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**AN BILLE UM CHEARTAS COIRIÚIL (GÁINNEÁIL
AINDLEATHACH AR MUIR), 2000
CRIMINAL JUSTICE (ILLICIT TRAFFIC BY SEA) BILL, 2000**

*Mar a tionscnaíodh
As initiated*

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SCHEDULE

Text of Council of Europe Agreement on Illicit Traffic by Sea
implementing Article 17 of the United Nations Convention
against Illicit Traffic in Narcotic Drugs and Psychotropic
Substances, done at Strasbourg on 31 January 1995

Acts Referred to

Criminal Justice Act, 1960	1960, No. 27
Criminal Justice Act, 1994	1994, No. 15
Maritime Jurisdiction Acts, 1959 to 1988	



**AN BILLE UM CHEARTAS COIRIÚIL (GÁINNEÁIL
AINDLEATHACH AR MUIR), 2000
CRIMINAL JUSTICE (ILLICIT TRAFFIC BY SEA) BILL, 2000**

BILL

5 *entitled*

AN ACT TO GIVE EFFECT TO THE COUNCIL OF EUROPE
AGREEMENT ON ILLICIT TRAFFIC BY SEA
IMPLEMENTING ARTICLE 17 OF THE UNITED
10 NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN
NARCOTIC DRUGS AND PSYCHOTROPIC SUB-
STANCES, TO AMEND THE CRIMINAL JUSTICE ACT,
1994, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act except when the context otherwise requires— Interpretation.

15 “Act of 1994” means the Criminal Justice Act, 1994;

“Agreement” means the Council of Europe Agreement on Illicit
Traffic by Sea implementing Article 17 of the United Nations Con-
vention against Illicit Traffic in Narcotic Drugs and Psychotropic
Substances, done at Strasbourg on 31 January 1995;

20 “Convention state” has the meaning given to it in the Act of 1994;

“drug trafficking offence” has the meaning given to it in the Act of
1994;

“enforcement officer” has the meaning given to it in the Act of 1994;

25 “Minister” means the Minister for Justice, Equality and Law
Reform;

“outer limit of the territorial seas” has the meaning given to that
expression by the Maritime Jurisdiction Acts, 1959 to 1988;

“territory of the State” includes a vessel registered in the State;

30 “vessel” means a ship or other floating craft of any description and
includes a hovercraft or submersible craft.

(2) In this Act, unless the contrary intention appears, a reference
to—

(a) a section, Part or Schedule is a reference to a section or Part
of, or Schedule to, this Act,

(b) a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, and

(c) an enactment includes a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act. 5

(3) For convenience of reference, the text of the Agreement in the English language is set out in the *Schedule*.

Exercise of powers by enforcement officers.

2.—For the purposes of this Act, the powers conferred on an enforcement officer by the Act of 1994 shall not be exercised outside the outer limit of the territorial seas of the State except with the authority of the Minister for Foreign Affairs as provided in section 35(2) of the Act of 1994. 10

Convention states party to the Agreement.

3.—(1) The Minister for Foreign Affairs may by order declare that any state specified in the order is a Convention state which is a party to the Agreement. 15

(2) An order that is in force under *subsection (1)* shall be evidence that any state specified in the order is a Convention state which is a party to the Agreement.

(3) The Minister for Foreign Affairs may by order amend or revoke an order under this section including an order under this subsection. 20

(4) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

Communication by master of vessel.

4.—(1) Subject to *subsection (2)*, the master of a vessel which— 25

(a) is registered in a Convention state which is a party to the Agreement, and

(b) is boarded by an enforcement officer outside the outer limit of the territorial seas of the State,

shall be entitled to communicate with the authorities of the Convention state and the owner or operator of the vessel for the purpose of notifying them that the vessel has been boarded. 30

(2) An enforcement officer may prevent or delay communication under *subsection (1)* if he or she is satisfied that it would obstruct the investigation of an offence. 35

Arrested person to be brought before High Court.

5.—Where—

(a) a vessel registered in a Convention state which is a party to the Agreement—

(i) is arrested outside the outer limit of the territorial seas of the State, and 40

(ii) is taken by an enforcement officer to a port in the State,

and

(b) a person on board the vessel is arrested by the enforcement officer by virtue of his or her powers under the First Schedule to the Act of 1994,

5 the person shall be brought before the High Court as soon as possible, unless there are no longer reasonable grounds for suspecting that the person has committed the offence for which he or she was arrested, in which case the person shall be released forthwith.

10 **6.**—Where a person is brought before the High Court under *section 5*, and the Court is satisfied that the person was lawfully arrested by an enforcement officer in the exercise of his or her powers under the Act of 1994, the Court shall make an order remanding the person pending the production of a certificate referred to in *section 8* or the release of the person in accordance with an order
15 under *section 21*. Remand of arrested person.

7.—(1) A Convention state which is a party to the Agreement may make a request to the Minister in accordance with Article 15 of the Agreement for the surrender of— Request for surrender.

(a) a person who has been arrested,

20 (b) a vessel which has been detained, or

(c) anything which has been seized from a vessel and retained,

by an enforcement officer in the exercise of his or her powers under the Act of 1994.

(2) A request may be transmitted by facsimile transmission or
25 other electronic means.

8.—On receiving a request made in accordance with *section 7* for the surrender of a person, the Minister shall certify that the request has been duly made. Certification of surrender request.

30 **9.**—(1) Where a person who has been remanded under *section 6* is before the High Court and it is satisfied that— Committal or release of arrested person.

(a) a request under the Agreement for the surrender of the person has been duly made, and

35 (b) the original or a certified copy of a warrant for the arrest of the person, or other order having the same effect, issued by a judicial authority of the requesting Convention state has been produced,

the Court shall make an order committing the person to prison (or, if he or she is not more than 21 years of age, to a remand institution) there to await the order of the Minister for his or her surrender.

(2) The Court on making the order shall—

- (a) inform the person to whom it relates that he or she will not be surrendered, except with his or her consent, until the expiry of 15 days after the committal date,
- (b) inform the person of the provisions of section 4.2° of Article 40 of the Constitution (which relates to the making of a complaint to the Court by or on behalf of any person alleging that that person is unlawfully detained), 5
- (c) inform the person that he or she may, if not surrendered, be liable to proceedings in the State arising out of the circumstances which led to or followed the arrest, and 10
- (d) cause a certificate of the committal to be sent forthwith to the Minister.

(3) Where the person referred to in *subsection (1)* is not committed under that subsection, the Court shall order that he or she shall be released. 15

(4) No appeal shall lie against an order of the High Court under this section other than an appeal on a point of law to the Supreme Court.

(5) Sections 10 and 11 of the Criminal Justice Act, 1960, shall apply to a person committed to a remand institution under this section. 20

Powers of adjournment and remand.

10.—The High Court may, in relation to a person brought before it under this Act, exercise all its powers of adjournment and remand, including, but not limited to, the powers in that respect which the Court has in relation to a person sent forward to it for trial. 25

Nomination of judge.

11.—The President of the High Court may nominate from time to time one or more judges of the Court, including himself or herself, to sit as soon as may be and from time to time as appears necessary so as to enable the requirements of this Act and the Agreement to be complied with. 30

Immunity of foreign officials.

12.—A person acting for or on behalf of a Convention state which is a party to the Agreement shall not be liable in any criminal proceedings in the State for anything done in the purported exercise of powers in relation to an Irish vessel— 35

(a) on the authority of the Minister for Foreign Affairs under section 35(4) of the Act of 1994, or

(b) under an agreement referred to in section 35(5) of that Act.

Offences against foreign officials.

