

**Convention on International Cooperation in the Investigation and  
Prosecution of the Crime of Genocide, Crimes against Humanity and War  
Crimes  
(version 02/10/2019)**

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

## **Preamble**

The States Parties to this Convention,

Recalling that the crime of genocide, crimes against humanity and war crimes 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 in the States concerned,

Recognizing that States have primary responsibility for the prosecution of perpetrators of the crime of genocide, crimes against humanity and war crimes,

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

Noting 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 multilateral instruments 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 Protection of Civilian Persons in Time of War, the Geneva Convention relative to the Treatment of Prisoners 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 this 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 crime of genocide, crimes against humanity and war crimes and recognizing the need to strengthen the international legal framework to this end,

Have agreed as follows:

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## PART I GENERAL PROVISIONS

### Article 1. Purpose

1. The purpose of this Convention is to facilitate international cooperation in criminal matters with a view to strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes. *[NEW]*
2. For the purpose of this Convention, the crimes covered by this Convention shall not be considered political crimes. *[based on inter alia article 7 Genocide Convention]*

### 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. *[based on inter alia article 5 Rome Statute]*
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. *[Rome Statute article 6]*
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;
  - (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 within the jurisdiction of the International Criminal Court;

- (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. [*Rome Statute article 7, par 1*]

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;
- (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. [*Rome Statute article 7, par 2*]

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:
  - (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;
  - (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 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. [*Rome Statute article 8*]
6. States Parties may agree to apply part 2 to 6 of this Convention to crimes not covered by paragraph 2 to 5 of this article, if the underlying conduct qualifies as:
- a crime of genocide, a crime against humanity, or a war crime under international law,
  - a criminal act according to the law of the requesting state, and
  - a criminal act according to the law of the requested state.

### **[NEW]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, declare that it shall apply this Convention to the international crime or crimes listed in any of the annexes to this Convention in relation to other States Parties which have declared to apply the Convention to the same crime.
2. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto. [*Stockholm Convention on Persistent Organic Pollutants, Article 22, paragraph 1*]

### **Article 4. 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 crime it has declared applicable under article 3, paragraph 1, constitute offences under its criminal law.
2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature. [*based on UNCAT article 4*]

## Article 5. 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 ship or aircraft registered in that State;
  - (b) When the alleged offender is a national of that State;
  - (c) When the victim is a national of that State if that State considers it appropriate.
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. *[ICPAPED art 9]*
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with domestic law. *[UNCAT article 5]*

## Article 6. 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 crime it has declared applicable under 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.
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 is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
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 5, 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. *[UNCAT article 6]*

## Article 7. 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 crime this State Party has declared applicable under article 3, paragraph 1, is found shall in the cases contemplated in article 5, if it does not extradite him or her, submit the case to its competent authorities for the purpose of prosecution or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 5, 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 5, 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.

*[UNCAT article 7]*

## Article 8. 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 crime it has declared applicable under article 3, paragraph 1, . *[UNCAC article 26 and article 10 UNTOC, par 1]*
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. *[UNCAC article 26 and article 10 UNTOC, par 2]*
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the crimes. *[UNCAC article 26 and article 10 UNTOC, par 3]*
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. *[UNCAC article 26 and article 10 UNTOC, par 4]*

## Article 9. 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. *[UNTOC article 18, par 20]*

## Article 10. Principle of specialty and the protection of information and evidence

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. *[UNTOC, article 18, par 19]*
2. Where the central authority of the requested State Party has imposed special conditions on the use of the provided information or evidence as referred to in paragraph 1, the central authority of the requesting State Party shall upon request from the central authority of the requested State Party provide information on the use that has been made of the information or evidence.
3. Notwithstanding paragraph 1, the requesting State Party may disclose in its proceedings information or evidence that is exculpatory to an accused person. In such 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. *[UNTOC, article 18, par 19]*
4. 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.
5. 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.
6. 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 criminal offences.
7. 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. *[NEW]*



