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**Draft Convention on International Cooperation in the Investigation and Prosecution of
the Crime of Genocide, Crimes against Humanity, War Crimes, and other International
Crimes**

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Draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes, and other International Crimes

Preamble

The States Parties to this Convention,

Recalling that the Crime of Genocide, Crimes against Humanity and War Crimes, and other crimes covered by this Convention are among the most serious crimes of concern to the international community as a whole,

Emphasizing that fighting impunity for these crimes is essential for peace, stability and the rule of law,

Stressing that States have the primary responsibility to investigate and prosecute the crimes covered by this Convention and that they must take all necessary legislative and executive measures to that effect, affirming their willingness to foster conditions allowing States to assume fully that primary responsibility,

Considering the rights of victims, witnesses and others in relation to the crimes covered by this Convention, as well as the right of alleged offenders to fair treatment,

Observing that prosecuting these crimes often relates to suspects, witnesses, evidence or assets located outside the territory of the State that is conducting the investigation or prosecution,

Acknowledging that their effective prosecution at the national level must be ensured by enhancing international cooperation,

Recognizing that international cooperation in criminal matters in accordance with international obligations and domestic law is a cornerstone of continued efforts by States to fight against impunity, and encouraging the continuation and reinforcement of such activities at all levels,

Recalling the principles of sovereign equality and territorial integrity of States and that of non-intervention in the internal affairs of other States,

Taking note with appreciation of existing provisions under customary international law and multilateral instruments that seek to fight against impunity for the crime of genocide, crimes against humanity and war crimes, including, inter alia, the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Geneva Convention relative to the Treatment of Prisoners of War, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, and the additional protocols thereto, The Convention for the Protection of Cultural Property in the Event of Armed Conflict and the additional protocols thereto, and the Rome Statute of the International Criminal Court,

Mindful that during the 20th and 21st century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Determined to investigate and prosecute in a more effective manner the crimes covered by this Convention and recognizing the need to strengthen the international legal framework to this end,

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1. Purpose

1. The purpose of this Convention is to facilitate international cooperation in criminal matters between States Parties with a view to strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes.
2. Nothing in this Convention shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law, including in respect of the development of the definitions of the crime of genocide, crimes against humanity, war crimes, or any other international crime covered by this Convention.
3. States Parties shall endeavor to pursue the development of international law to combat impunity for the crime of genocide, crimes against humanity, war crimes and other international crimes.

Article 2. Crimes covered by this Convention

1. The crimes covered by this Convention are the crime of genocide, crimes against humanity and war crimes.¹
2. For the purpose of this Convention, “crime of genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.²
3. For the purpose of this Convention, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;

¹ Based on inter alia Rome Statute Article 5

² Rome Statute Article 6

- (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime covered by this Convention;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.³
4. For the purpose of paragraph 3:
- (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 3 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

³ Rome Statute Article 7, paragraph 1

- (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 3, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
 - (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.⁴
5. For the purpose of this Convention, “war crimes” means:
- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - (vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages.
 - (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

⁴ Rome Statute Article 7, paragraph 2

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his or her arms or having no longer means of defense, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

- (xii) Declaring that no quarter will be given;
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
 - (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
 - (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
 - (xvi) Pillaging a town or place, even when taken by assault;
 - (xvii) Employing poison or poisoned weapons;
 - (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
 - (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;⁵
 - (xx) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (xxi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in paragraph 4 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
 - (xxii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
 - (xxiii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (xxiv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;
 - (xxv) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of

⁵ Article 8(2)(b)(xx) of the Rome Statute has not been included in the copy/paste as this provision refers to an annex to the Rome Statute that does not exist.

the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (iii) Taking of hostages;
 - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 5 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
 - (v) Pillaging a town or place, even when taken by assault;
 - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in paragraph 4 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (ix) Killing or wounding treacherously a combatant adversary;
 - (x) Declaring that no quarter will be given;
 - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
 - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
- (f) Paragraph 5(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
6. Nothing in paragraph 5 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.⁶
7. For the purpose of this Convention, the crimes covered by this Convention shall not be considered political crimes, crimes connected with a political crime or as crimes inspired by political motives.⁷

Article 3. Optional extension of the scope of this Convention

1. Each State Party may, at the time of ratification, acceptance or approval of, or accession to, this Convention, or at any later time, notify the depositary that it shall apply this Convention to the international crime or crimes listed in any of the annexes to this Convention in relation to any other States Party which has notified the depositary that it shall apply the Convention to the same crime as listed in the relevant annex.
2. The relevant annex or annexes to this Convention shall form an integral part thereof for a State Party that has notified the depositary that it shall apply this Convention to the

⁶ Rome Statute Article 8, this was accidentally not reflected in the previous version.

⁷ Based on inter alia ICPAPET art 13

international crime or crimes listed in any of the annexes to this Convention, in accordance with paragraph 1. For such State Party a reference to this Convention constitutes at the same time a reference to any annex or annexes thereto⁸ in relation to which it has deposited a notification pursuant to paragraph 1, unless expressly provided otherwise.

Article 4. Ad Hoc application of this Convention

Without prejudice to articles 2 and 3, States Parties may, on an ad hoc basis, agree to apply this Convention to any request that refers to an act or omission that qualifies as:

- A crime of genocide, crime against humanity, war crime, crime of aggression, torture or enforced disappearance under international law;
- A crime of genocide, crime against humanity, war crime, crime of aggression, torture or enforced disappearance in the law of the requesting State Party; and
- An extraditable offence under the law of the requested State Party.

Article 5. Criminalization

1. Each State Party shall take the necessary measures to ensure that the crimes as defined in article 2, paragraphs 2 to 5, as well as any other international crime it applies this Convention to in accordance with article 3, paragraph 1, constitute offences under its domestic law.
2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their serious nature.⁹

Article 6. Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes as defined in article 2, paragraphs 2 to 5, as well as any crime it has declared applicable under article 3, paragraph 1, in the following cases:
 - (a) When the crimes are committed in any territory under its jurisdiction or on board a vessel or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State or, if that State considers it appropriate, a foreign national or a stateless person who is habitually resident in that State's territory;
 - (c) When the victim is a national of that State if that State considers it appropriate.

⁸ Stockholm Convention on Persistent Organic Pollutants Article 22, paragraph 1

⁹ Based on United Nations Convention against Torture (UNCAT) Article 4

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such crimes in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him or her to any of the States mentioned in paragraph 1, or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized.¹⁰
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with domestic law.¹¹

Article 7. General principle of cooperation

States Parties shall execute requests for cooperation made pursuant to this Convention in accordance with its domestic law. In any event, the execution of a request for cooperation may not be refused by a State Party on the ground that it has not yet taken the necessary measures provided for in articles 5 and 6 of this Convention.

Article 8. Statute of limitations

For the purpose of international judicial cooperation, no statutory limitation shall be invoked as a ground for refusal by the requested State Party to crimes covered by this Convention.

Article 9. Right to report

Each State Party shall take the necessary measures to ensure that any person who alleges that crimes covered by this Convention have been or are being committed has the right to report to the competent authorities. States Parties shall undertake to examine these complaints in order to determine whether there is reasonable ground to believe that these crimes, insofar as they fall within the jurisdiction of the State Party, have been or are being committed.

Article 10. Preliminary inquiry

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any crime as defined in article 2, paragraphs 2 to 5, or any other international crime it applies this Convention to in accordance with article 3, paragraph 1, is present shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State Party but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State Party shall immediately make a preliminary inquiry into the facts.

¹⁰ UNCAT Article 5 and International Convention for the Protection of All Persons from Enforced Disappearance Article 9

¹¹ UNCAT Article 5

3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.¹²
4. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States Parties referred to in article 6, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his or her detention. The State Party which makes the preliminary inquiry contemplated in paragraph 2 shall promptly report its findings to the said States Parties and shall indicate whether it intends to exercise jurisdiction.¹³

Article 11. Aut dedere, aut iudicare

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any crime as defined in article 2, paragraphs 2 to 5, or any other international crime it applies this Convention to in accordance with article 3, paragraph 1, is found shall in the cases contemplated in article 6, if it does not extradite or surrender the person to another State or a competent international criminal court or tribunal, submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party.
2. In the cases referred to in article 6, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 6, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the crimes covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings.¹⁴

Article 12. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the crimes as defined in article 2, paragraphs 2 to 5, as well as any other international crime it applies this Convention to in accordance with article 3, paragraph 1.¹⁵

¹² UNCAT article 6 (3)

¹³ UNCAT Article 6

¹⁴ UNCAT Article 7

¹⁵ United Nations Convention against Corruption (UNCAC) Article 26 and United Nations Convention against Transnational Organized Crime (UNTOC) Article 10, paragraph 1

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.¹⁶
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the crimes.¹⁷
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.¹⁸

Article 13. Confidentiality

The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested

State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.¹⁹

Article 14. Protection of information and evidence

1. Where the requested State Party has imposed special conditions on the use of information or evidence it has provided, the requesting State Party shall upon request from the requested State Party provide information on the use that has been made of the information or evidence.
2. Where, following disclosure to the requesting State Party, the requested State Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the central authority of the requested State Party may consult with the central authority of the requesting State Party to determine the extent to which the evidence and information can be protected.
3. The requested State Party shall be obliged to ensure the accuracy of the information to be transmitted. If it appears that incorrect information has been transmitted or if it appears that information should not have been transmitted, the requesting State Party shall immediately be notified to this effect. The requested State Party shall be obliged to correct or delete the information without delay.

¹⁶ UNCAC Article 26 and UNTOC, Article 10, paragraph 2

¹⁷ UNCAC Article 26 and UNTOC, Article 10, paragraph 3

¹⁸ UNCAC Article 26 and UNTOC, Article 10, paragraph 4

¹⁹ UNTOC Article 18, paragraph 20

4. Upon request, the person concerned shall be informed about any transmitted personal data relating to him or her and about the purpose of its intended use. However, this information may be withheld or postponed in order to avoid prejudicing the prevention, detection, investigation or prosecution of crimes.
5. If the domestic law of the requested State Party envisages special time limits regarding the deletion of transmitted personal data, the requested State Party shall notify the requesting State Party to this effect. Irrespective of such time limits, the transmitted personal data shall be deleted in accordance with the domestic law of the requesting State Party as soon as they are no longer required for the purpose for which they have been transmitted.

Article 15. Spontaneous exchange of information

1. Without prejudice to domestic law, a State Party may, without prior request, transmit information relating to the crimes covered by this Convention to another State Party where they believe that such information could assist the latter State Party in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party in accordance with this Convention. Without prejudice to more favorable conditions in other legal instruments, the spontaneous exchange of information shall take place through the central authorities designated by the States Parties.²⁰
2. The transmission of information pursuant to paragraph 1 shall be without prejudice to inquiries and criminal proceedings in the providing State Party.²¹
3. The competent authorities receiving the information shall comply with a request of the providing State Party that said information remain confidential, even temporarily, or with restrictions on its use.²²
4. Notwithstanding paragraph 3, the receiving State Party may disclose in its proceedings information that is exculpatory to an accused person. In such case, the receiving State Party shall notify the providing State Party prior to the disclosure and, if so requested, consult with the providing State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the providing State Party of the disclosure without delay.²³

²⁰ Based on UNTOC Article 18, paragraph 4

²¹ Based on UNTOC Article 18, paragraph 5

²² Based on UNTOC Article 18, paragraph 5

²³ Based on UNTOC Article 18, paragraph 5

Article 16. Costs

1. The ordinary costs of executing a request pursuant to this Convention shall be borne by the requested State Party, unless otherwise determined in this Convention or otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.²⁴
2. The following costs shall be borne or refunded by the requesting State Party, unless the requested State Party waives the refunding of all or some of these expenses:
 - the remuneration of interpreters;
 - allowances to witnesses and experts and their travelling expenses in the requested State Party in accordance with the national legislation of the requested State Party.
3. The costs for the transportation to the requesting State Party of a person in custody carried out under article 33 of this Convention shall be borne by the requesting State Party.
4. The costs for the transportation to the requesting State Party of the person whose extradition is sought, shall be borne by the requesting State Party.
5. The costs for the transportation of a sentenced person to the State Party executing his sentence shall be borne by the administering State Party.

²⁴ UNTOC Article 18, paragraph 28

PART II CENTRAL AUTHORITIES AND COMMUNICATION

Article 17. Central authority

1. Each State Party shall designate a central authority at the time of ratification, acceptance, approval or accession to this Convention. The central authority shall be responsible for sending and receiving requests and information in accordance with the provisions of this Convention.
2. Where a State Party has a special region or territory with a separate system, it may designate a distinct central authority that shall have the same function for that region or territory.²⁵
3. Where a State Party has a distinct central authority responsible for sending or receiving request and information in accordance with specific parts of this Convention, it may designate a distinct central authority that shall have the same function for the relevant parts of this Convention.
4. At the request of one or more States Parties, consultations may be held among central authorities on matters related to the application of this Convention.
5. The depositary shall be notified of the designated central authority of each State Party at the time it deposits its instrument of ratification, acceptance, approval of or accession to this Convention. A State Party subsequently may, at any time and in the same manner, change the terms of their declaration. A list of designated central authorities shall be shared and updated on a regular basis.²⁶

Article 18. Channel of communication and single points of contact

1. Requests made in accordance with this Convention and any communication related thereto shall be addressed to the central authorities designated by the States Parties.²⁷
2. Any State Party may at the time of signature, or at the time of ratification, acceptance, approval or accession, or at any later time thereafter declare in a communication addressed to the other Contracting States, that requests be addressed to it through diplomatic channels, and/or through the International Criminal Police Organization.²⁸
3. In order to facilitate the efficient communication regarding the execution of an individual request made in accordance with this Convention, each State Party shall, without prejudice to article 17, paragraph 1, 2, 3 and 4, identify a single point of contact within its competent law enforcement authorities. These points of contact may liaise with each other on practical matters regarding the execution of such a request.

²⁵ UNTOC Article 18, paragraph 13

²⁶ Based on UNTOC Article 18, paragraph 13

²⁷ UNTOC Article 18, paragraph 13

²⁸ Based on UNTOC Article 18, paragraph 13

4. The Secretariat shall be notified of the identified single point of contact of each State Party at the time the State Party deposits its instrument of ratification, acceptance, approval of or accession to this Convention. A list of identified single points of contact shall be shared and updated on a regular basis.²⁹
5. The transmission of requests, information or communication based on this Convention may, where the States Parties concerned agree, be done by electronic means while taking into account the need to protect confidentiality.

Article 19. Language

1. Requests shall be made in a language acceptable to the requested State Party.
2. The depositary shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance, approval of or accession to this Convention.
3. Without prejudice to paragraph 1, requests made in accordance with this Convention and any communication related thereto may also be made in a language acceptable to both the requesting and the requested State Party.

²⁹ Based on UNTOC Article 18, paragraph 13

PART III MUTUAL LEGAL ASSISTANCE

Article 20. Use of terms

For the purpose of this Convention:

1. “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
2. “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
3. “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
4. “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority³⁰;

Article 21. Scope

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the crimes covered by this Convention.³¹
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party in respect of investigations, prosecutions and judicial proceedings in relation to the crimes for which a legal person may be held liable in accordance with article 12 paragraph 1, in the requesting State Party.³²

Article 22. Purpose of the request

Mutual legal assistance to be afforded in accordance with the provisions of this Convention shall include:

- (a) Taking evidence or statements from persons, including, as far as consistent with the law of the requested State Party, by video conference;³³

³⁰ UNTOC Article 2 d-g

³¹ UNTOC Article 18, paragraph 1

³² UNTOC Article 18, paragraph 2

³³ Based on UNTOC Article 18, paragraph 3

- (b) Examining objects and sites;³⁴
- (c) Providing information, evidentiary items and expert evaluations;³⁵
- (d) Effecting service of judicial documents and documents of public authorities;³⁶
- (e) Providing originals or copies, if need be certified, of relevant documents, records and digital information, including government, bank, financial, corporate or business records;³⁷
- (f) Facilitating the voluntary appearance of persons and the temporary transfer of detained persons, in the requesting State Party;³⁸
- (g) The use of special investigative techniques;
- (h) Cross border observations;
- (i) The establishment of joint investigation teams;
- (j) Measures that allow for the adequate protection of victims and witnesses giving statement;
- (k) Any other type of assistance that is not contrary to the domestic law of the requested State Party.³⁹

Article 23. Request and supporting documents

1. A request for mutual legal assistance shall be made in writing under conditions allowing States Parties to establish authenticity.⁴⁰
2. A request for mutual legal assistance shall contain or be accompanied by the following:
 - (a) The identity of the authority making the request;⁴¹
 - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;⁴²
 - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;⁴³

³⁴ UNTOC Article 18, paragraph 3

³⁵ UNTOC Article 18, paragraph 3

³⁶ UNTOC Article 18, paragraph 3

³⁷ Based on UNTOC Article 18, paragraph 3

³⁸ UNTOC Article 18, paragraph 3

³⁹ UNTOC Article 18, paragraph 3

⁴⁰ Based on UNTOC Article 18, paragraph 14

⁴¹ UNTOC Article 18, paragraph 15

⁴² UNTOC Article 18, paragraph 15

⁴³ Based on UNTOC Article 18, paragraph 15

- (d) A statement of the relevant domestic law, accompanied by the reference texts, and a statement of the penalty that can be imposed for the crimes;
 - (e) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;⁴⁴
 - (f) Where possible, the identity, location and nationality of any person concerned;⁴⁵
 - (g) The purpose for which the evidence, information or action is sought;⁴⁶
 - (h) Where appropriate, the time limit within which the assistance should be provided and the reasons therefore.
 - (i) Where applicable, a statement of the relevant domestic law allowing a witness to refuse to testify.
3. In urgent circumstances, where agreed by the States Parties concerned, requests may be made orally but shall be confirmed in writing forthwith.

Article 24. Provisional measures

1. At the request of the requesting State Party, the requested State Party, in accordance with its domestic law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.
2. The requested State Party may grant the request partially or subject to conditions, in particular time limitation of the requested measures.⁴⁷

Article 25. Additional information

If the requested State Party considers that the information provided in support of a request for mutual legal assistance is not sufficient to enable the request to be dealt with, it may request that additional information be furnished within such reasonable time as it specifies.⁴⁸

Article 26. Legal basis

If a State Party that makes mutual legal assistance conditional on the existence of a treaty receives a request for mutual legal assistance from another State Party with which it has no mutual legal assistance treaty, it shall consider this Convention the legal basis for mutual legal assistance in respect of any crime covered by this Convention.⁴⁹

⁴⁴ Based on UNTOC Article 18, paragraph 15

⁴⁵ UNTOC Article 18, paragraph 15

⁴⁶ UNTOC Article 18, paragraph 15

⁴⁷ Based on ECMA , Second Additional Protocol, Article 24

⁴⁸ Based on UNTOC Article 18, paragraph 16

⁴⁹ UNTOC Article 16, paragraph 4

Article 27. Grounds for refusal

1. Mutual legal assistance shall be refused if:
 - (a) The requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, sexual orientation, religion, nationality, ethnic origin, political opinions or other grounds that are universally recognized as impermissible under international law, or that compliance with the request would cause prejudice to that person's position for any of these reasons.
 - (b) The request is made with regard to an offence punishable by the death penalty under the law of the requesting State Party, unless the requesting State Party gives sufficient guarantees, in accordance with the domestic law of the requested State Party, that the death penalty sentence will not be imposed or will not be carried out if imposed.
 - (c) The request concerns facts on the basis of which the prosecuted person has been finally acquitted, pardoned or convicted in the requested State Party for an essentially similar offence, provided the penalty imposed is currently being carried out or has already been carried out.
 - (d) There are substantial grounds to believe that the person concerned by the request would be subjected to torture or other cruel, inhuman or humiliating treatment or punishment, a flagrant violation of the right to a fair trial or other serious human rights violations in the requesting State Party.
 - (e) The authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar crime, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction.⁵⁰
2. Mutual legal assistance may be refused if:
 - (a) The request is not made in conformity with the provisions of this Convention;⁵¹
 - (b) The requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;⁵²
 - (c) The request has been issued on behalf of an extraordinary or ad hoc court or tribunal of the requesting State Party, unless the competent authorities of the requesting State Party give assurances considered sufficient that the judgement will be passed by a court which is generally empowered under the rules of judicial administration to pronounce on criminal matters.⁵³

⁵⁰ UNTOC Article 18, paragraph 21 (c)

⁵¹ UNTOC Article 18, paragraph 21 (a)

⁵² UNTOC Article 18, paragraph 21 (b)

⁵³ UN Model law on extradition, section 7 (3)

- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.⁵⁴
3. States Parties may not refuse a request for mutual legal assistance on the sole ground that the crime is also considered to involve fiscal matters, nor on the ground of bank secrecy.⁵⁵
 4. Reasons shall be given for any refusal of mutual legal assistance.⁵⁶

Article 28. Rule of speciality

1. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party.⁵⁷
2. Nothing in this article shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.⁵⁸

Article 29. Execution of the request

1. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.⁵⁹
2. The requested State Party shall execute the request as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request.⁶⁰
3. On the express request of the requesting State Party, the requested State Party shall, as far as possible, state the date and place of execution of the request for mutual assistance. The requested State Party may be asked to authorize the presence of officials from the requesting State Party or other persons therein specified. Such presence shall be subject to the approval of the requested State Party.

⁵⁴ UNTOC Article 18, paragraph 21 (d)

⁵⁵ UNTOC Article 18, paragraph 8 and 23

⁵⁶ UNTOC Article 18, paragraph 23

⁵⁷ UNTOC Article 18, paragraph 19

⁵⁸ UNTOC Article 18, paragraph 19

⁵⁹ UNTOC Article 18, paragraph 17

⁶⁰ UNTOC Article 18, paragraph 24

4. The execution of the request may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. Reasons shall be given for any postponement⁶¹, including, when possible, the conditions under and the timeframe in which execution could take place.
5. Before refusing a request pursuant to article 29 or postponing its execution pursuant to paragraph 4, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.⁶²

Article 30. Depositions of persons in the requested State Party

1. Witnesses shall be heard in accordance with the law of the requested State Party. Witnesses may refuse to testify if the law of the requested or requesting State Party allows them to do so.
2. If their refusal to testify is based on the law of the requesting State Party, the requested State Party shall consult the requesting State Party.
3. A witness invoking the right to refuse to testify cannot be subjected to any legal penalty in the requesting or requested State Party for that reason.
4. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested State Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested State Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested State Party to the competent authority of the requesting State Party.⁶³
5. Each State Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its domestic law applies in the same way as if the hearing took place in a national procedure.⁶⁴

⁶¹ Based on UNTOC Article 18, paragraph 23 and 25

⁶² UNTOC Article 18, paragraph 26

⁶³ Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Article 9(6)

⁶⁴ Article 9(7) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

Article 31. Hearing by video conference

1. If a person is in one State Party's territory and has to be heard as a witness or expert by the judicial authorities of another State Party, the latter may, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
2. The requested State Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested State Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting State Party by mutual agreement.
3. Requests for a hearing by video conference shall contain, in addition to the information referred to in article 22, paragraph 2 of this Convention, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested State Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
5. With reference to hearing by video conference, the following rules shall apply:
 - (a) a judicial authority of the requested State Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested State Party. If the judicial authority of the requested State Party is of the view that during the hearing the fundamental principles of the law of the requested State Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
 - (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
 - (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting State Party in accordance with its own laws;
 - (d) at the request of the requesting State Party or the person to be heard, the requested State Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
 - (e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting State Party.
6. States Parties may at their discretion also apply the provisions of this article to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to consent of both the States Parties concerned, and in accordance with their domestic law and relevant international instruments.

Article 32. Appearances of persons in the requesting State Party

1. If the requesting State Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested State Party shall invite the witness or expert to appear. The requested State Party shall inform the requesting State Party of the reply of the witness or expert.
2. In the case provided for under paragraph 1 the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.
3. If a specific request is made, the requested State Party may grant the witness or expert an advance.⁶⁵
4. A witness or expert who has failed to answer a summons to appear, service of which was requested, shall not, even if this summons contains obligations, be subject to any punishment or measure of constraint, unless he or she later voluntarily enters the territory of the requesting State Party and is there again duly summoned.⁶⁶

Article 33. Temporary transfer of detainees

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to the crimes covered by this Convention may be transferred if the following conditions are met:
 - (a) The person freely gives his or her informed consent;
 - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.⁶⁷
2. For the purposes of paragraph 1:
 - (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;⁶⁸
 - (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;⁶⁹

⁶⁵ ECMA Article 10

⁶⁶ ECMA Article 8.

⁶⁷ UNTOC Article 18, paragraph 10

⁶⁸ UNTOC Article 18, paragraph 11

⁶⁹ UNTOC Article 18, paragraph 11

- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;⁷⁰
- (d) The person transferred shall receive credit for service of the sentence being served in the State Party from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.⁷¹

Article 34. Safe conduct

- 1. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party.
- 2. The safe conduct provided for in paragraph 1 shall cease when the witness, expert or other person:
 - (a) having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party;
 - (b) or, having left the territory of the requesting State Party, has returned of his or her own free will.⁷²

Article 35. Copies of records

- 1. Upon request, the requested State Party shall transmit objects, documents, records or evidence to the requesting State Party.
- 2. The requested State Party may transmit copies of documents, records or evidence requested. If the requesting State Party expressly requests the transmission of originals, the requested State Party shall make every effort to comply with the request.

⁷⁰ UNTOC Article 18, paragraph 11

⁷¹ UNTOC Article 18, paragraph 11

⁷² Based on UNCAC, Article 46, paragraph 27

3. The requesting State Party is required to return what was transmitted as quickly as possible or at the latest after the end of the proceeding unless the requested State Party expressly waives the return thereof.
4. Rights claimed by third parties to objects, documents, records or evidence in the requested State Party shall not prevent their transmission to the requesting State Party.

Article 36. Special investigative techniques

1. Each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques in criminal investigations related to crimes covered by this Convention, such as electronic or other forms of surveillance and covert investigations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.
2. For the purpose of investigating the crimes covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

Article 37. Covert investigations

1. The requesting and the requested States Parties may agree to assist one another in the conduct of investigations into crimes covered by this Convention by officers acting under covert or false identity (covert investigations).
2. The decision on the request is taken in each individual case by the competent authorities of the requested State Party with due regard to its domestic law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their domestic law and procedures.
3. Covert investigations shall take place in accordance with the domestic law and procedures of the State Party on the territory of which the covert investigation takes place. The States Parties involved shall co-operate to ensure that the covert investigation is prepared and

supervised and to make arrangements for the security of the officers acting under covert or false identity.⁷³

4. States Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval of or accession to this Convention, by means of a declaration addressed to the Depositary, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 38. Joint investigation teams

1. By mutual agreement, the competent authorities of two or more States Parties may take the necessary measures in accordance with their national legislation and international law, to set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the States Parties setting up the team.
2. The composition of the team shall be set out in the agreement. A joint investigation team may, in particular, be set up where:
 - (a) A State Party's investigations into crimes covered by this Convention require difficult and demanding investigations having links with other States Parties;
 - (b) A number of States Parties are conducting investigations into crimes covered by this Convention in which the circumstances of the case necessitate co-ordinated, concerted action in the States Parties involved.

A request for the setting up of a joint investigation team may be made by any of the States Parties concerned. The team shall be set up in one of the States Parties in which the investigations are expected to be carried out.

3. In addition to the information referred to in the relevant provisions of article 22 of this Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team, the purpose, and duration for which the joint investigation team would be constituted.
4. A joint investigation team shall operate in the territory of the States Parties setting up the team under the following general conditions:
 - (a) The leader or leaders of the team shall represent the competent authorities participating in criminal investigations from the State Party of operation. The leader of the team shall act within the limits of his or her competence under domestic law;
 - (b) The team shall carry out its operations in accordance with the law of the State Party of operation. The members and seconded members of the team shall carry out their tasks

⁷³ ECMA, Second Additional Protocol, Art. 19

under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team;

(c) The State Party in which the team operates shall make the necessary organisational arrangements for it to do so.

5. In this article, members of the joint investigation team from the State Party of operation are referred to as "members", while members from States Parties other than the State Party in which the team operates are referred to as "seconded members".
6. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the State Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the State Party of operation, decide otherwise.
7. Seconded members of the joint investigation team may, in accordance with the law of the State Party of operation, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the State Party of operation and the seconding State Party.
8. Where the joint investigation team needs investigative measures to be taken in one of the States Parties setting up the team, members seconded to the team by that State Party may request their own competent authorities to take those measures. Those measures shall be considered in that State Party under the conditions which would apply if they were requested in a national investigation.
9. Where the joint investigation team needs assistance from a State Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State Party of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
10. A seconded member of the joint investigation team may, in accordance with his or her domestic law and within the limits of his or her competence, provide the team with information available in the State Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.
11. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the States Parties concerned may be used for the following purposes:
 - (a) For the purposes for which the team has been set up;
 - (b) Subject to the prior consent of the State Party where the information became available, for detecting, investigating and prosecuting other crimes. Such consent may be withheld only in cases where such use would endanger criminal investigations in the State Party concerned or in respect of which that State Party could refuse mutual assistance;

- (c) For preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
 - (d) For other purposes to the extent that this is agreed between States Parties setting up the team.
12. This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
13. To the extent that the laws of the States Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the States Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.⁷⁴

Article 39. Cross-border observations

1. Police officers of one of the States Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a crime covered by this Convention, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, may be authorised to continue their observation in the territory of another State Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.
2. On request, the observation will be entrusted to officers of the State Party in whose territory it is carried out.
3. The request for assistance referred to in the first paragraph must be sent to an authority designated by each State Party and having jurisdiction to grant or to forward the requested authorisation.
4. The observation referred to in paragraphs 1 to 3 shall be carried out only under the following general conditions:
 - (a) The officers conducting the observation must comply with the provisions of this article and with the law of the State Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
 - (b) The officers shall, during the observation, carry a document certifying that authorisation has been granted.
 - (c) The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.

⁷⁴ ECMA, Second Additional Protocol, Article 20

- (d) The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested State Party; their use shall be prohibited save in cases of legitimate self-defence.
 - (e) Entry into private homes and places not accessible to the public shall be prohibited.
 - (f) The officers conducting the observation may neither stop and question, nor arrest, the person under observation.
 - (g) All operations shall be the subject of a report to the authorities of the State Party in whose territory they took place; the officers conducting the observation may be required to appear in person.
 - (h) The authorities of the State Party from which the observing officers have come shall, when requested by the authorities of the State Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.
5. States Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Depository, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.⁷⁵

Article 40. Electronic or other forms of surveillance⁷⁶

1. The competent authorities of each State Party may, at the express request of another State Party, order the surveillance of postal and telecommunications traffic in order to establish the whereabouts of a person suspected of having committed a crime covered by this Convention.
2. States Parties may in particular make a request for:
 - (a) The surveillance of postal services;
 - (b) The interception, recording and immediate or subsequent transmission of telecommunications;
 - (c) The transmission of electronic communications traffic data.
3. The requirements for surveillance and the procedure shall otherwise be governed by the domestic law of the requested State Party.

⁷⁵ Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Article 17.

⁷⁶ Included from Swiss proposal, no source known.

Article 41. Restitution and confiscation

1. A State Party that has received a request to reconstitute property to the victim and/or to its prior legitimate owner, for the purpose of confiscation of proceeds or property the value of which corresponds to that of such proceeds⁷⁷ of crimes covered by this Convention, including laundered property, or of property, equipment or other instrumentalities used in or destined for use in such crimes, situated in its territory or on board a vessel or aircraft registered in that State, shall, to the greatest extent possible within its domestic legal system:⁷⁸
 - (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or⁷⁹
 - (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a competent authority in the territory of the requesting State Party, insofar as it relates to proceeds of crime, property, equipment or other instrumentalities used or destined for use in the crimes covered by this Convention, situated in the territory of the requested State Party.⁸⁰
2. Following a request made by another State Party having jurisdiction over a crime covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities used or destined for use in the crimes covered by this Convention, for the purpose of eventual restitution or confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1, by the requested State Party.⁸¹
3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.⁸²
4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.⁸³
5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.⁸⁴
6. For the purposes of this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be

⁷⁷ Based on UNTOC Article 12, paragraph 1

⁷⁸ Based on UNTOC Article 13, paragraph 1

⁷⁹ UNTOC Article 13, paragraph 1

⁸⁰ UNTOC Article 13, paragraph 1

⁸¹ UNTOC Article 13, paragraph 2

⁸² UNTOC Article 12, paragraph 3

⁸³ UNTOC Article 12, paragraph 4

⁸⁴ UNTOC Article 12, paragraph 5

seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.⁸⁵

7. The provisions of paragraph 1 shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested State Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested State Party shall, if payment is not obtained, realize the claim on any property available for that purpose.⁸⁶
8. The State Parties may co-operate insofar their domestic law allows with those State Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting State Party in relation to crimes covered by this Convention, provided that it has been established that the property constitutes proceeds or other property in the meaning of the paragraph 3, 4, and 5.⁸⁷
9. In addition to the information specified in article 23 requests made in accordance with this article shall contain:⁸⁸
 - (a) In the case of a request pertaining to paragraph 1 (a), a description of the property or assets to be returned to the victim and/or the prior legitimate owner or to be confiscated, and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;⁸⁹
 - (b) In the case of a request pertaining to paragraph 1 (b), a legally admissible copy of an order of restitution or confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;⁹⁰
 - (c) In the case of a request pertaining to paragraph 2, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.⁹¹
10. When acting on the request made by another State Party in accordance with this article, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property or the value of which corresponds to such proceeds or property to the requesting State Party so that it can give compensation to the victims of the of crimes covered by this Convention or return such proceeds of crime or property to their legitimate owners.⁹²

⁸⁵ UNTOC Article 12, paragraph 6

⁸⁶ Warsaw Convention, Articles 23, paragraph 3

⁸⁷ Based on Warsaw Convention, Article 23, paragraph 5

⁸⁸ UNTOC Article 13, paragraph 3

⁸⁹ UNTOC Article 13, paragraph 3

⁹⁰ UNTOC Article 13, paragraph 3

⁹¹ UNTOC Article 13, paragraph 3

⁹² UNTOC Article 14, paragraph 2

11. The decisions or actions provided for in paragraphs 1 and 2 shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral Convention, agreement or arrangement to which it may be bound in relation to the requesting State Party.⁹³
12. The requested State Party may waive the return of articles either before or after handing them over to the requesting State Party if the restitution of such articles to the rightful owner may be facilitated thereby.
13. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

Article 42. Sharing of confiscated assets

1. States Parties undertake to afford each other the widest cooperation in sharing confiscated assets in accordance with the provisions of this Convention and according to their domestic laws.
2. In order to share confiscated assets in the sense of this article, States Parties may conclude, for each individual case, a specific agreement or arrangement laying down the particular conditions for the request, the handing over and transfer of the shared assets.

⁹³ UNTOC Article 13, paragraph 4

PART IV EXTRADITION

Article 43. Scope

1. The provisions of this Part shall apply to the crimes covered by this Convention where the person who is the subject of a State Party's request for extradition is present in the territory of the requested State Party.⁹⁴
2. Without prejudice to article 45, extradition shall be granted if, according to the documents supporting the request for the extradition, the crime is punishable by deprivation of liberty for a maximum period of at least one year both under the law of the requested and the requesting State Party. Where a conviction and prison sentence have occurred in the requesting State Party, the punishment awarded must have been for a period of at least 6 months.⁹⁵;
3. If the request for extradition includes several separate crimes, at least one of which is extraditable under this Convention and some of which are not covered by this Convention, the requested State Party may, at its discretion, apply this article also in respect of the latter crimes.⁹⁶
4. Each of the crimes covered by this Convention shall be deemed to be included as an extraditable crime in any extradition treaty existing between States Parties. States Parties undertake to include such crimes as extraditable crimes in every extradition treaty to be concluded between them.⁹⁷

Article 44. Legal basis

If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it shall consider this Convention the legal basis for extradition in respect of any crime covered by this Convention.⁹⁸

Article 45. Grounds for refusal

1. Extradition shall be refused if:
 - (a) The requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, sexual orientation, religion, nationality, ethnic origin, political opinions or other grounds that are universally recognized as impermissible under international law,

⁹⁴ UNCAC Article 44, paragraph 1

⁹⁵ European Convention on extradition, Article 2(1)

⁹⁶ Based on UNCAC Article 44, paragraph 3

⁹⁷ UNTOC Article 16, paragraph 3

⁹⁸ UNTOC Article 16, paragraph 4

or that compliance with the request would cause prejudice to that person's position for any of these reasons.

- (b) The request is made with regard to an offence punishable by the death penalty under the law of the requesting State Party, unless in accordance with the domestic law of the requested State Party, the requesting State Party gives credible and effective guarantees that the death penalty will not be imposed or, if imposed, will not be carried out.
- (c) The requested State Party has already made a final judgment against the person whose extradition is sought, for an essentially similar offence, provided the penalty imposed is currently being carried out or has already been carried out.
- (d) There are substantial grounds to believe that the person whose extradition is sought would be subjected to torture or other cruel, inhuman or humiliating treatment or punishment, a flagrant violation of the right to a fair trial or other serious human rights violations in the requesting State Party.
- (e) The person sought has been tried or sentenced by a competent international court or tribunal or by another State Party, provided the penalty imposed is currently being carried out or has already been carried out.
- (f) The person sought is to be tried before a competent international court or tribunal.⁹⁹
- (g) To comply would result in a violation of International Humanitarian Law.