13.—Where a person acting for or on behalf of a Convention state which is a party to the Agreement exercises powers in relation to an Irish vessel— 40

(a) on the authority of the Minister for Foreign Affairs under section 35(4) of the Act of 1994, or

(b) under an agreement referred to in section 35(5) of that Act,

any person who does or fails to do anything in relation to that person which, if done or not done in relation to an enforcement officer, would constitute an offence is guilty of that offence, and section 36 (jurisdiction and prosecutions in relation to offences on ships) of the Act of 1994 shall apply and have effect accordingly, with any necessary modifications.

14.—(1) Where a court or the Minister orders the release of a person who has been arrested, or of a vessel or thing which has been detained or retained, outside the outer limit of the territorial seas of the State, the release shall, subject to this Act and the Agreement, not of itself prejudice the commencement of proceedings in the State against that person or in relation to that vessel or thing in connection with the drug trafficking offence concerned or with the circumstances leading to or following the arrest, detention or retention.

Restriction on arrest and proceedings.

(2) A person on board a vessel—

(a) which is registered in a Convention state which is a party to the Agreement, and

(b) in relation to which the powers conferred on an enforcement officer by the First Schedule to the Act of 1994 are exercised,

shall not be liable to be arrested or proceeded against for an offence, other than the drug trafficking offence with respect to which the powers are exercised or any offence in relation to an enforcement officer (including an offence under paragraph 9 of the First Schedule to the Act of 1994), unless—

(i) that Convention state gives its consent, or

(ii) the offence is committed by the person after he or she has been taken into the territory of the State.

(3) A person on board a vessel—

(a) which is registered in a Convention state which is a party to the Agreement, and

(b) in relation to which the powers conferred on an enforcement officer by the First Schedule to the Act of 1994 are exercised for a drug trafficking offence,

shall not be liable to be arrested or proceeded against in the State for that offence where the person is released under *section 21(d)*.

(4) References in *subsections (2) and (3)* to the exercise of powers by an enforcement officer are to the exercise of those powers outside the outer limit of the territorial seas of the State.

15.—(1) The High Court shall, on the application of the Minister, order the suspension of any proceedings commenced in any court in the State if it is satisfied that the suspension is necessary to give effect to the obligations of the State under paragraph 3 of Article 14 of the Agreement.

Suspension of proceedings.

(2) Where it orders that proceedings be suspended, the High Court may make such other orders as are appropriate to give effect to the application by the Minister, including the revocation of any warrant of arrest issued in connection with the proceedings.

(3) For the purpose of considering an application under *subsection (1)*, the High Court may order the adjournment of the proceedings for such period or periods, and on such conditions, as it thinks fit.

Removal of
detained person to
hospital or other
place.

16.—The Minister may by order direct that a person in custody under this Act be removed to a hospital or other place if the Minister thinks it necessary to do so in the interests of the person’s health and the person, while in or in transit to or from the hospital or other place, shall continue to be in the like custody.

Surrender of
persons.

17.—(1) The Minister may by order direct that a person who has been committed under *section 9*, other than a person—

- (a) who has been released by an order of the High Court under Article 40.4.2° of the Constitution or on the determination of an appeal from an order under that provision, 15
- (b) who has been released on the determination by the Supreme Court of an appeal on a point of law,
- (c) who has been released by order of the Minister under *section 21*, or 20
- (d) whose surrender has been refused under *section 22*,

be surrendered to such person as in the Minister’s opinion is duly authorised by the requesting Convention state to receive him or her.

(2) Any person to whom an order under *subsection (1)* directs a person to be surrendered may receive, hold in custody and convey out of the State the person so surrendered and, if that person escapes from the custody to which he or she has been surrendered, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody. 25 30

(3) An order under *subsection (1)* which is made in respect of a person who is subject to a sentence of a court in the State, may include a provision authorising the return of that person to the State in accordance with arrangements made by the Minister with—

- (a) the court or tribunal exercising criminal jurisdiction in the Convention state concerned or a prosecuting authority in that state, or 35
- (b) any other authority in that state that appears to the Minister to have the function of making such arrangements.

Surrender of vessels
and any thing
seized.

18.—(1) Where a vessel registered in a Convention state which is a party to the Agreement is taken by an enforcement officer to a port in the State and the vessel is detained or anything on the vessel is seized as evidence, and the Minister receives from that state a request under Article 15 of the Agreement for— 40

- (a) the surrender of the vessel, 45

- (b) the surrender of any thing seized from the vessel, or
- (c) the surrender of both the vessel and any such thing,

5 the Minister may, if satisfied that the request is in accordance with the Agreement, by order direct that the vessel or thing, or both the vessel and thing, as the case may be, be surrendered to such person as in the Minister's opinion is duly authorised by the requesting Convention state to receive it.

10 (2) Any person to whom an order under *subsection (1)* directs a vessel or thing to be surrendered may receive, hold in custody and convey out of the State the vessel or thing so surrendered.

19.—(1) A person committed under *section 9* shall not, except with his or her consent given before the High Court, be surrendered under the Agreement until— Time lapse before surrender.

- (a) the expiry of 15 days from the date of committal, or
- 15 (b) the conclusion of any appeal proceedings brought by or on behalf of that person,

whichever is the later.

(2) In this section, "appeal proceedings" means proceedings relating to—

- 20 (a) a complaint under Article 40.4.2° of the Constitution (including proceedings on appeal from a decision on that complaint), or
- (b) an appeal on a point of law to the Supreme Court.

25 **20.—**(1) An application may be made to the High Court for the release of a person who is awaiting surrender under this Act and who is not surrendered and conveyed out of the State within one month after— Release if not conveyed out of State.

- (a) the date of that person's committal under *section 9*, or
- 30 (b) the conclusion of any appeal proceedings (as defined in *section 19(2)*) brought by or on behalf of that person,

whichever is the later.

35 (2) If satisfied that the application has been made by or on behalf of a person referred to in *subsection (1)* and that the Minister has been given reasonable notice of the application, the Court shall, subject to *subsection (3)*, order that the person be released from custody under this Act.

(3) If satisfied as to the matters specified in *subsection (2)* and also that—

- 40 (a) the person's state of health or other circumstances beyond the control of the State or the requesting Convention state have prevented him or her from being conveyed out of the State, and

- (b) it is likely that within a reasonable time those circumstances will no longer prevent the person's conveyance out of the State,

the Court may fix a period within which the person may be surrendered, and he or she shall be released from custody under this Act if not conveyed out of the State within that period. 5

Release by order of Minister.

21.—Where a person is remanded under *section 6* or a vessel or thing is detained or retained by an enforcement officer, in the exercise of his or her powers under the Act of 1994, outside the outer limit of the territorial seas of the State and— 10

- (a) there are no longer reasonable grounds for suspecting that the person has committed the offence in respect of which he or she has been remanded,
- (b) no request has been received from the relevant Convention state for the surrender of the person, vessel or thing within 18 days of the arrest, detention or retention concerned, 15
- (c) the relevant Convention state has given notice that it does not intend to make a request under the Agreement for the surrender of the person, vessel or thing, or 20
- (d) the relevant Convention state has requested the release under the Agreement of the person, vessel or thing,

the Minister shall order the release of the person, vessel or thing, as the case may be, and the person, vessel or thing shall be released forthwith. 25

Capital punishment.

22.—Where—

- (a) a Convention state which is a party to the Agreement has requested, in the exercise of its preferential jurisdiction, the surrender of a person who has been arrested under Article 10.1 of the Agreement for an offence, and 30
- (b) the offence is punishable by death under the law of the Convention state,

the surrender of the person shall be refused unless that state gives such assurances as the Minister considers sufficient that the death penalty will not be carried out. 35

Custodial sentence not completed.

