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**Convention on International Cooperation in the Investigation and Prosecution  
of the Crime of Genocide, Crimes against Humanity and War Crimes  
(“pure MLA”-version 12/03/2020)**

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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 the primary responsibility for the prosecution of perpetrators of the crime of genocide, crimes against humanity and war crimes,

Affirming their willingness to foster conditions allowing States to assume fully that primary responsibility,

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 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,

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:

## **PART I GENERAL PROVISIONS**

### **Article 1. Purpose**

1. The States Parties to this Convention undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of international judicial cooperation in proceedings in respect of offences within the scope of this Convention the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State Party.

2. The provisions of this Convention shall not affect any obligations under any other treaty, bilateral or multilateral, that governs or will govern in whole or in part, international cooperation in judicial matters in a more favorable way.

### **Article 2. Scope of application**

1. States Parties shall apply this Convention to any request that refers to an act that qualifies in the requesting State Party as a crime of genocide, crimes against humanity, or war crimes ~~as defined in international law.~~

2. States Parties may, on an ad hoc basis, agree to apply this Convention to any request that refers to an act that qualifies in the requesting State Party as a crime of aggression, torture or enforced disappearance, as defined in international law.

3. For the purpose of this Convention, the crimes according to paragraph 1 and, where applicable, paragraph 2 shall not be considered political crimes, crimes connected with a political crime or crimes inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such crimes shall not be refused for such reasons.

### **Article 3. Dual Criminality**

1. Any State Party may, by a declaration addressed to the Depositary, when signing this Convention or depositing its instrument of ratification, acceptance, approval or accession to this Convention declare to what extent the execution of requests is dependent on one or more of the following conditions: (a) that the offence motivating the request is punishable under both, the law of the requesting State Party and the requested State Party;  
(b) that the offence motivating the request is an extraditable offence in the requested State Party;  
(c) that the offence motivating the request is punishable as a crime within the scope of this Convention in the requested State Party.

2. Where a State Party makes a declaration in accordance with paragraph 1 of this article, any other State Party may apply reciprocity.

#### **Article 4. Statute of limitations**

International ~~judicial~~ cooperation in ~~accordance with this Convention~~ ~~criminal matters~~ shall not be refused on the ground that the prosecution or the punishment ~~of the offence underlying~~ ~~at the origin~~ ~~of~~ the request would be statute-barred according to the law of the requested State Party.

#### **Article 5. Confidentiality**

The requesting State Party may require that the requested State Party keep confidential the facts 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.

#### **Article 6. Principle of specialty**

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.

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 written 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.

#### **Article 7. Use of information and evidence**

1. Where, following disclosure to the ~~requesting~~ receiving State Party, the ~~requested~~ transmitting 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~~ transmitting State Party may consult with the central authority of the

**Met opmerkingen [A1]:** Art. 7 and Art. 8 should be combined into one Article.

~~requesting-receiving~~ State Party to determine the extent to which the evidence and information can be used.

2. The ~~requested-transmitting~~ 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-receiving~~ State Party shall immediately be notified to this effect. The ~~requested-receiving~~ State Party shall be obliged to correct or delete the information without delay.

3. Upon request, the person affected by the requested measure 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.

4. If the domestic law of the ~~requested-transmitting~~ State Party envisages special time limits regarding the deletion of transmitted personal data, the ~~requested-transmitting~~ State Party shall notify the ~~requesting-receiving~~ 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-receiving~~ State Party as soon as they are no longer required for the purpose for which they have been transmitted.

## Article 8. Data protection

1. Personal data transmitted based on this Convention shall only be used for the purposes for which the data were transmitted and subject to such conditions as the transmitting State determines. Subject to the exceptions according to articles 6 ~~paragraph 3~~ and 7, use of the data for other purposes ~~must be permitted by the national law of the State Party transmitting the data and requires that Parties' the prior written consent of the State Party transmitting the data.~~

2. The following provisions shall apply to the transmission and use of personal data transmitted for the purpose of a request for assistance under this Convention:

(a) only data that ~~is adequate, relevant and not excessive in relation~~ ~~relates~~ to the request shall be transmitted to the competent authority of the ~~receiving~~ ~~requesting~~ State Party;

(b) upon request, the States Party which has received the data shall inform the transmitting State Party of the use made of the data and the results achieved therefrom;

(c) if it appears to the transmitting State Party that incorrect data have been transmitted or that data have been transmitted that should not have been, the transmitting State Party shall notify without delay the State Party that has received the data; the latter shall without delay rectify any errors or destroy the data;

**Met opmerkingen [A2]:** It is unclear to what para. of Article 7 this provision refers to.

**Met opmerkingen [A3]:** This para. should be included as a sub-para. in para. 2 of this Article.

**Met opmerkingen [A4]:** This para. should include a provision stating that transmission of personal data shall be carried out in accordance with respective national law and the principles of data transmission as set out by this article. The following additional sub-para. should be included:

"(x) Data revealing the racial or ethnic origin, the political opinion, religious or other beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a person, data concerning health or data concerning a person's sex life or sexual orientation shall only be processed if the processing is absolutely necessary and provided that the national law ensures adequate safeguards for the rights and freedoms of the data subject. The same applies to data relating to criminal offences including the suspicion of criminal offences, criminal convictions and preventive measures."

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(d) the States Parties shall keep records in a readily retrievable form concerning the transmission, ~~and~~ receipt and erasure of data. These records shall include the purpose, and time of the transfer and the erasure, the transmitting and the receiving authority as well as an identifier for the official who carried out and the official who ordered the request or transmission. The records shall only be used to control compliance with the applicable data protection rules. The records shall be protected with suitable measures against unauthorised use and other forms of improper use and shall be kept for three years. After this period the records shall be deleted without any delay;

(e) onward transfers of personal data shall only be permitted in compliance with the national legislation and with the prior written consent of the transmitting State Party;

(f) transmitted data that are no longer used-required for the purposes permitted pursuant to the Convention shall be destroyed without delay, or other measures permitted pursuant to domestic law shall be taken which serve the right of the affected person in the same way.

**Met opmerkingen [A5]:** This exception appears to be too broad and would require further determination.

3. The States Parties shall protect personal data particularly against accidental loss, accidental or unauthorized destruction or modification, unauthorized access, use or disclosure or other misuse.

4. The States Parties shall guarantee the legitimate-rights of the person affected by the transmission of the data under this Convention with regard to information and access to data concerning him or her, correction or deletion of such data or restriction of their processing in appropriate cases, and an effective judicial remedy, upon request of the person concerned, in relation to the transmission or use of the information or the enforcement of his or her rights as well as claims for compensation.

5. Each State Party may wholly or partly restrict the rights of the person concerned with regard to information and access to data, including information with regard to any refusal of rectification or erasure of personal data or restriction of processing, to the extent that and for as long asif this constitutes a necessary and proportionate measure in order to take into account legitimate interests so as to safeguard public and national security, protect rights and freedoms of others, avoid obstructing legal inquiries, investigations or proceedings, or avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of sentences.

### Article 9. Costs

The ordinary costs of executing a request pursuant to this Convention shall be borne by the requested State Party with the exception of those incurred by the attendance of experts in the territory of that State Party or the temporary transfer of a person in custody carried out under Article 24, 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.

## PART II REQUEST

### Article 10. Request for cooperation

A request for cooperation shall be made in writing under conditions allowing States Parties to establish authenticity.

**Met opmerkingen [A6]:** This Article could be deleted and its content incorporated into the provisions of Art. 19 para. 1 and 37 para. 1.

### Article 11. 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.

**Met opmerkingen [A7]:** Since this Article refers to MLA only, it should be moved to the relevant chapter (preferably after Art. 19).

### Article 12. Common grounds for refusal

1. Cooperation shall be refused if: (a) the requested State Party has substantial grounds to believe that the person concerned by the request would be subjected, in the other State Party, to torture or other cruel, inhuman or degrading treatment or punishment, a flagrant violation of the right to a fair trial or other serious violations of human rights as guaranteed by the international instruments for the protection of human rights such as the International Covenant on Civil and Political Rights of 16 December 1966;

(b) the requested State Party has substantial grounds for believing that the proceedings in the requesting State Party are being conducted with the purpose of prosecuting or punishing a person on account of that person's political beliefs, its belonging to a certain social group or for reasons of 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;

**Met opmerkingen [A8]:** We would prefer the wording used in Art. 21 para. 1 sub-para. a or Art. 35 para. 1 sub-para. a of the Core Group's draft.

(c) 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 sought, imposed or, if imposed, will not be carried out.

(d) 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.

2. Cooperation may be refused if: (a) the request is not made in conformity with the provisions of this Convention;

(b) the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) the request concerns facts on the basis of which the prosecuted person has been finally acquitted, pardoned or convicted in the requested State Party for an essentially similar offence, provided the penalty imposed is currently being carried out or has already been carried out.

**Met opmerkingen [A9]:** These grounds for refusal should also be obligatory and therefor included in para. 1 of this Article.

3. States Parties may not refuse a request for cooperation on the sole ground that the crime is also considered to involve fiscal matters, on the ground of bank secrecy, nor on the ground that it was committed by a person holding an official position.

Optional grounds for refusal following the examples of Art. 7 and 8 of the European Convention on Extradition could be included.

4. Reasons shall be given for any refusal of cooperation.
5. Before refusing a request, States Parties shall consider whether assistance can be given on such terms and conditions as they deem necessary. If so, those terms and conditions shall be complied with by the requesting State Party.

**Met opmerkingen [A10]:** We would prefer the wording used in Art. 22 para. 5 or 35 para. 2 of the Core Group's draft.

### **Article 13. 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.
2. The requested State Party shall execute the request as soon as possible and shall aim at complying with any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request.
3. 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 including the conditions under and the timeframe in which execution could take place.

### **Article 14. Legal basis**

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

## **PART III CENTRAL AUTHORITIES AND COMMUNICATION**

### **Article 15. 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.
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.
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 or accession to this Convention. A list of designated central authorities shall be shared and updated annually.

#### **Article 16. 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.

2. Where State Parties in bilateral or multilateral instruments have agreed upon more favorable forms of transmission of requests, the more favorable rules shall take precedence over this Convention.

3. 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.

4. 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 15, 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.

5. The transmission of requests, information or communication based on this Convention may, where the States Parties concerned agree, be done by secure electronic means.

#### **Article 17. Language**

1. 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.

2. Each State Party may declare that it reserves the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into one of its own language.

**Met opmerkingen [A11]:** Cf. wording proposed in relation to the Core Group's draft:

1. Requests made in accordance with this Convention and any communication related thereto shall be translated into an official language of the requested State Party.

2. Each State Party may, when signing or depositing its instrument of ratification, acceptance, approval or accession, declare that requests addressed to it in accordance with this Convention and any communication related thereto may be made in the languages as it shall indicate, subject to reciprocity. Such a declaration shall be addressed to the Depositary.

### **PART IV MUTUAL LEGAL ASSISTANCE**

#### **Article 18. 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.

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 the requesting State Party.

### **Article 19. Request and supporting documents**

1. A request for cooperation shall at least contain or be accompanied by the following:

- (a) the identity of the authority making the request;
- (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;
- (c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (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;
- (f) where possible, the identity, location and nationality of any person concerned;
- (g) the purpose for which the evidence, information or action is sought;
- (h) where appropriate, the time limit within which the assistance should be provided and the reasons thereto.

2. In urgent circumstances, where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

### **Article 20. Purpose of the request**

Mutual legal assistance to be afforded in accordance with the provisions of this Convention may be requested for any of the following purposes:

- (a) taking evidence or statements from persons, including, as far as consistent with the law of the requested State Party, by video conference;
- (b) effecting service of judicial documents and documents of public authorities;
- (c) executing searches, seizures, ~~and~~ freezing and confiscation;
- (d) examining objects and sites;
- (e) providing information, evidentiary items and expert evaluations;

- (f)* providing originals or copies, if need be certified, of relevant documents, records and digital information, including government, bank, financial, corporate or business records;
- (g)* the use of special investigative techniques;
- (h)* the establishment of joint investigation teams;
- (i)* identifying, freezing or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (j)* facilitating the voluntary appearance of persons in the requesting State Party;
- (k)* the restitution and return of assets [in accordance with the law of the requested State Party](#);
- (l)* transferring detained persons with a view to interrogation or confrontation;
- (m)* searching of persons and of property;
- (n)* any other type of assistance that is not contrary to the domestic law of the requested State Party.

#### **Article 21. Provisional Measures**

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

#### **Article 22. 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 initiating or facilitating inquiries and criminal proceedings and 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.
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.
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.

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.

5. The information transmitted according to this provision cannot be used as evidence in criminal proceedings before a formal MLA request is submitted.

**Met opmerkingen [A12]:** We believe that this provision is unusual and should be deleted.

### **Article 23. Presence of officials**

On the express request of the requesting State Party and if the requested measure so permits, 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 interested persons. Such presence shall be subject to the approval of the requested State Party.

### **Article 24. Depositions of persons in the requested State Party**

1. Witnesses shall be heard in accordance with the law of the requested State Party. However, they may also refuse to testify if the law of the requesting State Party allows them to do so.
2. If their refusal to testify is based on the law of the requesting State Party, the requested State Party shall send the matter to the requesting State Party for decision. Reasons shall be given for that decision.
3. A witness invoking the right to refuse to testify cannot be subjected to any legal penalty in the requesting State Party for that reason.

### **Article 25. Appearances of persons in the requesting State Party**

1. If the requesting State Party considers the personal appearance of a witness or expert before its judicial authorities necessary, it shall so mention in its request for service of the summons and the requested State Party shall invite the witness or expert to appear in the territory of the requesting State Party.
2. The requested State Party shall, without delay, communicate in writing to the requesting State Party the decision of the witness or expert with regard to the invitation.
3. The allowances, travel costs and subsistence shall be paid by the requesting State Party.
4. The witness or expert shall be informed of the amount of the allowances, travel costs and subsistence to which the witness or expert will be entitled and may require the requesting

State Party to grant an advance on such allowances, travel costs and subsistence. ~~The allowances and the travel costs and subsistence shall be calculated as from the place of residence of the witness or expert and at rates at least equal to those provided for in the scales and rules in force in the State Party where the hearing is intended to take place.~~

**Met opmerkingen [A13]:** We would prefer the wording used in Art. 26 paras. 2 and 3 of the Core Group's draft.

## Article 26. 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: (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 (b) submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a competent authority in the territory of the requesting State Party, insofar as it relates to proceeds of crime, property, equipment or other instrumentalities in or destined for use in the crimes covered by this Convention, situated in the territory of the requested State Party.
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.
3. The provisions of article 19 are applicable, mutatis mutandis, to this article. In addition to the information specified in article 19 requests made in accordance with this article shall contain: (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; (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; (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.

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.

5. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

6. In the execution of the request, 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.

### **Article 27. Sharing**

1. States Parties undertake to afford each other the widest cooperation in sharing matters according to their national laws.

2. In order to share confiscated assets ~~in the sense of this article~~, States Parties shall conclude, for each individual case, a specific agreement or arrangement laying down the particular conditions for the request, the handing over and transfer of the shared assets.

**Met opmerkingen [A14]:** This provision appears to be too vague and should be deleted.

### **Article 28. 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.

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; (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;

*(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;

*(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.

#### **Article 29. Safe conduct**

1. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party.

2. The safe conduct provided for in paragraph 1 shall cease when the witness, expert or other person:

*(a)* having had the opportunity to leave the territory of the requesting State Party, has not left it within a period of fifteen days after their presence is no longer required by the judicial authorities; or

*(b)* after having left the territory of the requesting State Party, has returned to it.

#### **Article 30. Hearing by video conference**

1. If a person is in one State Party's territory and has to be heard as a witness or expert by the judicial authorities of another State Party, the latter 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, as provided for in paragraphs 2 to 7.

2. The requested State Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on the condition that it has the technical means to carry out the hearing. If the requested State Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting State Party by mutual agreement.

3. Requests for a hearing by video conference shall contain, in addition to the information referred to in article 19 of this Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

4. The judicial authority of the requested State Party shall summon the person concerned to appear in accordance with the forms laid down by its law.

5. With reference to hearing by video conference, the following rules shall apply:

(a) a judicial authority of the requested State Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested State Party. If the judicial authority of the requested State Party is of the view that during the hearing the fundamental principles of the law of the requested State Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested State Parties; the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting State Party in accordance with its own laws; at the request of the requesting State Party or the person to be heard, the requested State Party shall ensure that the person to be heard is assisted by an interpreter, if necessary; the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting State Party.

6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested State Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested State Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested State Party to the competent authority of the requesting State Party.

7. 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 applies in the same way as if the hearing took place in a national procedure.

**Met opmerkingen [A15]:** We would prefer the wording used in Art. 27 para. 5 of the Core Group's draft.

8. States Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the States Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.

### **Article 31. Transmission of objects, documents, records or evidence**

1. Upon request, the requested State Party shall transmit objects, documents, records or evidence to the requesting State Party.
2. The requested State Party may transmit copies of documents, records or evidence requested. If the requesting State Party expressly requests the transmission of originals, the requested State Party shall make every effort to comply with the request.
3. The requesting State Party is required to return what was transmitted as quickly as possible or at the latest after the end of the proceeding unless the requested State Party expressly waives the return thereof.
4. Rights claimed by third parties to objects, documents, records or evidence in the requested State Party shall not prevent their transmission to the requesting State Party.

### **Article 32. Joint investigation teams**

1. By mutual agreement, the competent authorities of two or more States Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the State Parties setting up the team. The composition of the team shall be set out in the agreement. A joint investigation team may, in particular, be set up where:
  - (a) A State Party's investigations into criminal offences require difficult and demanding investigations having links with other State Parties;
  - (b) A number of States Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the States Parties involved.
2. A request for the setting up of a joint investigation team may be made by any of the State Parties concerned. The team shall be set up in one of the States Parties in which the investigations are expected to be carried out.