## Article 11. 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. *[based on UNTOC article 18, par 4]*
2. The transmission of information pursuant to paragraph 1 of this article shall be without prejudice to inquiries and criminal proceedings in the providing State Party. *[based on UNTOC article 18, par 5]*
3. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. *[based on UNTOC article 18, par 5]*
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. *[based on UNTOC article 18, par 5]*

## Article 12. Costs

The ordinary costs of executing a request pursuant to this Convention shall be borne by the requested State Party, unless 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. *[UNTOC article 18, par 28]*

## PART II CENTRAL AUTHORITIES AND COMMUNICATION

### Article 13. 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 made in accordance with the provisions of this Convention. *[NEW]*
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. *[UNTOC article 18, par 13]*
3. 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.
4. 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 list of designated central authorities shall be shared and updated annually. *[based on UNTOC article 18, par 13]*

### Article 14. Channel of communication and single points of contact

1. Requests made in accordance with this Convention and the communication related thereto shall be addressed to the central authorities designated by the States Parties. *[UNTOC article 18, par 13]*
2. The requirement in paragraph 1 shall be without prejudice to the right of a State Party to require that the requests and communications shall be addressed to it through diplomatic channels, and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization. *[UNTOC article 18, par 13]*
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 13, paragraph 1, 2 and 3, identify a single point of contact within its competent law enforcement authorities. These persons or entities may liaise with each other on practical matters regarding the execution of such a request. *[NEW]*
4. The transmission of requests, information or communication based on this Convention may, where the States Parties concerned agree, be done by electronic means. *[NEW]*

## Article 15. Language

Requests made in accordance with this Convention and any communication related thereto shall be made in a language acceptable to both the requesting and the requested State Party. *[NEW]*

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## PART III MUTUAL LEGAL ASSISTANCE

### Article 16. Scope

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions or judicial proceedings in relation to the crimes covered by this Convention. *[UNTOC article 18, par 1]*
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 8 paragraph 1, in the requesting State Party. *[UNTOC article 18, par 2]*

### Article 17. Purpose of the request

Mutual legal assistance to be afforded in accordance with the provisions of this Convention shall include, but not be limited to:

- (a) Taking evidence or statements from persons, including, as far as consistent with the law of the requested State Party, by video conference; *[based on UNTOC article 18, par 3]*
- (b) Effecting service of judicial documents and documents of public authorities; *[UNTOC article 18, par 3]*
- (c) Executing searches and seizures, freezing and confiscation; *[UNTOC article 18, par 3]*
- (d) Examining objects and sites; *[UNTOC article 18, par 3]*
- (e) Providing information, evidentiary items and expert evaluations; *[UNTOC article 18, par 3]*
- (f) Providing originals or copies, if need be certified, of relevant documents, records and digital information, including government, bank, financial, corporate or business records; *[based on UNTOC article 18, par 3]*
- (g) The use of special investigative techniques; *[NEW]*
- (h) The establishment of joint investigation teams; *[NEW]*
- (i) Identifying, freezing or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; *[UNTOC article 18, par 3]*
- (j) Facilitating the voluntary appearance of persons in the requesting State Party; *[UNTOC article 18, par 3]*
- (k) The recovery of assets; *[based on UNCAC article 46, par 3, sub k]*
- (l) Any other type of assistance that is not contrary to the domestic law of the requested State Party *[UNTOC article 18, par 3]*

## Article 18. Request and supporting documents

1. A request for mutual legal assistance shall be made in writing under conditions allowing States Parties to establish authenticity. *[based on UNTOC article 18, par 14]*
2. A request for mutual legal assistance shall contain or be accompanied by the following:
  - (a) The identity of the authority making the request; *[UNTOC article 18, par 15]*
  - (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; *[UNTOC article 18, par 15]*
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; *[based on UNTOC article 18, par 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; *[based on UNTOC article 18, par 15]*
  - (f) Where possible, the identity, location and nationality of any person concerned; *[UNTOC article 18, par 15]*
  - (g) The purpose for which the evidence, information or action is sought; *[UNTOC article 18, par 15]*
  - (h) Where appropriate, the time limit within which the assistance should be provided. *[NEW]*
3. In urgent circumstances, where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