23.—Subject to *section 14(2)*, where a court or the Minister orders the release of a person who is otherwise subject to a custodial sentence of a court in the State for an offence against the law of the State—

- (a) the person shall continue to be liable to complete the term of imprisonment to which he or she has been sentenced by the court in the State, and 40
- (b) if the sentence has not expired, the person shall be transferred in custody to the place where he or she is liable to be imprisoned under that sentence. 45

24.—(1) This section applies where a person, vessel or thing is detained in a Convention state pursuant to an authorisation under section 35(4) of the Act of 1994 and the State is entitled to have the person, vessel or thing surrendered to it.

Ireland as State seeking to exercise preferential jurisdiction.

(2) Where the Minister receives from a Convention state a notification of the detention of a person or the seizure of a vessel or thing under Article 10.2 of the Agreement together with a summary of the evidence of any alleged drug trafficking offences in accordance with Article 13.1 of the Agreement, the Minister, after consultation with the Director of Public Prosecutions, shall decide whether the State should exercise its preferential jurisdiction with respect to the person, vessel or thing; and, if any such jurisdiction is exercised, the Director of Public Prosecutions may apply to a judge of the District Court for a warrant for the arrest of the person detained or for the handing over of the vessel or thing seized.

(3) A judge of the District Court may issue a warrant referred to in *subsection (2)* if satisfied that the person, vessel or thing is the subject of a notification referred to in that subsection.

(4) A warrant for any alleged offence referred to in *subsection (2)* may be issued, and the offence may for all incidental purposes be treated as having been committed, in any place in the State.

25.—(1) In any proceedings under this Act it shall be presumed unless the contrary is proved that a request for the surrender of a person has been duly made and received where a document purporting to be a certificate under *section 8* to that effect has been produced to the High Court.

Evidence and presumptions.

(2) In any proceedings under this Act a document purporting to be a request by a Convention state which is a party to the Agreement for the surrender of a person or to have been furnished in support of such a request shall, without further proof, be admissible in evidence if it purports to be signed by a person authorised by the law of the requesting Convention state to sign the document.

(3) In any proceedings under this Act, a document purporting—

(a) to be a copy of a warrant of arrest, or other order having the same effect, issued by a judicial authority of a Convention state which is a party to the Agreement, and

(b) to have been certified to be a true copy by an officer of that authority authorised by it to so certify on its behalf,

shall, without further proof, be admissible in evidence and be presumed, until the contrary is proved, to be a true copy of the warrant or order.

(4) A document purporting to be a certificate by the Minister for Foreign Affairs and stating that he or she has received a request or authorisation from a Convention state for the exercise of powers by an enforcement officer in relation to a vessel registered in that state, or that he or she has given his or her authority for any purpose provided for in section 35 of the Act of 1994, shall be admissible in evidence in any proceedings.

(5) Where a document is admissible in evidence under this section, any document which purports to be a translation of that document shall be admissible as evidence of the translation if it is

certified as correct by a person competent to do so; and a document purporting to be a certificate under this subsection shall be presumed to be such a certificate, and to be signed by a person who is competent to certify the document as correct, unless the contrary is shown. 5

(6) Requests, other communications and supporting documents shall be made in, or accompanied by a translation into, the Irish language or English language.

Expenses. 26.—The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 10

Compensation. 27.—The State shall be liable to pay compensation for any loss, damage or injury in accordance with the liability imposed by Article 26 of the Agreement.

Amendment of Criminal Justice Act, 1994. 28.—The Act of 1994 is amended in the following respects: 15

- (a) in section 3(1)—
 - (i) by the insertion of the following after the definition of “Minister”:

“ ‘outer limit of the territorial seas’ has the meaning given to that expression by the Maritime Jurisdiction Acts, 1959 to 1988;”, and 20
 - (ii) by the substitution of the following for the definition of “ship”:

“ ‘ship’ includes a hovercraft or submersible craft, any vessel used in navigation and any other floating craft of any description;”, 25

- (b) by the substitution of the following section for section 33:

“Drug trafficking offences on ships. 33.—(1) A person is guilty of a drug trafficking offence if the person does, on an Irish ship, a ship registered in a Convention state or a ship not registered in any country or territory, any act which, if done in the State, would constitute such an offence. 30

(2) This section is without prejudice to section 34 of this Act.” 35

- (c) in section 35—
 - (i) by the substitution, in subsection (2) of that section, of “outer limit” for “landward limits”, and
 - (ii) by the insertion of the following subsections after subsection 6: 40

“(7) Where an enforcement officer is acting under the powers conferred by subsection (1) of this section with the authority of the Minister for Foreign Affairs given under subsection (2) of this section, 45

any person who does or fails to do any act in relation to the officer, which if done or not done in the State in relation to another person would constitute an offence, shall be guilty of that offence.

(8) Requests under this section may be transmitted by facsimile transmission or other electronic means.”,

(d) in section 36, by the substitution, in subsection (3) of that section, of “outer limit” for “landward limits”,

(e) in paragraph 4 of the First Schedule to the Act, by the substitution for “an offence mentioned in section 33 or 34 of this Act” of “a drug trafficking offence”.

29.—(1) This Act may be cited as the Criminal Justice (Illicit Traffic by Sea) Act, 2000. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may fix either generally or with reference to any particular purpose or provision.

SCHEDULE

Text of Council of Europe Agreement on Illicit Traffic by Sea implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Strasbourg on 31 January 1995

AGREEMENT ON ILLICIT TRAFFIC BY SEA IMPLEMENTING ARTICLE 17 OF THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

The member States of the Council of Europe, having expressed their consent to be bound by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on 20 December 1988, hereinafter referred to as “The Vienna Convention”,

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

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for close co-operation on an international scale;

Desiring to increase their co-operation to the fullest possible extent in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea and in full respect of the principle of right of freedom of navigation;

Considering, therefore, that Article 17 of the Vienna Convention should be supplemented by a regional agreement to carry out, and to enhance the effectiveness of, the provisions of that article,

Have agreed as follows:

CHAPTER I — DEFINITIONS

Article 1 — Definitions

For the purposes of this Agreement:

- a “Intervening State” means a State Party which has requested or proposes to request authorisation from another Party to take action under this Agreement in relation to a vessel flying the flag or displaying the marks of registry of that other State Party; 5
- b “Preferential jurisdiction” means, in relation to a flag State having concurrent jurisdiction over a relevant offence with another State, the right to exercise its jurisdiction on a priority basis, to the exclusion of the exercise of the other State’s jurisdiction over the offence; 10
- c “Relevant offence” means any offence of the kind described in Article 3, paragraph 1, of the Vienna Convention; 15
- d “Vessel” means a ship or any other floating craft of any description, including hovercrafts and submersible crafts.

CHAPTER II — INTERNATIONAL CO-OPERATION

Section 1 — General provisions

Article 2 — General principles 20

- 1 The Parties shall co-operate to the fullest extent possible to suppress illicit traffic in narcotic drugs and psychotropic substances by sea, in conformity with the international law of the sea.
- 2 In the implementation of this Agreement the Parties shall endeavour to ensure that their actions maximise the effectiveness of law enforcement measures against illicit traffic in narcotic drugs and psychotropic substances by sea.
- 3 Any action taken in pursuance of this Agreement shall take due account of the need not to interfere with or affect the rights and obligations of and the exercise of jurisdiction by coastal States, in accordance with the international law of the sea. 30
- 4 Nothing in this Agreement shall be so construed as to infringe the principle of *non bis in idem*, as applied in national law. 35
- 5 The Parties recognise the value of gathering and exchanging information concerning vessels, cargo and facts, whenever they consider that such exchange of information could assist a Party in the suppression of illicit traffic in narcotic drugs and psychotropic substances by sea. 40
- 6 Nothing in this Agreement affects the immunities of warships and other government vessels operated for non-commercial purposes.

Article 3 — Jurisdiction 45

- 1 Each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences when the offence is committed on board a vessel flying its flag.

