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**EUROPEAN COMMITTEE ON CRIME PROBLEMS  
(CDPC)**

**COMMITTEE OF EXPERTS  
ON THE OPERATION OF EUROPEAN CONVENTIONS  
ON CO-OPERATION IN CRIMINAL MATTERS  
(PC-OC)**

**Discussion paper on the interaction between extradition and asylum  
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This discussion note is based from the following documents:

UNHCR, *Guidance Note on Extradition and International Refugee Protection* (April 2008); PC-OC 2008 13 rev; PC-OC 2008 18 rev 3; PC-OC (2009) 04 rev and UNHCR *Comments to the PC-OC. On the replies to the Questionnaire on the relationship between asylum procedures and extradition procedures* (April 2009); PC-OC INF 76; PC-OC (2012)08 rev 2; UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 6<sup>th</sup> Ed., June 2011, p. 219 As background documentation, relevant parts of FELLER, E., VOLKER, T. & NICHOLSON, F. (eds.), *Refugee Protection in International Law*, Cambridge University Press, 2003 were used.

In 2008-2009, the sensitive and complicated issue of the *interaction* between extradition and asylum, or asylum and extradition, was on the agenda of the PC-OC. Traditionally, when a 'new' mayor issue is put on the committee's agenda, a questionnaire is made and transmitted to all the members. Afterwards, when the replies to the questionnaire are made available, a document that compiles the main 'direction(s)' of the answers is prepared. The summary of replies provides an overview of the member's domestic legislation, practise and views on the subject. During the plenary meeting the outcome of the questionnaire was discussed. The UNHCR took part in the meeting and prepared a thorough document, commenting on the replies from the members.

Although our discussion in 2009 did not amount to a standard setting initiative, we have a rich body of information that provides more than ample food for thought. One general and preliminary remark is that the bulk of the available materials reflect the point of view of the Refugee Convention and its principles. For the most part the issue is seen through the prism of asylum proceedings. Many technical aspects from extradition, stemming from the extradition instruments, and their inference with asylum procedures are barely touched upon. For instance the regulations on re-extradition and on transit may give rise to problems in the light of the Refugee Convention. In this brief discussion paper, I will touch upon one particular and more fundamental issue, which is the interference between the nationality exception to extradition and asylum

Departing from the "final" document from our previous discussion, the UNHCR's comments (April 2009), I would like to highlight the *tension* that seems to emerge when asylum is confronted with extradition. This tension is quite obvious when reading the comments.

On the one hand there is the basic principle of priority of asylum (procedures) vis-à-vis extradition (procedures). Closely linked to that and again founded upon the key principle of *non-refoulement*, is the binding nature of asylum procedures. I refer to *Guidance Note*, §§21-23 regarding the hierarchy of

obligations and *Comments*, p. 2-3, esp. with respect to asylum seekers. One concrete directive in that respect is that extradition procedures or the (final) decision to extradite should await the final outcome of a pending asylum procedure, including the appeal(s) that the asylum seeker may have lodged. Accordingly, the final determination on the asylum claim should be made prior to the decision on the extradition request.

On the other hand, the UNHCR indicates that asylum-seekers or refugees may be extradited under certain conditions. In that respect, there is the point of view that “it would be prudent to conduct extradition and asylum proceedings *in parallel*. From practise we learn that interaction between both procedures are unavoidable. When the requesting State is, like in many cases, the State against whom protection is sought, the very same reasons and arguments against the extradition emerge in the asylum procedures and vice versa. In that respect a parallel or a subsequent – first asylum, then extradition – treatment of the asylum claim and the extradition request may create serious issues re. the confidentiality of the case files. I purposefully mention files, in plural, since the extradition request also contains confidential (law enforcement) information.

In terms of *articulating* both procedures that usually serve perfectly opposed goals - contra extradition *means* or even *is pro* asylum and vice versa – It seems that there exists doubts about the strict point of view that requires separate proceedings and a more lenient point of view that requires ‘parallel’ proceedings given the inevitable similarity of the information and arguments available or deployed for / in both proceedings. Some members or member States have recently amended both their asylum and extradition procedures in order to assure a mutual flow of information and to avoid loss of time in both proceedings. Those recent evolutions are more than interesting to explore during the discussion

As a special topic, I would like to point to a ‘material’ issue, i.e. a subject that confronts asylum with – one of – the *conditions or exceptions* to extradition. The issue deals with the cessation of asylum under article 1.C (3) of the Refugee Convention and the nationality exception to extradition.

For example: A person who obtained the refugee status in State A subsequently obtains the nationality of State A and is located in State B. The refugee is also wanted for extradition by his country of origin, State C. When the extradition procedure starts in State B, the question arises whether the refugee status ceased to exist under article 1.C (3) of the 1951 Convention<sup>1</sup>. Does State B needs to recognize the - ceased – asylum status and apply non-refoulement?

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<sup>1</sup> C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) ...  
(2) ...

This issue may also raise questions related to the nationality exception to extradition (cf. article 6§2 Extradition Convention). If, for example, the State that recognized the person as a refugee (State A) does extradite its nationals, and the refugee obtained the nationality of that State, does the cessation of the refugee status – which in this case is considered ‘automatically’ – offer ‘protection’. A (new) national is indeed protected against *expulsion* – a national is a fortiori not an illegal alien - but not necessarily against extradition. Given the fact that the national is not a national abroad, the nationality exception does not even play in State B.

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(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality;