

**CONVENTION ON INTERNATIONAL COOPERATION IN THE INVESTIGATION AND PROSECUTION OF THE CRIME OF GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES**

**UK COMMENTS ON 20 MARCH 2020 DRAFT**

Where there is no content beside a provision number, the UK has no comment on that provision at this stage. However, the UK is still considering aspects of the draft Convention and may wish to make comments on additional matters in due course.

<b>Provision/ Article Number</b>	<b>Proposed Amendments <i>in red italics</i></b> Deletion in <del>strikethrough</del>	<b>Explanation of Proposed Amendments/Comments</b>
Preamble	<p><i>Stressing that, in accordance with the terms of this Convention, States have a duty to investigate and prosecute the crimes covered by this Convention and that they must take all necessary legislative and administrative measures to that effect</i></p> <p>...</p> <p><i>Taking note with appreciation of existing provisions under customary international law and multilateral instruments that seek to fight against impunity...</i></p> <p>Swap the order of “the Geneva Convention relative to the Protection of Civilian Persons in Time of War” and “the Geneva Convention relative to the Treatment of Prisoners of War”</p>	<p>The UK proposes including the additional wording to make it clear that the preamble is not suggesting that there is a duty beyond that set out in the Convention.</p> <p>The UK proposes the amendment for clarity. The infinitive “to fight” did not flow from the previous words without additional language.</p> <p>The UK suggests changing the order of this preamble paragraph, given the former is referred to as the fourth Geneva Convention and the latter the third.</p>

	<i>Mindful that during the 20<sup>th</sup> and 21<sup>st</sup> century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,</i>	The UK proposes this amendment to highlight that atrocities did not end with the close of 20th century.
1.	<i>(2) Nothing in this Convention shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Convention.</i>	<p>This wording could imply that other rules of international law supersede this Convention. It is doubted that this is the intention. The wording seems to be based on Article 10 of the Rome Statute which says: <i>Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.</i></p> <p>The UK requests that the language in red is added to make it clear that this is a statement about the impact of the Convention on international law more generally.</p>
2.	<i>Insert: (6) Nothing in paragraphs 5(c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.</i>	The UK is unclear on why this wording from Article 8(3) of the Rome Statute has not been included. The UK proposes that it is included.
3.	<i>(3) Without prejudice to article 2 and paragraphs 1 and 2 of this articles, States Parties may, on an ad hoc basis, agree to apply this Convention to any request that refers to an act or omission that qualifies as: - <del>A crime of genocide, crime against humanity, war crime, crime of aggression, torture or enforced disappearance as defined in international law;</del></i>	The UK proposes that the first sub-bullet of Article(3)(3) is removed, as it is unclear why, for the purposes of a bilateral decision to apply the Convention to broader versions of the listed crimes than those covered by the Convention, it is necessary for those crimes to be “ <i>defined in international law</i> ”. Further, the UK respectfully asks whether Article 3(3)

	<p>- A crime of genocide, crime against humanity, war crime, crime of aggression, torture or enforced disappearance in the law of the requesting State Party; and</p> <p>- An extraditable offence under the law of the requested State Party.</p>	is required for such bilateral decisions to apply the Convention to broader versions of the listed crimes but appreciates that it may be necessary for certain States.
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6.	<p>(3) Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with <del>the nearest</del> <b>an</b> 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.</p>	The UK considers that “ <i>the nearest</i> ” is not particularly clear and so proposes to remove that language. Please can you also confirm that this provision concerns State officials rather than legal representatives?
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10.		In relation to Article 10(5), the UK respectfully requests for clarification as to whether the “information” referred to personal data? If so, would it be possible to make this clearer?
11.	<p>(1) ... Without prejudice to more favorable conditions in other legal instruments, the spontaneous exchange of information shall take place through the <b>competent</b> authorities designated by the States Parties</p>	The UK believes that “ <i>central</i> ” should be “ <i>competent</i> ” as it would not be standard practice for Central Authorities to engage in spontaneous exchanges of information.
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14.		The UK is unclear on the purposes of Article 14(3). Are the proposed single points of contact to be shared with the other States Parties or purely an internal matter? What issue is the provision trying to mitigate against? Is it suggesting that each competent authority names a SPOC or there is one for all competent law enforcement authorities?
15.	<i>The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention.</i>	In order to provide clarity on which languages are acceptable, the UK proposes that this language taken from Article 18 (14) UNTOC is added to Article 15.
16.	<i>1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions, <del>or</del> judicial proceedings or related proceedings in relation to the crimes covered by this Convention.</i>	MLA can be afforded under Article 17 for ancillary proceedings (i.e. <u>identifying</u> freezing or tracing proceeds of crime) and under Article 23 for confiscation. These proceedings may not necessarily be considered part of investigations, prosecutions or judicial proceedings. For avoidance of doubt, the UK proposes that Article 16(1) should be amended to include “ <i>related proceedings</i> ”.
17.		The UK respectfully requests further clarity on what is meant by “ <i>special investigative techniques</i> ” under Article 17(g) and what sort of techniques are envisaged under this practice?
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21.	<p>1. Mutual legal assistance shall be refused if:</p> <p>(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, <b>sexual orientation</b>, religion, nationality, ethnic origin, political opinion 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.</p>	<p>The UK proposes that "sexual orientation" is added to the list of protected characteristics.</p>
22.	<p><del>(3) On the express request of the requesting State Party, the requested State Party shall, as far as possible, state the date and place of execution of the request for mutual assistance. The requested State Party may be asked to authorize the presence of officials from the requesting State Party or other persons therein specified. Such presence shall be subject to the approval of the requested State Party.</del></p> <p><b>(3) On the express request of the requesting State Party the requested State Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.</b></p>	<p>The UK proposes a simplified version of Article 22(3) for clarity. This is based on the 1959 MLA Convention Article 4.</p>
23.	<p>Each State Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law</p>	<p>The UK continues to consider Article 23(7).</p>