- 2 For the purposes of applying this Agreement, each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel flying the flag or displaying the marks of registry or bearing any other indication of nationality of any other Party to this Agreement. Such jurisdiction shall be exercised only in conformity with this Agreement.
- 3 For the purposes of applying this Agreement, each Party shall take such measures as may be necessary to establish its jurisdiction over the relevant offences committed on board a vessel which is without nationality, or which is assimilated to a vessel without nationality under international law.
- 4 The flag State has preferential jurisdiction over any relevant offence committed on board its vessel.
- 5 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later date, by a declaration addressed to the Secretary General of the Council of Europe, inform the other Parties to the agreement of the criteria it intends to apply in respect of the exercise of the jurisdiction established pursuant to paragraph 2 of this article.
- 6 Any State which does not have in service warships, military aircraft or other government ships or aircraft operated for non-commercial purposes, which would enable it to become an intervening State under this Agreement may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe declare that it will not apply paragraphs 2 and 3 of this article. A State which has made such a declaration is under the obligation to withdraw it when the circumstances justifying the reservation no longer exist.

Article 4 — Assistance to flag States

- 1 A Party which has reasonable grounds to suspect that a vessel flying its flag is engaged in or being used for the commission of a relevant offence, may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.
- 2 In making its request, the flag State may, *inter alia*, authorise the requested Party, subject to any conditions or limitations which may be imposed, to take some or all of the actions specified in this Agreement.
- 3 When the requested Party agrees to act upon the authorisation of the flag State given to it in accordance with paragraph 2, the provisions of this Agreement in respect of the rights and obligations of the intervening State and the flag State shall, where appropriate and unless otherwise specified, apply to the requested and requesting Party, respectively.

Article 5 — Vessels without nationality

- 1 A Party which has reasonable grounds to suspect that a vessel without nationality, or assimilated to a vessel without nationality under international law, is engaged in or being

- used for the commission of a relevant offence, shall inform such other Parties as appear most closely affected and may request the assistance of any such Party in suppressing its use for that purpose. The Party so requested shall render such assistance within the means available to it. 5
- 2 Where a Party, having received information in accordance with paragraph 1, takes action it shall be for that Party to determine what actions are appropriate and to exercise its jurisdiction over any relevant offences which may have been committed by any persons on board the vessel. 10
- 3 Any Party which has taken action under this article shall communicate as soon as possible to the Party which has provided information, or made a request for assistance, the results of any action taken in respect of the vessel and any persons on board. 15

Section 2 — Authorisation procedures

Article 6 — Basic rules on authorisation

Where the intervening State has reasonable grounds to suspect that a vessel, which is flying the flag or displaying the marks of registry of another Party or bears any other indications of nationality of the vessel, is engaged in or being used for the commission of a relevant offence, the intervening State may request the authorisation of the flag State to stop and board the vessel in waters beyond the territorial sea of any Party, and to take some or all of the other actions specified in this Agreement. No such actions may be taken by virtue of this Agreement, without the authorisation of the flag State. 20 25

Article 7 — Decision on the request for authorisation

The flag State shall immediately acknowledge receipt of a request for authorisation under Article 6 and shall communicate a decision thereon as soon as possible and, wherever practicable, within four hours of receipt of the request. 30

Article 8 — Conditions

- 1 If the flag State grants the request, such authorisation may be made subject to conditions or limitations. Such conditions or limitations may, in particular, provide that the flag State's express authorisation be given before any specified steps are taken by the intervening State. 35
- 2 Each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that, when acting as an intervening State, it may subject its intervention to the condition that persons having its nationality who are surrendered to the flag State under Article 15 and there convicted of a relevant offence, shall have the possibility to be transferred to the intervening State to serve the sentence imposed. 40 45

Section 3 — Rules governing action

Article 9 — Authorised actions

- 1 Having received the authorisation of the flag State, and sub-
5 ject to the conditions or limitations, if any, made under
Article 8, paragraph 1, the intervening State may take the
following actions:
- i a stop and board the vessel;
 - b establish effective control of the vessel and over any
person thereon;
 - 10 c take any action provided for in sub-paragraph ii of
this article which is considered necessary to establish
whether a relevant offence has been committed and
to secure any evidence thereof;
 - 15 d require the vessel and any persons thereon to be
taken into the territory of the intervening State and
detain the vessel there for the purpose of carrying
out further investigations;
 - ii and, having established effective control of the vessel:
 - 20 a search the vessel, anyone on it and anything in it,
including its cargo;
 - b open or require the opening of any containers, and
test or take samples of anything on the vessel;
 - c require any person on the vessel to give information
concerning himself or anything on the vessel;
 - 25 d require the production of documents, books or
records relating to the vessel or any persons or
objects on it, and make photographs or copies of any-
thing the production of which the competent auth-
orities have the power to require;
 - 30 e seize, secure and protect any evidence or material
discovered on the vessel.
- 2 Any action taken under paragraph 1 of this article shall be
without prejudice to any right existing under the law of the
intervening State of suspected persons not to incriminate
35 themselves.

Article 10 — Enforcement measures

- 1 Where, as a result of action taken under Article 9, the
intervening State has evidence that a relevant offence has
40 been committed which would be sufficient under its laws to
justify its either arresting the persons concerned or detaining
the vessel, or both, it may so proceed.
- 2 The intervening State shall, without delay, notify the flag
State of steps taken under paragraph 1 above.
- 45 3 The vessel shall not be detained for a period longer than
that which is strictly necessary to complete the investigations
into relevant offences. Where there are reasonable grounds
to suspect that the owners of the vessel are directly involved
in a relevant offence, the vessel and its cargo may be further
detained on completion of the investigation. Persons not

suspected of any relevant offence and objects not required as evidence shall be released.

- 4 Notwithstanding the provisions of the preceding paragraph, the intervening State and the flag State may agree with a third State, Party to this Agreement, that the vessel may be taken to the territory of that third State and, once the vessel is in that territory, the third State shall be treated for the purposes of this Agreement as an intervening State. 5

Article 11 — Execution of action

- 1 Actions taken under Articles 9 and 10 shall be governed by the law of the intervening State. 10
- 2 Actions under Article 9, paragraph 1 a, b and d, shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect. 15
- 3 a An official of the intervening State may not be prosecuted in the flag State for any act performed in the exercise of his functions. In such a case, the official shall be liable to prosecution in the intervening State as if the elements constituting the offence had been committed within the jurisdiction of that State. 20
- b In any proceedings instituted in the flag State, offences committed against an official of the intervening State with respect to actions carried out under Articles 9 and 10 shall be treated as if they had been committed against an official of the flag State. 25
- 4 The master of a vessel which has been boarded in accordance with this Agreement shall be entitled to communicate with the authorities of the vessel's flag State as well as with the owners or operators of the vessel for the purpose of notifying them that the vessel has been boarded. However, the authorities of the intervening State may prevent or delay any communication with the owners or operators of the vessel if they have reasonable grounds for believing that such communication would obstruct the investigations into a relevant offence. 30 35

Article 12 — Operational safeguards

- 1 In the application of this Agreement, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and cargo and not to prejudice any commercial or legal interest. In particular, they shall take into account: 40
- a the dangers involved in boarding a vessel at sea, and give consideration to whether this could be more safely done at the vessel's next port of call; 45
- b the need to minimise any interference with the legitimate commercial activities of a vessel;
- c the need to avoid unduly detaining or delaying a vessel;
- d the need to restrict the use of force to the minimum necessary to ensure compliance with the instructions of the intervening State. 50

2 The use of firearms against, or on, the vessel shall be reported as soon as possible to the flag State.

3 The death, or injury, of any person aboard the vessel shall be reported as soon as possible to the flag State. The authorities of the intervening State shall fully co-operate with the authorities of the flag State in any investigation the flag State may hold into any such death or injury.