2. Extradition may be refused if:

- (a) The competent authorities of the requested State Party are proceeding against the person whose extradition is sought in respect of the offence or offences for which extradition is requested.¹⁰⁰
- (b) The request has been issued on behalf of an extraordinary or ad hoc court or tribunal of the requesting State Party, unless the competent authorities of the requesting State Party give assurances considered sufficient that the judgement will be passed by a court which is generally empowered under the rules of judicial administration to pronounce on criminal matters.¹⁰¹
- (c) The request is made with regard to an offence punishable by a life sentence under the law of the requesting State Party, unless in accordance with the domestic law of the requested State Party, the requesting State Party gives credible and effective guarantees that the life sentence will not be imposed or, if imposed, will not be carried out.

⁹⁹ Based on Inter-American Convention on Extradition Article 4

¹⁰⁰ European Convention on Extradition art 8

¹⁰¹ UN Model law on extradition, section 7 (3)

- (d) The requested State Party has received concurrent requests by more than one State or competent international criminal court or tribunal and has granted one of these requests.
- (e) The request is not made in conformity with the provisions of this Convention.

3. Before refusing a request pursuant to this article, or postponing its execution pursuant to article 48, paragraph 3, the requested State Party shall consult where appropriate with the requesting State Party to consider whether extradition may be permitted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts extradition subject to those conditions, it shall comply with these conditions.

Article 46. Rule of speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any crime committed prior to his or her extradition other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom, except in the following cases:
 - (a) when the State Party which extradited him or her consents. A request for consent shall be submitted, accompanied by the documents mentioned in article 42 and a legal record of any statement made by the extradited person in respect of the crime concerned. Consent shall be given when the crime for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;
 - (b) when that person, having had an opportunity to leave the territory of the State Party to which he or she has been extradited, has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it.
2. The requesting State Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.
3. When the description of the crime charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the crime under its new description is shown by its constituent elements to be a crime which would allow extradition.¹⁰²

Article 47. Re-extradition to a third State

Except as provided for in article 46, paragraph 1b, the requesting State Party shall not, without the consent of the requested State Party, extradite to another State Party or to a third State a

¹⁰² European Convention on Extradition Article 14

person extradited to the requesting State Party and sought by the said other State Party or third State in respect of offences committed before his or her extradition. The requested State Party may request the production of the documents mentioned in article 50, paragraph 2.¹⁰³

Article 48. Extradition of nationals

1. The nationality of the person sought may not be invoked as a ground for denying extradition, except when the law of the requested State otherwise provides.¹⁰⁴
2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in article 11.¹⁰⁵
3. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits, upon request of the requesting State Party, enforce the sentence that has been imposed under the domestic law of the requesting State Party or the remainder thereof in accordance with article 67 and seq. of this Convention.¹⁰⁶

Article 49. Execution of the request

1. The execution of a request for extradition shall be subject to the conditions provided for by the domestic law of the requested State Party.¹⁰⁷
2. If the requested State Party refuses the whole or any part of the request for extradition or in the event of postponement of the request, the reasons for refusal or postponement shall be notified to the requesting State Party.

Article 50. Request and supporting documents

1. A request for extradition shall be made in writing under conditions allowing States Parties to establish authenticity.
2. A request for extradition shall contain or be accompanied by the following:

¹⁰³ Based on European Convention on Extradition Article 15

¹⁰⁴ 1933 Inter-American Extradition Convention article 7(1)

¹⁰⁵ UNTOC Article 16, paragraph 11

¹⁰⁶ UNTOC Article 16, paragraph 12

¹⁰⁷ Based on UNTOC, Article 16, paragraph 7

- (a) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;¹⁰⁸
 - (b) The text of the relevant provision of the law creating the crime or, where necessary, a statement of the law relevant to the crime and a statement of the penalty that can be imposed for the crime;¹⁰⁹
 - (c) If the person is accused of a crime, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the crime for which extradition is requested and a description of the acts or omissions constituting the alleged crime, including an indication of the time and place of its commission;¹¹⁰
 - (d) If the person has been convicted of a crime, by a statement of the crime for which extradition is requested and a description of the acts or omissions constituting the crime and by the original or certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;¹¹¹
 - (e) If the person has been convicted of a crime in his or her absence, in addition to the documents set out in subparagraph (d), by a statement as to the legal means available to the person to prepare his or her defense or to have the case retried in his or her presence;¹¹²
 - (f) If the person has been convicted of a crime but no sentence has been imposed, by a statement of the crime for which extradition is requested and a description of the acts or omissions constituting the crime and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.¹¹³
3. If the requested State Party considers that the information provided in support of a request for the extradition is not sufficient to enable the request to be dealt with, it may request that additional information be furnished within such reasonable time as it specifies.

Article 51. Conflicting requests

- 1. If extradition or surrender is requested concurrently by more than one State Party or competent international criminal court or tribunal, either for the same crime or for different crimes, the requested State Party shall make its decision having regard to any pre-existing obligation regarding the primacy of jurisdiction according to an international legal instrument to which the requested State Party is bound.

¹⁰⁸ UN Model Treaty on Extradition Article 5, paragraph 2, sub a, i

¹⁰⁹ UN Model Treaty on Extradition Article 5, paragraph 2, sub a, ii

¹¹⁰ UN Model Treaty on Extradition Article 5, paragraph 2, sub b

¹¹¹ UN Model Treaty on Extradition Article 5, paragraph 2, sub c

¹¹² UN Model Treaty on Extradition Article 5, paragraph 2, sub d

¹¹³ UN Model Treaty on Extradition Article 5, paragraph 2, sub e

2. In the absence of such a pre-existing obligation, the requested State Party shall make its decision taking into account any relevant circumstances such as the relative seriousness and place of commission of the crimes, the respective dates of the requests, the nationality of the person claimed, the nationality of the victim(s), and the possibility of subsequent extradition to another State Party.

Article 52. Provisional arrest

1. The requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.¹¹⁴
2. The request for provisional arrest shall contain the information referred to in article 50, paragraph 2, subparagraphs (a) and (b), a description of the crime giving rise to the request and underlying facts, a statement of the existence of documents referred to in article 50 and a statement that a formal request for extradition of the person sought will follow.
3. The requested State Party shall, without undue delay, inform the requesting State Party of the result of its handling of the request.
4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the requested State Party has not received the formal request for extradition. The possibility of provisional release at any time is not excluded, but the requested State Party shall take any measures which it considers necessary to prevent the escape of the person sought.
5. The termination of provisional arrest pursuant to paragraph 4 shall not prejudice the re-arrest and the subsequent extradition if the requested State Party has subsequently received the formal request for extradition.

Article 53. Surrender of the person to be extradited¹¹⁵

1. If the request is agreed to, the requesting State Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
2. Subject to the provisions of paragraph 3 of this article, if the person claimed has not been taken over on the appointed date, he or she may be released after the expiry of 30 days and shall in any case be released after the expiry of 45 days. The requested State Party may refuse to extradite him or her for the same offence.

¹¹⁴ UNTOC Article 16, paragraph

¹¹⁵ European Convention on Extradition, Article 18

3. If circumstances beyond its control prevent a State Party from surrendering or taking over the person to be extradited, it shall notify the other State Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 2 of this article shall apply.

Article 54. Postponed or conditional surrender¹¹⁶

1. The requested State Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he or she may be proceeded against by that Party or, if he or she has already been convicted, in order that he or she may serve his or her sentence in the territory of that Party for an offence other than that for which extradition is requested.
2. The requested State Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting State Party in accordance with conditions to be determined by mutual agreement between the States Parties.

Article 55. Simplified extradition procedure

If the extradition of a person sought is not obviously precluded by the law of the requested State Party and provided the person sought irrevocably agrees in writing to extradition after personally being advised by a judge or competent magistrate of other rights in formal extradition proceedings, and the protection afforded by them that this person would lose, the requested State Party may grant extradition without a formal extradition proceeding having taken place.

Article 56. Handing over of property¹¹⁷

1. The requested State Party shall, in so far as its law permits and at the request of the requesting State Party, seize and hand over property:
 - (a) which may be required as evidence, or
 - (b) which has been acquired as a result of the crime and which, at the time of the arrest, is found in the possession of the person sought or is discovered subsequently.
2. The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to cannot be carried out owing to the death, disappearance or escape of the person claimed.

¹¹⁶ Cf. European Convention on Extradition, Article 19

¹¹⁷ European Convention on Extradition Article 20

3. When the said property is liable to seizure or confiscation in the territory of the requested State Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the requested State Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

Article 57. Transit

1. Where a person is to be extradited to a State Party from a third State through the territory of the other State Party, the State Party to which the person is to be extradited shall request the other State Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other State Party is scheduled.¹¹⁸
2. Upon receipt of such a request, which shall contain relevant information, and be supported by the documents mentioned in article 50, paragraph 2, the requested State Party shall deal with this request in accordance with procedures provided by its own law. The requested State Party shall grant the request expeditiously unless its essential interests would be prejudiced thereby.¹¹⁹
3. The State Party of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.¹²⁰
4. In the event of an unscheduled landing, the State Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for 48 hours, pending receipt of the transit request to be made in accordance with paragraph 1.¹²¹
5. The transit of the extradited person shall not be carried out through any territory where there is a reason to believe that his or her life may be threatened or if there is a high risk of his or her rights being violated by reasons of his or her race, sex, sexual orientation, religion, nationality, ethnic origin, political opinions or other grounds that are universally recognized as impermissible under international law.

¹¹⁸ UN Model Treaty on Extradition, Article 15, paragraph 1

¹¹⁹ UN Model Treaty on Extradition, Article 15, paragraph 2

¹²⁰ UN Model Treaty on Extradition, Article 15, paragraph 3

¹²¹ UN Model Treaty on Extradition, Article 15, paragraph 4

Part V TRANSFER OF SENTENCED PERSONS

Article 58. Scope

1. Wherever possible and consistent with fundamental principles of domestic law, a person sentenced in a State Party for a crime covered by this Convention may be transferred to another State Party in order to serve the sentence imposed on him or her.¹²²
2. For the purposes of this Part of the Convention:
 - (a) Sentencing State Party means the State Party in which the sentence was imposed and from which the sentenced person would be transferred or has been transferred;
 - (b) Administering State Party means the State Party to which the sentenced person may be or has been transferred in order to serve his or her sentence;
 - (c) Sentence means a final judicial decision imposing imprisonment as a penalty for the commission of a crime covered by this Convention. A sentence is understood to be final when no ordinary legal appeal against the conviction or sentence is pending in the sentencing State Party and the period for its appeal has expired.¹²³

Article 59. Conditions for transfer

1. Transfer may be requested by the sentencing State Party or the administering State Party.¹²⁴
2. A sentenced person who wishes to be transferred can ask either State Party to request his or her transfer. To that end, he or she may express his or her interest to the sentencing State Party or to the administering State Party in being transferred under this Convention.
3. A sentenced person may be transferred under this Convention only on the following conditions:¹²⁵
 - (a) If that person is a national of the administering State Party;¹²⁶
 - (b) If the judgment is final and enforceable;¹²⁷
 - (c) If, at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve or if the sentence is indeterminate;¹²⁸

¹²² Based on CoE Convention on the Transfer of Sentenced Persons Article 2, paragraph 2

¹²³ Inter-American Convention on Serving Criminal Sentences Abroad Article 1, paragraph 3.

¹²⁴ Based on CoE Convention on the Transfer of Sentenced Persons Article 2, paragraph 3

¹²⁵ CoE Convention on the Transfer of Sentenced Persons Article 3, paragraph 1

¹²⁶ CoE Convention on the Transfer of Sentenced Persons Article 3, paragraph 1, sub a

¹²⁷ Based on CoE Convention on the Transfer of Sentenced Persons Article 3, paragraph 1, sub b

¹²⁸ CoE Convention on the Transfer of Sentenced Persons Article 3, paragraph 1, sub c

- (d) If the transfer is consented to by the sentenced person or, where in view of his or her age or his or her physical or mental condition one of the two States Parties consider it necessary, by the sentenced person's legal representative;¹²⁹ and
 - (e) If the sentencing and administering States Parties agree to the transfer.¹³⁰
4. If a State Party which makes the transfer of sentenced persons conditional on the existence of a treaty receives a request for the transfer of a sentenced person from another State Party with which it has no applicable treaty, it shall consider this Convention as the legal basis for the transfer of sentenced persons in respect of the crimes covered by this Convention.

Article 60. Obligation to provide information

1. Any sentenced person to whom this Convention may apply shall be informed by the sentencing State Party of the substance of this part of the Convention.
2. If the sentenced person has expressed an interest to the sentencing State Party in being transferred under this Convention, that State Party shall so inform the administering State Party as soon as practicable after the judgment becomes final.
3. The information shall include:
 - (a) The name, date and place of birth of the sentenced person;
 - (b) His or her address, if any, in the administering State Party;
 - (c) A statement of the facts upon which the sentence was based;
 - (d) The nature, duration and date of commencement of the sentence.
4. If the sentenced person has expressed to the administering State Party his or her interest in being transferred by virtue of this Convention, the sentencing State Party shall, upon request of the administering State Party, provide that State Party with the information referred to in paragraph 3.
5. The sentenced person shall be informed, in writing, of any action taken by the sentencing State Party or by the administering State Party under the preceding paragraphs, as well as of any decision taken by either State Party on a request for transfer.¹³¹

Article 61. Requests, replies and supporting documents

1. Requests for transfer and replies thereto shall be made in writing under conditions allowing States Parties to establish the authenticity of the supporting documents detailed in paragraph 5.

¹²⁹ CoE Convention on the Transfer of Sentenced Persons Article 3, paragraph 1, sub d

¹³⁰ CoE Convention on the Transfer of Sentenced Persons Article 3, paragraph 1, sub f

¹³¹ CoE Convention on the Transfer of Sentenced Persons Article 4

2. The requested State Party shall promptly inform the requesting State Party of its decision whether or not to agree to the requested transfer.
3. If requested by the sentencing State Party, the administering State Party shall provide:
 - (a) A document or statement indicating that the sentenced person is a national or, if appropriate, a permanent resident of that State;
 - (b) A copy of the relevant law of the administering State Party which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State Party constitute a crime according to the law of the administering State Party, or would constitute a crime if committed on its territory;
 - (c) Copies of relevant domestic laws on conversion of sentences.
4. If a transfer is requested, the sentencing State Party shall provide the following documents to the administering State Party, unless either State Party has already indicated that it will not agree to the transfer:
 - (a) A certified copy of the judgment and the law on which it is based;
 - (b) A statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
 - (c) Other than the case mentioned in article 54, a written declaration containing the consent to the transfer as referred to in article 53;
 - (d) A report of the conduct of the sentenced person during his or her detention; and
 - (e) Whenever appropriate, any medical or social reports on the sentenced person, information about his or her treatment in the sentencing State Party, and any recommendation for his or her further treatment in the administering State Party.
5. Either State Party may ask to be provided with any of the documents or statements referred to in paragraphs 3 or 4 before making a request for transfer or taking a decision on whether or not to agree to the transfer.¹³²

Article 62. Consent and its verification

1. The sentencing State Party shall ensure that the person required to give consent to the transfer in accordance with article 59, paragraph 3, subparagraph (d), does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State Party.

¹³² CoE Convention on the Transfer of Sentenced Persons Articles 5 and 6

2. The sentencing State Party shall afford an opportunity to the administering State Party to verify through a consul or other official agreed upon with the administering State Party, that the consent is given in accordance with the conditions set out in paragraph 1.¹³³

Article 63. Persons who have left the sentencing State Party

1. Where a national of a State Party is the subject of a final sentence, the sentencing State Party may request the State of nationality to take over the execution of the sentence under the following circumstances:
 - (a) When the national has fled to or otherwise returned to the State of his or her nationality being aware of the criminal proceedings pending against him or her in the sentencing State Party; or
 - (b) When the national has fled to or otherwise returned to the State of his or her nationality being aware that a judgment has been issued against him or her.¹³⁴
2. At the request of the sentencing State Party, the administering State Party may, before receiving the documents supporting the request, or pending the decision on this request, have the sentenced person arrested or take any other measures such as to ensure that he or she remains on its territory pending a decision regarding the request. Requests for provisional measures shall be accompanied by the information mentioned in article 61, paragraph 3. Arrest of the sentenced person under this paragraph shall not lead to an aggravation of his or her penal situation.
3. In relation to this article, the transfer of the administration of the sentence does not require the consent of the sentenced person.¹³⁵

Article 64. Sentenced persons subject to an expulsion or deportation order

1. Upon being requested by the sentencing State Party, the administering State Party may, subject to the provisions of this article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State Party once he or she is released from prison.
2. The administering State Party shall not give its agreement for the purposes of paragraph 1 before having taken into consideration the opinion of the sentenced person.

¹³³ CoE Convention on the Transfer of Sentenced Persons Article 7

¹³⁴ Based on CoE Convention on the Transfer of Sentenced Persons, Protocol amending the Additional Protocol to Article 1

¹³⁵ CoE Convention on the Transfer of Sentenced Persons, Additional Protocol Article 2

3. For the purposes of the application of this article, the sentencing State Party shall furnish the administering State Party with:
 - (a) a declaration containing the opinion of the sentenced person as to his or her proposed transfer, and
 - (b) a copy of the expulsion or deportation order or any other order having the effect that the sentenced person will no longer be allowed to remain in the territory of the sentencing State Party once he or she is released from prison.
4. Any person transferred under the provisions of this article shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, for any offence committed prior to his or her transfer other than that for which the sentence to be enforced was imposed, nor shall he or she for any other reason be restricted in her or his personal freedom, except in the following cases:
 - (a) when the sentencing State Party so authorises: a request for authorisation shall be submitted, accompanied by all relevant documents and a legal record of any statement made by the convicted person; authorisation shall be given when the offence for which it is requested would itself be subject to extradition under the law of the sentencing State Party or when extradition would be excluded only by reason of the amount of punishment;
 - (b) when the sentenced person, having had an opportunity to leave the territory of the administering State Party, has not done so within 45 days of his or her final discharge, or if he or she has returned to that territory after leaving it.
5. Notwithstanding the provisions of paragraph 4, the administering State Party may take any measures necessary under its law, including proceedings in absentia, to prevent any legal effects of lapse of time.
6. Any State Party may, by way of a declaration addressed to the Depositary, indicate that it will not take over the execution of sentences under the circumstances described in this article.¹³⁶

Article 65. Effect of transfer for the sentencing State Party

1. The transfer of the administration of the sentence to the authorities of the administering State Party shall have the effect of suspending the enforcement of the sentence in the sentencing State Party.