## Article 19. 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. *[based on UNTOC article 18, par 16]*

## Article 20. Grounds for refusal

1. Mutual legal assistance may be refused if:
  - (a) The request is not made in conformity with the provisions of this Convention; *[UNTOC article 18, par 21]*
  - (b) The requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests; *[UNTOC article 18, par 21]*

- (c) 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; *[UNTOC article 18, par 21]*
  - (d) 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, religion, nationality, ethnic origin 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. *[NEW]*
  - (e) 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 that the death penalty sentence will not be imposed or, if imposed, will not be carried out. *[NEW]*
2. 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. *[UNTOC article 18, par 8 and 23]*
  3. Reasons shall be given for any refusal of mutual legal assistance. *[UNTOC article 18, par 23]*

#### **Article 21. 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. *[UNTOC article 18, par 17]*
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. *[UNTOC article 18, par 24]*
3. On the express request of the requesting State Party, the requested State Party shall state the date and place of execution of the request for mutual assistance. The requesting State Party may request the presence of officials and other persons. Such presence shall be subject to the approval of the requested State Party. *[NEW]*
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 postponement. *[UNTOC article 18, par 23 and 25]*
5. Before refusing a request pursuant to article 20 or postponing its execution pursuant to paragraph 4, the central authority of 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. *[UNTOC article 18, par 26]*

## Article 22. Confiscation

1. A State Party that has received a request for the purpose of confiscation of proceeds of crimes covered by this Convention, or of property, equipment or other instrumentalities used in or destined for use in such crimes, situated in its territory, shall, to the greatest extent possible within its domestic legal system: *[UNTOC article 13, par 1]*
  - (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; or *[UNTOC article 13, par 1]*
  - (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 court in the territory of the requesting State Party, insofar as it relates to proceeds of crime, property, equipment or other instrumentalities in or destined for use in the crimes covered by this Convention, situated in the territory of the requested State Party. *[UNTOC article 13, par 1]*
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 in or destined for use in the crimes covered by this Convention, for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1, by the requested State Party. *[UNTOC article 13, par 2]*
3. The provisions of article 18 are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18 requests made in accordance with this article shall contain: *[UNTOC article 13, par 3]*
  - (a) In the case of a request pertaining to paragraph 1 (a), a description of the property 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; *[UNTOC article 13, par 3]*
  - (b) In the case of a request pertaining to paragraph 1 (b), a legally admissible copy of an order of 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; *[UNTOC article 13, par 3]*
  - (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. *[UNTOC article 13, par 3]*

4. 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. *[UNTOC article 13, par 4]*
5. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties. *[UNTOC article 13, par 8]*
6. In applying article 21 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. The rights of bona fide third parties shall not be affected. *[NEW]*

### **Article 23. 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. *[UNTOC article 18, par 10]*
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; *[UNTOC article 18, par 11]*
  - (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; *[UNTOC article 18, par 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; *[UNTOC article 18, par 11]*
  - (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. *[UNTOC article 18, par 11]*



## Article 24. 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 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 or, having left it, has returned of his or her own free will. *[UNCAC, article 46, par 27]*

## Article 25. Testimony 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 State Party may, where it is not possible or desirable for the person to be heard to appear in its territory in person, request that the hearing take place by video conference. *[Based on Second Additional Protocol to the European Convention on Mutual Assistance, art. 9]*
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 the condition that it has the technical means to carry out the hearing. *[Based on Second Additional Protocol to the European Convention on Mutual Assistance, art. 9]*

## Article 26. Copies of records

The requested State Party:

- (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; *[UNTOC article 18, par 29]*
- (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public. *[UNTOC article 18, par 29]*

## Article 27. Joint investigations

1. States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative teams. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis.
2. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected. *[UNCAC article 49]*

## Article 28. 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, such as electronic or other forms of surveillance and undercover operations, 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.