Section 4 — Rules governing the exercise of jurisdiction

Article 13 — Evidence of offences

1 To enable the flag State to decide whether to exercise its preferential jurisdiction in accordance with the provisions of Article 14, the intervening State shall without delay transmit to the flag State a summary of the evidence of any offences discovered as a result of action taken pursuant to Article 9. The flag State shall acknowledge receipt of the summary forthwith.

2 If the intervening State discovers evidence which leads it to believe that offences outside the scope of this Agreement may have been committed, or that suspect persons not involved in relevant offences are on board the vessel, it shall notify the flag State. Where appropriate, the Parties involved shall consult.

3 The provisions of this Agreement shall be so construed as to permit the intervening State to take measures, including the detention of persons, other than those aimed at the investigation and prosecution of relevant offences, only when:

- a the flag State gives its express consent; or
- b such measures are aimed at the investigation and prosecution of an offence committed after the person has been taken into the territory of the intervening State.

Article 14 — Exercise of preferential jurisdiction

1 A flag State wishing to exercise its preferential jurisdiction shall do so in accordance with the provisions of this article.

2 It shall notify the intervening State to this effect as soon as possible and at the latest within fourteen days from the receipt of the summary of evidence pursuant to Article 13. If the flag State fails to do this, it shall be deemed to have waived the exercise of its preferential jurisdiction.

3 Where the flag State has notified the intervening State that it exercises its preferential jurisdiction, the exercise of the jurisdiction of the intervening State shall be suspended, save for the purpose of surrendering persons, vessels, cargoes and evidence in accordance with this Agreement.

4 The flag State shall submit the case forthwith to its competent authorities for the purpose of prosecution.

5 Measures taken by the intervening State against the vessel and persons on board may be deemed to have been taken as part of the procedure of the flag State.

Article 15 — Surrender of vessels, cargoes, persons and evidence

- 1 Where the flag State has notified the intervening State of its intention to exercise its preferential jurisdiction, and if the flag State so requests, the persons arrested, the vessel, the cargo and the evidence seized shall be surrendered to that State in accordance with the provisions of this Agreement. 5
- 2 The request for the surrender of arrested persons shall be supported by, in respect of each person, the original or a certified copy of the warrant of arrest or other order having the same effect, issued by a judicial authority in accordance with the procedure prescribed by the law of the flag State. 10
- 3 The Parties shall use their best endeavours to expedite the surrender of persons, vessels, cargoes and evidence.
- 4 Nothing in this Agreement shall be so construed as to deprive any detained person of his right under the law of the intervening State to have the lawfulness of his detention reviewed by a court of that State, in accordance with procedures established by its national law. 15
- 5 Instead of requesting the surrender of the detained persons or of the vessel, the flag State may request their immediate release. Where this request has been made, the intervening State shall release them forthwith. 20

Article 16 — Capital punishment

If any offence for which the flag State decides to exercise its preferential jurisdiction in accordance with Article 14 is punishable by death under the law of that State, and if in respect of such an offence the death penalty is not provided by the law of the intervening State or is not normally carried out, the surrender of any person may be refused unless the flag State gives such assurances as the intervening State considers sufficient that the death penalty will not be carried out. 25 30

Section 5 — Procedural and other general rules

Article 17 — Competent authorities

- 1 Each Party shall designate an authority, which shall be responsible for sending and answering requests under Articles 6 and 7 of this Agreement. So far as is practicable, each Party shall make arrangements so that this authority may receive and respond to the requests at any hour of any day or night. 35 40
- 2 The Parties shall furthermore designate a central authority which shall be responsible for the notification of the exercise of preferential jurisdiction under Article 14 and for all other communications or notifications under this Agreement.
- 3 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this article, together with any other information facilitating communication under this Agreement. Any subsequent change with respect to the 45 50

name, address or other relevant information concerning such authorities shall likewise be communicated to the Secretary General.

Article 18 — Communication between designated authorities

- 5 1 The authorities designated under Article 17 shall communicate directly with one another.
- 2 Where, for any reason, direct communication is not practicable, Parties may agree to use the communication channels of ICPO-Interpol or of the Customs Co-operation Council.

10 **Article 19 — Form of request and languages**

- 1 All communications under Articles 4 to 16 shall be made in writing. Modern means of telecommunications, such as telefax, may be used.
- 15 2 Subject to the provisions of paragraph 3 of this article, translations of the requests, other communications and supporting documents shall not be required.
- 3 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any Party may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests, other communications and supporting documents sent to it, be made in or accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.
- 20
- 25

Article 20 — Authentication and legalisation

- 30 Documents transmitted in application of this Agreement shall be exempt from all authentication and legalisation formalities.

Article 21 — Content of request

- A request under Article 6 shall specify:
- 35 a the authority making the request and the authority carrying out the investigations or proceedings;
- b details of the vessel concerned, including, as far as possible, its name, a description of the vessel, any marks of registry or other signs indicating nationality, as well as its location, together with a request for confirmation that the vessel has the nationality of the requested Party;
- 40 c details of the suspected offences, together with the grounds for suspicion;
- d the action it is proposed to take and an assurance that such action would be taken if the vessel concerned had been flying the flag of the intervening State.
- 45

Article 22 — Information for owners and masters of vessels

Each Party shall take such measures as may be necessary to inform the owners and masters of vessels flying their flag that States Parties to this Agreement may be granted the authority to board vessels beyond the territorial sea of any Party for the purposes specified in this Agreement and to inform them in particular of the obligation to comply with instructions given by a boarding party from an intervening State exercising that authority. 5

Article 23 — Restriction of use 10

The flag State may make the authorisation referred to in Article 6 subject to the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the intervening State in respect of investigations or proceedings other than those relating to relevant offences. 15

Article 24 — Confidentiality

The Parties concerned shall, if this is not contrary to the basic principles of their national law, keep confidential any evidence and information provided by another Party in pursuance of this Agreement, except to the extent that its disclosure is necessary for the application of the Agreement or for any investigations or proceedings. 20

Section 6 — Costs and damages

Article 25 — Costs 25

- 1 Unless otherwise agreed by the Parties concerned, the cost of carrying out any action under Articles 9 and 10 shall be borne by the intervening State, and the cost of carrying out action under Articles 4 and 5 shall normally be borne by the Party which renders assistance. 30
- 2 Where the flag State has exercised its preferential jurisdiction in accordance with Article 14, the cost of returning the vessel and of transporting suspected persons and evidence shall be borne by it.

Article 26 — Damages 35

- 1 If, in the process of taking action pursuant to Articles 9 and 10 above, any person, whether natural or legal, suffers loss, damage or injury as a result of negligence or some other fault attributable to the intervening State, it shall be liable to pay compensation in respect thereof. 40
- 2 Where the action is taken in a manner which is not justified by the terms of this Agreement, the intervening State shall be liable to pay compensation for any resulting loss, damage or injury. The intervening State shall also be liable to pay compensation for any such loss, damage or injury, if the suspicions prove to be unfounded and provided that the vessel boarded, the operator or the crew have not committed any act justifying them. 45
- 3 Liability for any damage resulting from action under Article 4 shall rest with the requesting State, which may seek compensation from the requested State where the damage was a result of negligence or some other fault attributable to that State. 50

CHAPTER III — FINAL PROVISIONS

Article 27 — Signature and entry into force

- 1 This Agreement shall be open for signature by the member
States of the Council of Europe which have already
expressed their consent to be bound by the Vienna Convention. They may express their consent to be bound by this Agreement by:
- a signature without reservation as to ratification, acceptance or approval; or
- b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Agreement in accordance with the provisions of paragraph 1.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of its consent to be bound by the Agreement in accordance with the provisions of paragraph 1.