¹³⁶ Additional Protocol to the Convention on the Transfer of Sentenced Persons Article 3

2. The sentencing State Party may no longer enforce the sentence if the administering State Party considers enforcement of the sentence to have been completed.¹³⁷

Article 66. Effect of transfer for the administering State Party

1. The competent authorities of the administering State Party shall:
 - (a) Continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in article 67; or
 - (b) Convert the sentence, through a judicial or administrative procedure, into a decision of that State Party, thereby substituting for the sanction imposed in the sentencing State Party a sanction prescribed by the law of the administering State Party for the same crime, under the conditions set out in article 68.
2. The administering State Party, if requested, shall inform the sentencing State Party before the transfer of the sentenced person as to which of these procedures it will follow.
3. The enforcement of the sentence shall be governed by the law of the administering State Party and that State Party alone shall be competent to take all appropriate decisions.
4. Any State Party which, according to its domestic law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another State Party on persons who for reasons of mental condition have been held not criminally responsible for the commission of the crime, and which is prepared to receive such persons for further treatment may, by way of a declaration, indicate the procedures it will follow in such cases.¹³⁸

Article 67. Continued enforcement

1. In the case of continued enforcement, the administering State Party shall be bound by the legal nature and duration of the sentence as determined by the sentencing State Party.
2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State Party, or its law so requires, that State Party may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar crime. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State Party, nor exceed the maximum prescribed by the law of the administering State Party.¹³⁹

¹³⁷ Based on CoE Convention on the Transfer of Sentenced Persons Article 8

¹³⁸ CoE Convention on the Transfer of Sentenced Persons Article 9

¹³⁹ CoE Convention on the Transfer of Sentenced Persons Article 10

Article 68. Conversion of sentence

1. In the case of conversion of sentence, the procedures provided for by the law of the administering State Party apply. When converting the sentence, the competent authority:
 - (a) Shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State Party;
 - (b) May not convert a sanction involving deprivation of liberty to a pecuniary sanction;
 - (c) Shall deduct the full period of deprivation of liberty served by the sentenced person; and
 - (d) Shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State Party may provide for the crime or crimes committed.
2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State Party shall keep that person in custody or otherwise ensure his or her presence in the administering State Party pending the outcome of that procedure.¹⁴⁰

Article 69. Review of judgment

The sentencing State Party alone shall have the right to decide on any application for review of the judgment.¹⁴¹

Article 70. Termination of enforcement

The administering State Party shall terminate enforcement of the sentence as soon as it is informed by the sentencing State Party of any decision or measure as a result of which the sentence ceases to be enforceable.¹⁴²

Article 71. Information on enforcement

The administering State Party shall provide information to the sentencing State Party concerning the enforcement of the sentence:

- (a) When it considers enforcement of the sentence to have been completed;
- (b) If the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- (c) If the sentencing State Party requests a special report.¹⁴³

¹⁴⁰ CoE Convention on the Transfer of Sentenced Persons Article 11

¹⁴¹ CoE Convention on the Transfer of Sentenced Persons Article 13

¹⁴² CoE Convention on the Transfer of Sentenced Persons Article 14

¹⁴³ CoE Convention on the Transfer of Sentenced Persons Article 15

Article 72. Transit of sentenced persons¹⁴⁴

1. A State Party shall, in accordance with its law, grant a request for transit of a sentenced person through its territory if such a request is made by another State Party and that State has agreed with another State Party or with a third State to the transfer of that person to or from its territory.
2. A State Party may refuse to grant transit if the sentenced person is one of its nationals.
3. Requests for transit and replies shall be communicated through the channels referred to in article 18.
4. A State Party may grant a request for transit of a sentenced person through its territory made by a third State if that State has agreed with another State Party to the transfer to or from its territory.
5. The State Party requested to grant transit may hold the sentenced person in custody only for such time as transit through its territory requires.
6. The State Party requested to grant transit may be asked to give an assurance that the sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his or her liberty in the territory of the transit State Party for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State Party.
7. No request for transit shall be required if transport is by air over the territory of a State Party and no landing there is scheduled. However, each State Party may, by a declaration addressed to the Depositary at the time of signature or of deposit of its instrument of ratification, acceptance, approval or accession, require that it be notified of any such transit over its territory.

¹⁴⁴ Cf. Convention on the Transfer of Sentenced Persons, Article 16.

PART VI VICTIMS, WITNESSES, EXPERTS, AND OTHERS

Article 73. Use of terms

1. “Victim” shall mean a natural person who has suffered harm as a result of the commission of any crime covered by this Convention.
2. “Victims” may include organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.¹⁴⁵

Article 74. Protection of victims, witnesses, experts, and others

1. Each State Party shall take appropriate measures to provide that victims, witnesses, and their relatives and representatives, experts, as well as other persons participating in or cooperating with any investigation, prosecution, extradition or other proceeding within the scope of this Convention, shall be protected against ill-treatment and intimidation as a consequence of such participation or cooperation.¹⁴⁶
2. The measures envisaged in paragraph 1 may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:¹⁴⁷
 - (a) Establishing procedures for the physical protection of these persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;¹⁴⁸
 - (b) Establishing, as appropriate, procedures to permit victims to participate in the proceedings;
 - (c) Establishing procedures to allow witnesses and experts to give testimony in a manner that ensures the safety, physical and psychological well-being and privacy of such persons, such as permitting the use of communication technologies.¹⁴⁹
3. States Parties shall consider entering into agreements or arrangements with other States Parties for the relocation of persons referred to in paragraph 1.¹⁵⁰

¹⁴⁵ Based on Rules of Procedure and Evidence of the ICC, Rule 85

¹⁴⁶ Based on ILC Draft Articles

¹⁴⁷ UNTOC Article 24, paragraph 2

¹⁴⁸ UNTOC Article 24, paragraph 2, sub a

¹⁴⁹ Based on UNTOC Article 24, paragraph 2, sub b

¹⁵⁰ UNTOC Article 24, paragraph 3

Article 75. Victims' rights

1. Each State Party shall take the necessary measures to ensure in its legal system that the victims of a crime covered by this Convention have the right to seek reparation for material and moral damages, on an individual or collective basis, consisting of but not limited to, as appropriate, restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition¹⁵¹ insofar as:
 - a) the crime has been committed in any territory under the jurisdiction of that State Party;
or
 - b) that State Party is exercising its jurisdiction over the crime.
2. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against suspects in a manner not prejudicial to the rights of the defense.¹⁵²
3. Each State Party shall, to the greatest extent possible within its domestic legal system and if so requested, give effect to a judgment or order in criminal proceedings, issued in accordance with the domestic law of the requesting State Party, to provide reparations in accordance with paragraph 1 of this article to victims of crimes covered in this Convention by complying with the provisions in article 41.

¹⁵¹ Based on ILC Draft Articles on Crimes against Humanity Article 12(3)

¹⁵² UNTOC, Article 25, paragraph 3

PART VII FINAL PROVISIONS

Article 76. Nationals

Each State Party shall, by a declaration at the time of signature, ratification, acceptance or approval of or accession to this Convention, define as far as it is concerned the term “nationals” according to its domestic law.

Article 77. Relation with other Agreements

Nothing in this Convention shall prevent States Parties which have concluded other agreements, or have in any other manner established relations between themselves, in respect of a subject-matter dealt with in this Convention to apply such agreements or to conduct their relations accordingly, in lieu of the present Convention, if that facilitates their cooperation.¹⁵³

Article 78. Conference of States Parties

1. A Conference of the States Parties is hereby established.
2. A Conference of States Parties shall be convened by [...] not later than [...] 3 year[s] after the entry into force of this Convention or, at any time, at the proposal of at least one third of the States Parties to this Convention. Thereafter, meetings of the Conference of States Parties shall be held at regular intervals to be decided by the Conference of States Parties.
3. The Conference of States Parties shall elect the President of the Conference of States Parties. The President of the Conference of States Parties shall act in that capacity from the moment of the opening of the meeting of the Conference of States Parties until the opening of the next meeting.
4. The Conference of States Parties shall by consensus agree upon and adopt at its first meeting rules of procedure for itself and any of its subsidiary bodies.
5. The Conference of States Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by this Convention and, to that end, shall:
 - a. Establish such subsidiary bodies as it considers necessary for the implementation of the Convention;
 - b. Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies;

¹⁵³ Based on Agreement on illicit Traffic by Sea, art 30, paragraph 3

- c. Consider and adopt amendments to this Convention in accordance with article 81;
- d. Consider and adopt additional annexes to this Convention in accordance with articles 3 and 81;
- e. Consider and adopt a template for a request for mutual legal assistance in order to facilitate international cooperation and assistance in accordance with Parts III, IV and V of this Convention;
- f. Convene meetings with authorities conducting the investigation, prosecution, or judicial proceedings, where necessary;¹⁵⁴
- g. Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention.

Article 79 Secretariat

1. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations or States Parties which have signified their willingness to carry out the secretariat functions under this Convention.
2. Without prejudice to previous paragraph, the secretariat functions under this Convention shall be carried out by [XXX (name of State)] from the date on which this Convention is open for signature, until the designation of the Secretariat under the previous paragraph.