## PART IV EXTRADITION

### Article 29. Scope

1. The provisions of this Part shall apply to the crimes covered by this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party. *[UNCAC article 44, par 1]*
2. Without prejudice to article 31, extradition shall be granted if, according to the documents supporting the request for the extradition, the crime:
  - (a) 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;
  - (b) is not subject to the jurisdiction of the requested State Party or the requested State Party is not exercising its jurisdiction.
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 apply this article also in respect of the latter crimes. *[based on UNCAC article 44, par 3]*
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. *[UNTOC article 16, par 3]*

### Article 30. 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.

*[UNTOC article 16, par 4]*

### Article 31. 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, religion, nationality, ethnic origin 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. *[NEW]*

- (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 that the death penalty will not be imposed or, if imposed, will not be carried out. *[NEW]*
  - (c) The requested State Party has already made a final judgment against the person to be extradited for the crimes and underlying facts for which extradition is requested; *[NEW]*
  - (d) There are substantial grounds to believe that the person 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. *[NEW]*
2. Before refusing a request pursuant to article 31, paragraph 1, or postponing its execution pursuant to article 35, paragraph 2, the central authority of 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 the conditions.

### **Article 32. Extradition of nationals**

States Parties shall have the right to refuse extradition of their nationals. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of a crime to which this Convention applies solely on this ground, shall be obliged to submit the case without undue delay 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 crime of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution. For this purpose, the files, information and exhibits relating to the crime shall be transmitted without charge by the means provided for in article 36, paragraph 1. The requesting State Party shall be informed of the result of its request. *[UNTOC article 16, par 10]*

### **Article 33. Conditional extradition of nationals**

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 32. *[UNTOC article 16, par 11]*

### **Article 34. Extradition of nationals for purposes of enforcing a sentence**

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, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting State Party or the remainder thereof. *[UNTOC, article 16, par 12]*

### **Article 35. 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. *[based on UNTOC, article 16, par 7]*
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. *[NEW]*

### **Article 36. 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:
  - (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; *[UN Model Treaty article 5, par 2, sub a, i]*
  - (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; *[UN Model Treaty article 5, par 2, sub a, ii]*
  - (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; *[UN Model Treaty article 5, par 2, sub b]*
  - (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; *[UN Model Treaty article 5, par 2, sub c]*

- (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; *[UN Model Treaty article 5, par 2, sub d]*
  - (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. *[UN Model Treaty on Extradition, article 5, par 2, sub e]*
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 37. 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. *[UNTOC article 16, par 9]*
2. The request for provisional arrest shall contain the contents referred to in article 36, paragraph 2, under a, a description of the crime committed and underlying facts, a statement of the existence of documents referred to in article 36 and a statement that a formal request for extradition of the person sought will follow. *[NEW]*
3. The requested State Party shall, without delay, inform the requesting State Party of the result of its handling of the request. *[NEW]*
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. *[NEW]*
5. The termination of provisional arrest pursuant to paragraph 4 shall not prejudice the re-arrest and his or her subsequent extradition of the person sought if the requested State Party has subsequently received the formal request for extradition. *[NEW]*

## Article 38. Simplified procedures

States Parties shall endeavor to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any crime covered by this Convention. *[UNTOC article 16, par 8]*

## Article 39. 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. *[UN Model Treaty on Extradition, article 15, par 1]*
2. Upon receipt of such a request, which shall contain relevant information, and be supported by the documents mentioned in article 36, 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. *[UN Model Treaty on Extradition, article 15, par 2]*
3. The State Party of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit. *[UN Model Treaty on Extradition, article 15, par 3]*
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. *[UN Model Treaty on Extradition, article 15, par 4]*
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, religion, nationality, ethnic origin or other grounds that are universally recognized as impermissible under international law.