Article 28 — Accession

- 1 After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Agreement, may invite any State which is not a member of the Council but which has expressed its consent to be bound by the Vienna Convention to accede to this Agreement, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Agreement shall enter into force on the first day of the month following the expiry of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 29 — Territorial application

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories in respect of which its consent to be bound to this Agreement shall apply.
- 2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend its consent to be bound by the present Agreement to any other territory specified in the declaration. In respect of such territory the Agreement shall enter into force on the first

day of the month following the expiry of a period of three months after the date of receipt of such declaration by the Secretary General.

- 3 In respect of any territory subject to a declaration under paragraphs 1 and 2 above, authorities may be designated under Article 17, paragraphs 1 and 2. 5
- 4 Any declaration made under the preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of such notification by the Secretary General. 10

Article 30 — Relationship to other conventions and agreements

- 1 This Agreement shall not affect rights and undertakings deriving from the Vienna Convention or from any international multilateral conventions concerning special matters. 15
- 2 The Parties to the Agreement may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Agreement, for the purpose of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it and in Article 17 of the Vienna Convention. 20
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject dealt with in this Agreement or have otherwise established their relations in respect of that subject, they may agree to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Agreement, if it facilitates international co-operation. 25 30

Article 31 — Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 3, paragraph 6, Article 19, paragraph 3 and Article 34, paragraph 5. No other reservation may be made. 35
- 2 Any State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General. 40
- 3 A Party which has made a reservation in respect of a provision of this Agreement may not claim the application of that provision by any other Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it. 45

Article 32 — Monitoring committee

- 1 After the entry into force of the present Agreement, a monitoring committee of experts representing the Parties shall be 50

convened at the request of a Party to the Agreement by the Secretary General of the Council of Europe.

2 The monitoring committee shall review the working of the Agreement and make appropriate suggestions to secure its efficient operation.

3 The monitoring committee may decide its own procedural rules.

4 The monitoring committee may decide to invite States not Parties to the Agreement as well as international organisations or bodies, as appropriate, to its meetings.

5 Each Party shall send every second year a report on the operation of the Agreement to the Secretary General of the Council of Europe in such form and manner as may be decided by the monitoring committee or the European Committee on Crime Problems. The monitoring committee may decide to circulate the information supplied or a report thereon to the Parties and to such international organisations or bodies as it deems appropriate.

Article 33 — Amendments

1 Amendments to this Agreement may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to the Agreement in accordance with the provisions of Article 28.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems, which shall submit to the Committee of Ministers its opinion on the proposed amendment.

3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Crime Problems, and may adopt the amendment.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all the Parties have informed the Secretary General of their acceptance thereof.

Article 34 — Settlement of disputes

1 The European Committee on Crime Problems of the Council of Europe shall be kept informed of the interpretation and application of this Agreement.

2 In case of a dispute between Parties as to the interpretation or application of this Agreement, the Parties shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, mediation, conciliation or judicial process, as agreed upon by the Parties concerned.

- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or on any later date, by a declaration addressed to the Secretary General of the Council of Europe, declare that, in respect of any dispute concerning the interpretation or application of this Agreement, it recognises as compulsory, without prior agreement, and subject to reciprocity, the submission of the dispute to arbitration in accordance with the procedure set out in the appendix to this Agreement. 5
- 4 Any dispute which has not been settled in accordance with paragraphs 2 or 3 of this article shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision. 10
- 5 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it does not consider itself bound by paragraph 4 of this article. 15
- 6 Any Party having made a declaration in accordance with paragraphs 3 or 5 of this article may at any time withdraw the declaration by notification to the Secretary General of the Council of Europe. 20

Article 35 — Denunciation

- 1 Any Party may, at any time, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe. 25
- 2 Such denunciation shall become effective on the first day of the month following the expiry of a period of three months after the date of receipt of the notification by the Secretary General. 30
- 3 The present Agreement shall, however, continue to remain effective in respect of any actions or proceedings based on applications or requests made during the period of its validity in respect of the denouncing Party.

Article 36 — Notifications 35

The Secretary General of the Council of Europe shall notify the member States of the Council, any State which has acceded to this Agreement and the Secretary General of the United Nations of:

- a any signature; 40
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c the name of any authority and any other information communicated pursuant to Article 17;
- d any reservation made in accordance with Article 31, paragraph 1; 45
- e the date of entry into force of this Agreement in accordance with Articles 27 and 28;
- f any request made under Article 32, paragraph 1, and the date of any meeting convened under that paragraph; 50

g any declaration made under Article 3, paragraphs 5 and 6, Article 8, paragraph 2, Article 19, paragraph 3 and Article 34, paragraphs 3 and 5;

h any other act, notification or communication relating to this Agreement.

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

Done at Strasbourg, this 31st day of January 1995, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Agreement.

15 Appendix

1 The Party to the dispute requesting arbitration pursuant to Article 34, paragraph 3, shall inform the other Party in writing of the claim and of the grounds on which its claim is based.

2 The Parties concerned shall establish an arbitral tribunal.

3 The arbitral tribunal shall consist of three members. Each Party shall nominate an arbitrator. Both Parties shall, by common accord, appoint the presiding arbitrator.

4 Failing such nomination or such appointment by common accord within four months from the date on which the arbitration was requested, the necessary nomination or appointment shall be entrusted to the Secretary General of the Permanent Court of Arbitration.

5 Unless the Parties agree otherwise, the tribunal shall determine its own procedure.

6 Unless otherwise agreed between the Parties, the tribunal shall decide on the basis of the applicable rules of international law or, in the absence of such rules, *ex aequo et bono*.

7 The tribunal shall reach its decision by a majority of votes. Its decision shall be final and binding.



[CLICK HERE FOR BILL](#)

**AN BILLE UM CHEARTAS COIRIÚIL (GÁINNEÁIL
AINDLEATHACH AR MUIR), 2000
CRIMINAL JUSTICE (ILLICIT TRAFFIC BY SEA) BILL, 2000**

EXPLANATORY MEMORANDUM

General

The purpose of the Bill is to give effect to the Council of Europe Agreement on Illicit Traffic by Sea implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), done at Strasbourg on 31 January 1995. Arising from Ireland's obligations under the United Nations Convention, it is an offence under Irish law for a person to be involved in the carrying of controlled drugs on either an Irish ship or a ship registered in a Convention state or a ship not registered in any state or territory, no matter where the ship may be, knowing or having reasonable grounds to suspect that the drugs are to be imported or exported contrary to Irish law or a corresponding law of any other country. The Irish authorities may, on the high seas, stop, board and detain a ship registered in a Convention state where such drug trafficking is suspected, provided that Convention state agrees. The other Convention states have enacted similar laws, so that there is a shared jurisdiction among all Convention states.

All of this is provided for in the Convention and has been given effect in Irish law by the Criminal Justice Act, 1994 ("the 1994 Act"). However, the Convention is silent on the consequences of shared jurisdiction, in particular on which state ought to prosecute in such circumstances (although the need for further provision is recognised in Article 17 of the Convention, which deals with illicit traffic by sea, where regional agreements to enhance effectiveness in this area, such as the present Agreement, are envisaged). What the Council of Europe Agreement seeks to do is to establish an agreed method of dealing with such a situation by giving the flag state, that is the state where the ship is registered, preferential jurisdiction, where the ship has been arrested on suspicion of drug trafficking on the high seas.

The Agreement, at Article 3, also requires that each party to it shall take such steps as are necessary to establish its jurisdiction over the relevant offences, (i.e. any of the drug trafficking offences described in Article 3, paragraph 1 of the Vienna Convention), whether committed on board a vessel registered in a Convention state or a vessel of no nationality. Section 33 of the 1994 Act is being amended to take account of this requirement, so that it will apply to such drug trafficking offences, and not, as at present, only the offences of possession of drugs and carrying or concealing of drugs for import or export.