	<i>applies in the same way as if the hearing took place in a national procedure.</i>	
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27.	<i>[(9) Any State Party may, at any time, by means of a declaration addressed to the Secretary General, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect. ]</i>	The UK continues to consider this provision but notes that the content of Article 27 is taken from the Second Additional Protocol with the omission of Article 9(9) of the Second Additional Protocol. The UK does not allow video conferencing to be used for accused / suspects in a hearing which forms part of the trial for that person.
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31.	<i>The requesting and the requested Parties may agree to assist one another in the conduct of investigations into <b>the crimes covered by this Convention</b> <del>crime</del> by officers acting under covert or false identity (covert investigations).</i>	The UK proposes the additional wording for clarity.
32.	<del>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</del>	The meaning of “special investigative techniques” is unclear. In the absence of further clarity, the UK suggests the removal of this Article. See also UK comments on Article 17(g).

	<p>undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.</p> <p>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.</p> <p>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.</p>	
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35.	<p>1. Extradition shall be refused if:</p> <p>(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, <i>sexual orientation</i>, political opinion or other grounds that are universally recognized as impermissible under international law, or that</p>	<p>The UK requests that "sexual orientation" is added to the non-discrimination grounds.</p>

	<i>compliance with the request would cause prejudice to that person's position for any of these reasons</i>	
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39.	<i>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 <b>afforded the opportunity to returned</b> 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 38</i>	The UK proposes to add the wording in red. The person would be returned under the prisoner transfer arrangements, which require consent. States cannot give a bona fide undertaking that the person will be returned as consent will not yet have been given.
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43.	<i>1. <b>Subject to the provisions of its domestic law and its extradition treaties, [t]he requested State Party may, , upon being satisfied that the circumstances 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.</b></i>  ...	The UK proposes to add the wording in red. Provisional arrest should be subject the requirements of domestic law (in the case of the UK, the application of section 193 of the Extradition Act 2003) before it can be considered unless a treaty is already in place. This reflects the full wording of UNTOC Article 16(9).



	<p>4. <i>Provisional arrest shall be terminated if, within a period of <del>sixty</del>-forty 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.</i></p>	<p>The UK proposes that sixty days is amended to forty days. Forty days is a more appropriate timeframe, particularly with the ability to exchange requests digitally.</p>
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45.	<p>5. <i>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, <del>political opinion, sexual orientation</del> or other grounds that are universally recognized as impermissible under international law.</i></p>	<p>The UK proposes that the list here should be identical to the list in Article 35 and should also include sexual orientation.</p>
46.	<p>Article 46. Scope</p> <p>1. <i>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.</i></p> <p>2. <i>For the purposes of this Part of the Convention:</i></p> <p>...</p> <p>(c) <i>Sentence means the final judicial decision imposing, as a penalty for the commission of a criminal offence, <del>or imprisonment for a term of parole,</del></i></p>	<p>The definition of “sentence” in Article 46(2)(c) currently includes: “<i>imprisonment or a term of parole, probation, or other form of supervision without imprisonment</i>”.</p> <p>This is problematic for UK as the UK has no mechanism to transfer parole probation or supervision periods. The UK can only currently transfer sentences of imprisonment and enforce them as such. The UK therefore recommends deleting the above wording.</p>

	<u>probation, or other form of supervision without imprisonment</u> . 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.	
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63.		The UK notes that there is a risk that reference of disputes to the ICJ could cut across the judgments of the ICC, given the use of wording from the Rome Statute in this Convention.
64.	<del>(5) Without prejudice to paragraph 6, ....</del>	Wording to be removed or updated as there is no paragraph 6.
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Annex A		
Annex B		
Annex C		
Annex D		
Annex E		
Annex F		The UK notes that there is a risk of conflict with UNCAT by including torture.
Annex G		The UK notes that there is a risk of conflict with The International Convention for the Protection of All Persons from Enforced Disappearance by including enforced disappearance.
Annex H		