## Part V TRANSFER OF SENTENCED PERSONS

### Article 40. 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. *[based on CoE Convention on the transfer of sentenced persons, article 2, par 2]*
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 the final judicial decision imposing, as a penalty for the commission of a criminal offense, imprisonment or a term of parole, probation, or other form of supervision without imprisonment. 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. *[Interamerican Convention]*.

### Article 41. Conditions for transfer

1. Transfer may be requested by the sentencing State Party or the administering State Party. *[based on CoE Convention on the transfer of sentenced persons, article 2, par 3]*
2. The person 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 only on the following conditions: *[CoE Convention on the transfer of sentenced persons, article 3, par 1]*
  - (a) If that person is a national or a permanent resident of the administering State Party; *[CoE Convention on the transfer of sentenced persons, article 3, par 1, sub a]*
  - (b) If the judgment is final and enforceable; *[based on CoE Convention on the transfer of sentenced persons, article 3, par 1, sub b]*
  - (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; *[CoE Convention on the transfer of sentenced persons, article 3, par 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; *[CoE Convention on the transfer of sentenced persons, article 3, par 1, sub d]*

(e) If the sentencing and administering States Parties agree to the transfer. *[CoE Convention on the transfer of sentenced persons, article 3, par 1, sub f]*

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 necessary legal basis for the transfer of sentenced persons in respect of the crimes covered by this Convention. *[NEW]*

#### **Article 42. 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 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, on request, communicate to the administering State Party the information referred to in paragraph 3 above.
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. *[CoE Convention on the transfer of sentenced persons, article 4]*

#### **Article 43. 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 4 of this article.
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 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 criminal offence according to the law of the administering State Party, or would constitute a criminal offence if committed on its territory;
  - (c) Copies of relevant domestic laws on conversion of sentences.
4. The administering State Party, if requested, shall inform the sentencing State Party before the transfer of the sentenced person which procedure under articles 48 or 49 it will apply to the sentences.
5. 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 45, a written declaration containing the consent to the transfer as referred to in article 44 or, if appropriate, the documents mentioned in article 43;
  - (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.
6. Either State Party may ask to be provided with any of the documents or statements referred to in paragraphs 3 or 5 above before making a request for transfer or taking a decision on whether or not to agree to the transfer. *[CoE Convention on the transfer of sentenced persons, articles 5 and 6]*

#### **Article 44. 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 41, paragraph 3, under 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.

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 the paragraph above. *[CoE Convention on the transfer of sentenced persons, article 7]*

#### **Article 45. 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. *[based on Protocol amending the Additional Protocol to the Convention CoE on the Transfer of Sentenced Persons, article 1]*
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 steps such as to ensure that he remains on its territory pending a decision regarding the request. Any such request shall be accompanied by the information mentioned in article 43. Arrest of the sentenced person under this heading shall not lead to an aggravation of his or her penal situation.
3. The transfer of the administration of the sentence does not require the consent of the sentenced person. *[Additional Protocol to the CoE Convention on the Transfer of Sentenced Persons, article 2]*

#### **Article 46. 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.
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. *[based on CoE Convention on the transfer of sentenced persons, article 8]*

## **Article 47. 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 48, 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 offence, under the conditions set out in article 49.
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 offence, 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. *[CoE Convention on the transfer of sentenced persons, article 9]*

## **Article 48. 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 offence. 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. *[CoE Convention on the transfer of sentenced persons, article 10]*

## **Article 49. 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;
  - (c) Shall deduct the full period of deprivation of liberty served by the sentenced person;
  - (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. *[CoE Convention on the transfer of sentenced persons, article 11]*

#### **Article 50. Review of judgment**

The sentencing State Party alone shall have the right to decide on any application for review of the judgment. *[CoE Convention on the transfer of sentenced persons, article 13]*

#### **Article 51. 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. *[CoE Convention on the transfer of sentenced persons, article 14]*

#### **Article 52. 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. *[CoE Convention on the transfer of sentenced persons, article 15]*