If, to take an example, a foreign ship on the high seas off the coast of Ireland was suspected of carrying drugs, the authorities of the flag

state (that is the country where the ship is registered) could, under the Convention, request Ireland, or alternatively Ireland could seek permission from the flag state, to stop, board and search the ship. If evidence of drugs was found, the ship could be taken to and detained in an Irish port and the crew arrested. The crew would, however, be guilty of a drug trafficking offence not only under Irish law but also under the law of the flag state. What the Council of Europe Agreement seeks to do is to establish an agreed method of dealing with such a situation by giving the flag state preferential jurisdiction. In the above example, the flag state would have the right to insist on prosecuting the crew and could, therefore, under the Agreement, require the crew, the ship and any evidence found on board to be surrendered to it by the Irish authorities; (alternatively, the flag state could simply require the release of the ship and crew). Such a requirement of surrender or release would, under the Agreement, have to be made within 14 days of the receipt of a summary of evidence from the arresting state which in this case would be Ireland. The summary would itself have to be given to the flag state as soon as possible after arrest. If, as is expected to be the norm, flag states do not exercise their right to preferential jurisdiction under the Agreement, the arresting state will be free to initiate a prosecution under its domestic law. The *Schedule* contains the text of the Agreement.

In addition to giving effect to the Agreement, the Bill amends sections 35 and 36 of the 1994 Act. These sections relate to enforcement powers, jurisdiction and prosecution provisions for Convention state vessels which are outside the *landward* limits of the Territorial seas of the State (i.e. either in Irish territorial water or on the high seas). At present, the authority of the Minister for Foreign Affairs must be sought in order to exercise powers in relation to such vessels and that authority may not be granted unless the Minister has obtained the consent of the Convention state. In consequence, action may not be taken against Convention state vessels in Irish territorial waters, which are suspected of drug smuggling offences, unless the consent of that state has been obtained. Advice available to the Department indicates that where such a vessel is in Irish territorial waters the consent of the foreign state to board the vessel is not necessary and sections 34 and 35 are being amended to take account of this advice. The question of preferential jurisdiction for flag state ships — the main purpose of the Bill — does not arise where a ship is arrested within territorial waters.

Exchequer Costs and Staffing Implications

This Bill builds on provisions already provided for in Part V of the 1994 Act and no significant staffing or financial implications are anticipated, as the Agreement essentially provides for the smoother implementation among Member States of the Council of Europe of commitments which already exist among states party to the Vienna Convention.

Provisions of the Bill

Section 1: Interpretation

This section is concerned with interpretation and defines certain terms which are used in the Bill.

Section 2: Exercise of powers by enforcement officers

This section provides that for the purposes of this Act and when acting outside the outer limit of the territorial seas (or, in other words, outside Irish territorial waters), an enforcement officer may only exercise the powers conferred under the 1994 Act when the

authority of the Minister for Foreign Affairs has been obtained as provided in that Act.

Section 3: Convention states party to the Agreement

This section makes provision for orders to be made by the Minister for Foreign Affairs declaring any state specified in the order to be a Convention state which is a party to the Agreement. It also provides for the amendment and laying of such orders before each House of the Oireachtas.

Section 4: Communication by master of vessel

Subsection (1) provides that a master of a Convention state vessel which has been boarded is entitled to communicate with the authorities of that state and the owner or operator of the vessel to notify them of the boarding.

Subsection (2) provides that the enforcement officer may prevent or delay that communication if it is likely to obstruct the investigation of an offence.

Section 5: Arrested person to be brought before the High Court

This section provides that when a vessel registered in a Convention state is arrested outside Irish territorial waters and brought to port by an enforcement officer and a person on board is arrested, that person is to be brought before the High Court as soon as possible. In the event that there are no longer reasonable grounds for suspecting that the person has committed the offence for which he or she was arrested, the person shall be released immediately.

Section 6: Remand of arrested person

This section provides that where a person is brought before the High Court and the Court is satisfied that the person has been lawfully arrested by an enforcement officer in accordance with his or her powers under the 1994 Act, the Court shall remand the person in custody pending:

- the production of a certificate of the Minister for Justice, Equality and Law Reform (“the Minister”) under *section 8*, or
- the release of the person in accordance with an order under *section 21*.

Section 7: Request for surrender

Subsection (1) provides that a request may be made to the Minister by a Convention state which is a party to the Agreement for the surrender of a person who has been arrested, a vessel which has been detained or a thing which has been seized and retained, while on the high seas, under procedures already provided for in section 35 of the 1994 Act.

Subsection (2) provides that the request may be transmitted by facsimile transmission or other electronic means.

Section 8: Certification of surrender request

This section makes provision for the Minister to certify that a request for surrender under *section 7* has been duly made.

Section 9: Committal or release of arrested person

Subsection (1) makes provision for the High Court to make an order committing to prison a person who has been remanded under *section 6*. If the person is under 21, he or she will be committed to a remand institution. The court must be satisfied that—

- (a) a request for surrender has been received, and
- (b) an original or certified copy of an arrest warrant, or other order having the same effect, issued by a judicial authority of the requesting Convention state has been produced.

The person committed must then await the order of the Minister for his or her surrender.

Subsection (2) requires the High Court to take certain actions on making a committal order. The court must inform the person who is the subject of the committal order—

- (a) that he or she will not be surrendered, except with his or her consent, until the expiry of 15 days after the committal date,
- (b) of the provisions of Article 40.4.2° of the Constitution (which relate to the making of a complaint alleging that a person is unlawfully detained),
- (c) that if he or she is not surrendered, he or she may be liable to proceedings in the State arising out of the circumstances which led to the arrest, and
- (d) cause a certificate of the committal to be sent to the Minister.

Subsection (3) deals with the situation where a person is not committed under *subsection (1)* and provides that the Court shall order the release of such person.

The only appeal against an order of committal under this section will be an appeal on a point of law to the Supreme Court (*subsection 4*).

Subsection (5) provides that sections 10 and 11 of the Criminal Justice Act, 1960, apply to a person committed to a remand institution under this section. These two sections relate to the power of the Minister to transfer a person detained in a remand institution to another remand institution or to a prison and the deeming of a person to be in lawful custody in a remand institution or a prison.

Section 10: Powers of adjournment and remand

This section provides that the High Court may exercise all its powers of adjournment and remand in relation to a person brought before it under this legislation.

Section 11: Nomination of judge

This section makes provision for the President of the High Court to nominate a judge to be available to hear proceedings under the Act as soon as possible.

Section 12: Immunity of foreign officials

This section gives immunity from prosecution in Ireland to foreign officials who are exercising their powers in relation to an Irish vessel on the high seas when those powers have been authorised by the Minister for Foreign Affairs in accordance with section 35(4) of the 1994 Act or are provided for under an agreement referred to in section 35 (5) of that Act.

Section 13: Offences against foreign officials

This section provides that a person who does or fails to do anything in relation to a foreign official who is exercising authorised powers in relation to an Irish vessel which, if done or not done in relation to an enforcement officer would constitute an offence, is guilty of that offence. It also provides that jurisdiction in relation to and prosecution of such offence is governed by section 36 of the 1994 Act.

Section 14: Restriction on arrest and proceedings

Subsection (1) provides that when a person, vessel or thing has been released by order of the Court of the Minister, the release will not prejudice commencement of proceedings in Ireland in relation to that person, vessel or thing in connection with the circumstances leading to or following the arrest or detention.

Subsection (2) provides that a person on board a vessel shall not be liable to be proceeded against in Ireland for an offence, other than the drug trafficking offence in respect to which an enforcement officer has exercised his or her powers, or an offence in relation to an enforcement officer, unless the Convention state has consented or the offence is one committed by the person after he or she has been taken into the territory of the State. By definition, "territory" includes a vessel registered in the State.