Article 80. Settlement of disputes

1. States Parties shall endeavor to settle disputes concerning the interpretation or application of this Convention through negotiation.¹⁵⁵
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within six months from the date of request for such settlement shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.¹⁵⁶
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph

¹⁵⁴ based on UNTOC, art. 18(15)]

¹⁵⁵ UNTOC Article 35, paragraph 1

¹⁵⁶ UNTOC Article 35, paragraph 2

2.¹⁵⁷ The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article, may at any time withdraw that reservation by notification to the depositary.¹⁵⁸

Article 81. Amendments to the Convention

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment to this Convention.
2. Any proposal for an amendment shall be communicated to the the Secretariat, which shall circulate the proposal forthwith to all States Parties for the purpose of considering and deciding on the proposal at the next meeting of the Conference of States Parties. The Secretariat shall also communicate proposed amendments to the signatories to this Convention.
3. States Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, require for its adoption a three-fourths majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this article, States Parties present and voting means States Parties present and casting an affirmative or negative vote.
4. The Secretariat shall communicate any adopted amendment to the Convention to all States Parties and signatories of the Convention for ratification, acceptance or approval.
5. When amendments enter into force, they shall be binding on those States Parties which have accepted them. Other States Parties remain bound by the provisions of this Convention and any earlier amendment which they have accepted.
6. Any amendment shall enter into force on the ninetieth day after the date of deposit by such State Party of its instrument of ratification, acceptance, or approval of the amendment.

Article 82. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [PM] to [PM] in [PM], and thereafter at [PM] until [PM].¹⁵⁹
2. This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the depositary.¹⁶⁰

¹⁵⁷ UNTOC Article 35, paragraph 3

¹⁵⁸ UNTOC Article 35, paragraph 4

¹⁵⁹ UNTOC Article 36, paragraph 1

¹⁶⁰ Based on UNTOC, Article 36, paragraph 3

3. This Convention shall be open for accession by any State. Instruments of accession shall be deposited with the depositary.¹⁶¹

Article 83. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the second instrument of ratification, acceptance, approval or accession.
2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the second instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.
3. Notifications referred to in article 3, paragraph 1, made at the time of ratification, acceptance or approval of or accession to this Convention shall take effect on the date of entry into force of the Convention for the State concerned, in accordance with paragraph 1 or 2 of this article.
4. Notifications referred to in article 3, paragraph 1, made after ratification, acceptance or approval or accession, but before the entry into force of this Convention, shall take effect on the date of entry into force of the Convention for the State concerned, in accordance with paragraph 1 or 2 of this article or, if the Convention has already entered into force with regard to the State, on the date on which that State notifies the depositary.
5. This Convention shall apply to any request presented after the date of entry into force for the States Parties concerned, including where the relevant acts or omissions occurred before that date. However, any State may, at the time of signature, ratification, acceptance, approval of or accession to this Convention, declare that it reserves the right not to apply this Convention or any part thereof to requests relating to acts or omissions that occurred before the date indicated by that State Party, provided that this date is no later than the entry into force of the Convention for that State Party.

Article 84. Provisional application

1. Any State may at the time of signature declare that it shall provisionally apply this Convention or any part thereof, pending the entry into force of this Convention for that State.
2. Requests for cooperation from States that are applying the Convention on the basis of provisional application may be refused by States who have not made a declaration as described in paragraph 1 of this article.
3. Any State Party may terminate its provisional application of this Convention or any part thereof by written notification to the depositary. Termination of the provisional application of this Convention shall take effect on the first day of the month following

¹⁶¹ Based on UNTOC, Article 36, paragraph 4

notification, but termination shall not affect the obligations of that State Party under the Convention regarding requests pursuant to This Convention made prior to the termination of the provisional application.

Article 85. Reservations

1. No reservations may be made to this Convention other than those expressly provided for in this Convention.

Article 86. Withdrawal

1. A State Party may withdraw from this Convention by giving written notification to the depositary.
2. A withdrawal shall become effective one year after the date of receipt of the notification by the depositary, or on such later date as may be specified in the notification of withdrawal.
3. A withdrawal shall not affect the obligations of that State under the Convention regarding requests pursuant to this Convention made prior to the date on which the notification becomes effective according to paragraph 2 of this article.¹⁶²

Article 87. Depositary and languages

1. [X] shall act as depositary of the Convention.
2. The original version of the Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary.
3. The depositary shall:
 - a) Keep custody of the original texts of the Convention;
 - b) Prepare certified true copies of the original texts and transmit these to the States Parties and signatories;
 - c) Register the Convention with the Secretariat of the United Nations in accordance with article 102 of the Charter of the United Nations.
4. The depositary shall notify the States Parties and signatories of:
 - a) Any notifications extending the scope of the Convention to the international crime or crimes listed in any of the annexes to the Convention, in accordance with article 3, paragraph 1;
 - b) The deposit of any instruments of ratification, acceptance, approval or accession, in accordance with article 82;
 - c) The date of entry into force of the Convention, in accordance with article 83, paragraph 1;

¹⁶² Based on UNTOC, Article 40, paragraph 1

- d) After the entry into force of the Convention, the date of entry into force of the Convention for the States Parties concerned, in accordance with article 83, paragraph 2;
- e) Any declarations stating the provisional application of the Convention or any part thereof, in accordance with article 84, paragraph 1;
- f) Any notifications regarding the termination of the provisional application of the Convention or any part thereof, in accordance with article 84, paragraph 3;
- g) Any reservations in accordance with article 85;
- h) Any notifications of withdrawal in accordance with article 86, paragraph 1;
- i) Any notifications defining the term “nationals” made in accordance with article 76;
- j) The deposit of any instruments of ratification, acceptance or approval of an amendment to the Convention and the dates of entry into force of that amendment for the States Parties concerned, in accordance with article 81, paragraph 6.

ANNEXES

Annex A. War crimes

In addition to the “acts” listed in article 2, paragraph 5 (e) (i) to (xii) of this Convention, this Convention shall also apply to the following “acts”, listed (xiii) to (xv), in respect of States Parties which have made a notification under article 3 of this Convention:

(xiii) Employing poison or poisoned weapons;¹⁶³

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;¹⁶⁴

(xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.¹⁶⁵

¹⁶³ 2010 Rome Statute amendment to Article 8, paragraph 2(e)

¹⁶⁴ 2010 Rome Statute amendment to Article 8, paragraph 2(e)

¹⁶⁵ 2010 Rome Statute amendment to Article 8, paragraph 2(e)

Annex B. War crimes

In addition to the “acts” listed in article 2, paragraph 5 (b) (i) to (xxv) and article 2, paragraph 5 (e) (i) to (xii) of this Convention, this Convention shall also apply to the following “act”, in respect of States Parties which have made a notification under article 3 of this Convention:

Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production;¹⁶⁶

¹⁶⁶ 2017 Rome Statute amendment to be inserted as Article 8, paragraph 2(b)(xxvii) and Article 8, paragraph 2(e)(xvi)

Annex C. War crimes

In addition to the “acts” listed in article 2, paragraph 5 (b) (i) to (xxv) and article 2, paragraph 5 (e) (i) to (xii) of this Convention, this Convention shall also apply to the following “act”, in respect of States Parties which have made a notification under article 3 of this Convention:

Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;¹⁶⁷

¹⁶⁷ 2017 Rome Statute amendment to be inserted as Article 8, paragraph 2(b)(xxviii) and Article 8, paragraph 2(e)(xvii)

Annex D. War crimes

In addition to the “acts” listed in article 2, paragraph 5 (b) (i) to (xxv) and article 2, paragraph 5 (e) (i) to (xii) of this Convention, this Convention shall also apply to the following “act”, in respect of States Parties which have made a notification under article 3 of this Convention:

Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices;¹⁶⁸

¹⁶⁸ 2017 Rome Statute amendment to be inserted as Article 8, paragraph 2(b)(xxix) and Article 8, paragraph 2 (e)(xviii)

Annex E. War crimes

In addition to the “acts” listed in article 2, paragraph 5 (e) (xii) of this Convention, this Convention shall also apply to the following “act”, in respect of States Parties which have made a notification under article 3 of this Convention:

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies.¹⁶⁹

¹⁶⁹ 2019 Rome Statute amendment to be inserted as Article 8, paragraph 2(e)(xix)

Annex F. Torture

1. In addition to the crimes listed in article 2, paragraph 1 of this Convention, this Convention shall also apply to the crime of torture, in respect of States Parties which have made a notification under article 3 of this Convention.
2. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹⁷⁰

¹⁷⁰ UNCAT Article 1, paragraph 1

Annex G. Enforced disappearance

1. In addition to the crimes listed in article 2, paragraph 1 of this Convention, this Convention shall also apply to the crime of enforced disappearance, in respect of States Parties which have made a notification under article 3 of this Convention.
2. For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.¹⁷¹

¹⁷¹ International Convention for the Protection of All Persons from Enforced Disappearance Article 2

Annex H. Crime of aggression

1. In addition to the crimes listed in article 2, paragraph 1 of this Convention, this Convention shall also apply to the crime of aggression, in respect of States Parties which have made a notification under article 3 of this Convention.
2. For the purpose of this Convention, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
3. For the purpose of paragraph 2, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:
 - (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
 - (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
 - (c) The blockade of the ports or coasts of a State by the armed forces of another State;
 - (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
 - (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
 - (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.¹⁷²

¹⁷² Rome Statute Article 8bis