## PART VI VICTIMS, WITNESSES AND EXPERTS

### Article 53. Protection of victims, witnesses and experts

1. Each State Party shall take the necessary measures to ensure that victims, witnesses and their relatives and representatives, experts, as well as other persons participating in any investigation, prosecution, extradition or other proceeding within the scope of this Convention, shall be protected against ill-treatment or intimidation as a consequence of any complaint, information, testimony or other evidence given. *[NEW]*
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: *[UNTOC, article 24, par 2]*
  - (a) Establishing procedures for the physical protection of such 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; *[UNTOC, article 24, par 2, sub a]*
  - (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.  
*[UNTOC, article 24, par 2, sub b]*
3. States Parties shall consider entering into agreements or arrangements with other States Parties for the relocation of persons referred to in paragraph 1. *[UNTOC, article 24, par 3]*

### Article 54. Access to assistance for victims

1. Each State Party shall establish appropriate procedures to provide access to compensation and restitution through the criminal proceedings for victims of the crimes covered by this Convention. *[based on UNTOC, article 25, par 2]*
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 offenders in a manner not prejudicial to the rights of the defense. *[UNTOC, article 25, par 3]*

## PART VII FINAL PROVISIONS

### Article 55. Relation with other Agreements

Nothing in this Convention shall prevent States Parties which have already 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 it facilitates international cooperation. *[based on Agreement on Illicit Traffic by Sea, art. 30, par 3]*

### Article 56. Conference of States Parties

1. A Conference of the States Parties is hereby established.
2. The first meeting of the Conference of States Parties shall be convened by the depositary of the Convention no later than five years after the date of entry into force of 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. At each meeting, the Conference of States Parties shall elect the President of the Conference of States Parties. The President of the Conference of States Parties shall also be the Host of the next meeting of the Conference of States Parties and shall make arrangements for that purpose. 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 he or she is hosting 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 and financial rules 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, taking into account the progressive development of international criminal law. 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;
  - (c) Consider and adopt amendments to this Convention in accordance with Article 58;
  - (d) Consider and adopt additional annexes to this Convention in accordance with articles 3 and 59;

- (e) Consider and adopt a template for a request for mutual assistance in order to facilitate international cooperation and assistance in accordance with Parts III, IV and V of this Convention;
  - (f) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention. *[Mercury Convention]*
6. The United Nations, its specialized agencies, the International Committee of the Red Cross as well as any State not a Party to this Convention may be represented at meetings of the Conference of States Parties as observers. The admission and participation of other bodies or agencies as observer shall be subject to the rules of procedure adopted by the Conference of States Parties. *[NEW]*
  7. The costs of the Conferences of States Parties shall be borne by the States Parties to this Convention, in accordance with the United Nations scale of assessment adjusted appropriately. The Conference of States Parties may agree on specific financial arrangements for the participation of observers at meetings of the Conference of States Parties in its financial rules agreed upon in accordance with paragraph 4 of this Article.

#### **Article 57. Settlement of disputes**

1. States Parties shall endeavor to settle disputes concerning the interpretation or application of this Convention through negotiation. *[UNTOC, article 35, par 1]*
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time 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. *[UNTOC, article 35, par 2]*
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 2 of this article. *[UNTOC, article 35, par 3]*

#### **Article 58. 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 host of the meeting of the Conference of States Parties, who 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 host of next meeting of the Conference of States Parties shall also communicate proposed amendments to the signatories to this Convention and, for information, to the depositary.

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 be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. For the purposes of this article, States Parties present and voting means States Parties present and casting an affirmative or negative vote.
4. The host of the Conference of States Parties shall communicate any adopted amendments to the depositary, which shall communicate the amendment to all States Parties and signatories of the Convention for ratification, acceptance or approval.
5. Without prejudice to paragraph 6, an amendment to this Convention adopted in accordance with this Article shall enter into force for the States Parties which have consented to be bound by it on the ninetieth day after the date of deposit of the second instrument of ratification, acceptance or approval of the amendment. Thereafter, the amendment shall enter into force for any other State Party on the ninetieth day after the date of deposit of its instrument of ratification, acceptance or approval of the amendment.
6. Amendments to article 56 shall enter into force for all States Parties six months after their adoption by the conference.