Subsection (3) provides that if the person has been released under *section 21(d)* on the request of the Convention state then that person cannot be arrested or proceeded against in Ireland for the suspected drug trafficking offence for which he or she was arrested and taken into custody.

Subsection (4) provides that the exercise of powers by enforcement officers in *subsections (2)* and *(3)* refers to exercise of those powers outside territorial waters.

Section 15: Suspension of proceedings

This section deals with the situation where proceedings have already commenced before a court in the State and the State is required to give effect to its obligations under the Agreement.

Under *subsection (1)*, the High Court, on an application by the Minister, shall suspend any proceedings which have been commenced if it is satisfied that the suspension is necessary in order to give effect to the State's obligations under the Agreement.

Subsection (2) provides that the High Court on the suspension of the proceedings may make such orders as are appropriate to give effect to the Minister's application.

Subsection (3) is an ancillary provision providing for the adjournment of court proceedings in order to enable the High Court consider an application for suspension of proceedings.

Section 16: Removal of detained person to hospital or other place

Subsection (1) enables the Minister, by order, to direct that a person who is in custody under the Act be removed to a hospital or other place in the interests of that person's health and *subsection (2)* provides that such a person shall be in lawful custody while detained in, or in transit to or from, such a place.

Section 17: Surrender of persons

This section deals with the surrender of a person following committal.

Subsection (1) provides that the Minister may by order (i.e. a surrender order) direct that a person, who has been committed under *section 9* and who has not been released for one of the stated reasons, be surrendered into the custody of a person duly authorised by the Convention state to receive such person.

Subsection (2) provides for that authorised person to receive, hold in custody and convey the surrendered person out of the State. If such a person escapes from custody he or she shall be liable to be retaken in the same way as any person who escapes from lawful custody.

Subsection (3) provides that, where a person who is to be surrendered is already subject to a sentence of a court in Ireland, the surrender order may contain a provision authorising the return of the person as may be arranged by the Minister.

Section 18: Surrender of vessels and any thing seized

This section deals with the surrender of a vessel which has been detained or a thing which has been seized and retained.

Subsection (1) provides that the Minister may, by order following a request from a Convention state, direct that a vessel which has been detained or a thing which has been seized, be surrendered into the custody of a person authorised by the Convention state to receive such vessel or thing. The Minister must be satisfied that the request received is in accordance with the Agreement.

Subsection (2) provides for that authorised person to receive, hold in custody and convey that vessel or thing out of the State.

Section 19: Time lapse before surrender

Subsection (1) provides that a person committed under *section 9* shall not be surrendered until:

- the expiry of 15 days from the committal date, or
- the conclusion of any appeal proceedings by or on that person's behalf, whichever is the later. The person may waive that time period by consent given before the High Court.

Subsection (2) defines appeal proceedings for the purpose of this section to mean (a) a complaint under Article 40.4.2° of the Constitution, including proceedings on appeal from a decision about that complaint, or (b) an appeal on a point of law to the Supreme Court.

Section 20: Release if not conveyed out of the State

Under *subsection (1)*, an application for release may be made to the High Court in respect of a person who has not been surrendered and conveyed out of the State within one month after his or her committal or the conclusion of appeal proceedings, whichever is the later.

Under *subsection (2)*, the Court shall, subject to *subsection (3)*, order the release of the person if it is satisfied that the application has been made by or on behalf of the person referred to in *subsection (1)* and the Minister has been given reasonable notice of the application.

Subsection (3) provides that the Court may fix a period within which the person may be surrendered where the conveyance of the person out of the State has been prevented by his or state of health or other circumstances beyond the control of the State and it is likely

that within a reasonable time those circumstances will no longer apply. If not conveyed out of the State within that time, the person shall be released from custody.

Section 21: Release by order of Minister

This section provides that the Minister shall order the release of the remanded person, or the detained vessel or thing, if—

- (a) there are no longer reasonable grounds for suspecting the person has committed the offence for which he or she has been remanded,
- (b) no request for surrender has been received from the Convention state within 18 days of the arrest of the person, or the detention or retention of the thing concerned,
- (c) the Convention state has given notice that it does not intend to make such a request, or
- (d) the Convention state requests the release of the person, vessel or thing.

Section 22: Capital punishment

This section provides that the Minister shall refuse the request for surrender from a Convention state which is party to the Agreement where the offence for which the person is sought is punishable by a death sentence in that country, unless the Minister receives satisfactory assurances that the death penalty will not be carried out.

Section 23: Custodial sentence not completed

This section provides that, subject to *section 14(2)*, where the High Court or the Minister orders the release of a person under this legislation it will not affect a person's continued liability to complete a term of imprisonment to which he or she has been sentenced in the State. Provision is also made for subsequent transfer into custody in such cases.

Section 24: Ireland as State seeking to exercise preferential jurisdiction

This section makes provision for Ireland, as the flag state, to exercise its jurisdiction and seek the return of a person detained by a Convention state or the handing over of a vessel or thing seized by that state. On receipt of notification from the Convention state of such detention or seizure for an alleged drug trafficking offence, the Minister will decide, after consultation with the Director of Public Prosecutions (DPP), whether the State should exercise its preferential jurisdiction for the return of the person, vessel or thing. If such jurisdiction is exercised, the DPP may then apply to the District Court for a warrant of arrest of the person detained or the handing over of the vessel or thing detained. Provision is included in this section for the issue of warrants and for the alleged offence to be treated as having been committed in any place in the State.

Section 25: Evidence and presumptions

This section provides for the proof of documents and for certain presumptions of a procedural nature.

Section 26: Expenses

This section contains a standard provision enabling the expenses incurred in administering the legislation to be paid out of moneys provided by the Oireachtas.

Section 27: Compensation

This section contains a provision whereby the State is liable in

accordance with the liability imposed by Article 26 of the Agreement for compensation for any loss, damage or injury arising from actions taken in enforcing the Agreement.

Section 28: Amendment of Criminal Justice Act, 1994

This section provides for certain amendments to the 1994 Act.

Paragraph (a) provides for the amendment to section 3(1) of the 1994 Act. It inserts into the section a definition of the “outer limits of the territorial seas” and a new definition of “ship” to bring it into line with the definition of “vessel” as used in the Agreement and defined in this Bill.

Paragraph (b) replaces section 33 of the 1994 Act with a new section providing that a person is guilty of a drug trafficking offence if that person does any act on board an Irish ship, a ship registered in a Convention state or a ship which is without nationality, which, if done in the State, would constitute such an offence. The result is that, as required by the Agreement, the State will have jurisdiction over any of the drug trafficking offences comprehended by the Vienna Convention and not just, as at present, the offences of possession of drugs and carrying or concealing of drugs for import or export.

Paragraph (c) amends the reference in section 35(2) of the 1994 Act from “landward limits” to “outer limit” and provides that, where any person does or fails to do anything to an enforcement officer, which if done or not done to another person would be an offence under Irish law, then that person is guilty of an offence.

Paragraph (d) amends the reference in section 36(3) of the 1994 Act from “landward limits” to “outer limit”.

The amendments under *paragraphs (c)* and *(d)* are being made to correct an anomaly that exists under the 1994 Act which required the consent of the flag state to be obtained even though its vessel was in Irish territorial waters when suspected of a drug trafficking offence. As a result of these changes such consent will not now be required.

Paragraph (e) is a technical change following on from the amendment to the 1994 Act in *paragraph (b)*. It amends Paragraph 4 of the First Schedule to the 1994 Act relating to the powers of enforcement officers to refer to drug trafficking offences generally rather than the more limited offences covered by sections 33 and 34 at present.

Section 29: Short title and commencement

This is a standard technical provision which provides for the short title and coming into force of the Bill.

Schedule

Text of the Council of Europe Agreement on Illicit Traffic by Sea implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Strasbourg on 31 January 1995.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Aibreán, 2000.*