#### **Article 59. Adoption of additional annexes**

1. Any State Party may propose, at any time after the expiry of five years after entry into force of this Convention, additional annexes to this Convention containing one or more international crimes not listed in any other annex.
2. Additional annexes shall be proposed and adopted and shall enter into force according to the procedure laid down in Article 58, paragraphs 2 to 4, and paragraph 3 of this Article.
3. An additional annex adopted in accordance with paragraph 2 of this article shall enter into force for the States Parties which have declared to apply this Convention to the crime or crimes listed in this additional annex, on the ninetieth day after the date of deposit of the second declaration to that effect. Thereafter, the additional annex shall enter into force for any other State Party on the date on which that State Party deposits its declaration.

#### **Article 60. Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open to all UN Member States for signature from [PM] to [PM] in [PM], and thereafter at [PM] until [PM]. [UNTOC, article 36, par 1]

2. This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the depositary. *[based on UNTOC, article 36, par 3]*
3. This Convention shall be open for accession by any UN Member State. Instruments of accession shall be deposited with the depositary. *[based on UNTOC, article 36, par 4]*

### **Article 61. 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. Declarations referred to in article 3, paragraph 1, made at the time of ratification, acceptance or approval of or accession to this Convention shall enter into force 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. Declarations referred to in article 3, paragraph 1, made after ratification, acceptance or approval of or accession to this Convention shall enter into force on the date of entry into force of the Convention for the State concerned, in accordance with paragraph 1 of this article or, thereafter, on the date on which that State deposits its declaration.
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. *[NEW]*

### **Article 62. Provisional application**

Any State may at the time of signature, or at the time of ratification, acceptance, approval or accession, or at any later time thereafter, declare that it will apply this Convention or any part thereof, pending the entry into force of this Convention for that State.

### **Article 63. Reservations**

1. No reservations may be made to this Convention other than those expressly provided for in this Convention.
2. Any State Party that has made a reservation in accordance with article 57, paragraph 3, may at any time withdraw that reservation by notification to the depositary. *[UNTOC, article 35, par 4]*

## Article 64. Withdrawal

A State Party may withdraw from this Convention by giving written notification to the depositary. Any such 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. Any such withdrawal will not affect the obligations of that State under the Convention regarding requests pursuant to this Convention made prior to the notification. *[Based on UNTOC, article 40, par 1]*

## Article 65. Depositary and languages

1. The *[PM]* is designated depositary of this Convention. *[UNTOC, article 41, par 1]*
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary. *[UNTOC, article 41, par 2]*

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at *[place of signature]* on this *[date]* day of *[month]*, *[year]*.

## 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 declaration under Article 3 of this Convention:

(xiii) Employing poison or poisoned weapons; [2010 Rome Statute amendment to Article 8, Paragraph 2(e)]

(xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; [2010 Rome Statute amendment to Article 8, Paragraph 2(e)]

(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. [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 declaration under Article 3 of this Convention:

Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production; *[2017 Rome Statute amendment to be inserted as Article 8, paragraph 2(b)(xxvii) and Article 8, paragraph 2(e)(xvi)]*

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## 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 declaration 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; [2017 Rome Statute amendment to be inserted as Article 8, paragraph 2(b)(xxviii) and Article 8, paragraph 2(e)(xvii)]

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## 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 declaration 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; *[2017 Rome Statute amendment to be inserted as Article 8, paragraph 2(b)(xxix) and Article 8, paragraph 2 (e)(xviii)]*

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## Annex E. 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 declaration 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. [*Article 1, paragraph 1 UNCAT*]



## Annex F. 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 declaration 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. [*Article 2 ICPAPED*]

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