3. In addition to the information referred to in the relevant provisions of article 19 of this Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

4. A joint investigation team shall operate in the territory of the States Parties setting up the team under the following general conditions:

*(a)* The leader of the team shall be a representative of the competent authority participating in criminal investigation from the State Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;

*(b)* The team shall carry out its operations in accordance with the law of the State Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;

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

5. In this article, members of the joint investigation team from the State Party in which the team operates are referred to as “members”, while members from States Parties other than the State Party, in which the team operates are referred to as “seconded members”.

6. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the State Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the State Party where the team operates, decide otherwise.

7. Seconded members of the joint investigation team may, in accordance with the law of the State Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the State Party of operation and the seconding State Party.

8. Where the joint investigation team needs investigative measures to be taken in one of the States Parties setting up the team, members seconded to the team by that State Party may request their own competent authorities to take those measures. Those measures shall be considered in that State Party under the conditions which would apply if they were requested in a national investigation.

9. Where a joint investigation team needs assistance from a State Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State Party of operation to the competent authorities to the other State concerned in accordance with the relevant instruments of arrangements.

10. A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the State Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

11. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the States Parties concerned may be used for the following purposes:

(a) For the purposes for which the team has been set up;

(b) Subject to prior consent of the State Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the State Party concerned or in respect of which that State Party could refuse mutual assistance;

(c) For preventing an immediate and serious threat to public security, and without prejudice to subparagraph b if subsequently a criminal investigation is opened;

(d) For other purposes to the extent that this is agreed between the States Parties setting up the team

12. This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

13. To the extent that the laws of the States Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the States Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members of seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

### **Article 33. Cross-border observations**

1. Police officers of one of the States Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorized to continue their observation in the territory of another State Party where the latter has authorized cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorization.

On request, the observation will be entrusted to officers of the State Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each State Party and having jurisdiction to grant or to forward the requested authorization.

2. Where, for particularly urgent reasons, prior authorization of the other State Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorized to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

*(a)* the authorities of the State Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;

*(b)* a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorization shall be submitted without delay.

*(c)* Observation shall cease as soon as the State Party in whose territory it is taking place so requests, following the notification referred to in subparagraph a or the request referred to in subparagraph b or where authorization has not been obtained within five hours of the border being crossed.

3. The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

*(a)* the officers conducting the observation must comply with the provisions of this article and with the law of the State Party in whose territory they are operating; they must obey the instructions of the local responsible authorities;

*(b)* except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorization has been granted;

*(c)* the officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity;

*(d)* the officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested State Party; their use shall be prohibited save in cases of legitimate self-defense;

*(e)* entry into private homes and places not accessible to the public shall be prohibited;

*(f)* the officers conducting the observation may neither stop and question, nor arrest, the person under observation;

*(g)* all operations shall be the subject of a report to the authorities of the State Party in whose territory they took place; the officers conducting the observation may be required to appear in person;

*(h)* the authorities of the State Party from which the observing officers have come shall, when requested by the authorities of the State Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4. States Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Depositary, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

#### **Article 34. Covert investigations**

1. The requesting and the requested States Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2. The decision on the request is taken in each individual case by the competent authorities of the requested State Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the States Parties with due regard to their national law and procedures.

3. Covert investigations shall take place in accordance with the national law and procedures of the State Party on the territory of which the covert investigation takes place. The States Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.

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

### **Article 35. Electronic or other forms of surveillance**

1. The competent authorities of each State Party may at the express request of another State Party order the surveillance of postal and telecommunications traffic in order to establish the whereabouts of a person suspected of having committed a crime within the scope of the Convention.

2. States Parties may in particular make a request for:

(a) the surveillance of postal services;

(b) the interception, recording and immediate or subsequent transmission of telecommunications;

(c) the transmission of electronic communications traffic data.

3. The requirements for surveillance and the procedure shall otherwise be governed by the internal law of the requested State Party.

**Met opmerkingen [A16]:** We would prefer the wording used in Art. 32 of the Core Group's draft which also encompasses controlled deliveries.

## **PART V EXTRADITION**

### **Article 36. Scope**

~~21.~~ 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.

~~32.~~ Without prejudice to article 12, 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.

~~(c) Where a conviction and prison sentence have occurred in the requesting State Party, the punishment awarded must have been for a period of at least 6 months.~~

~~43.~~ 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.

~~54.~~ 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.

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**Article 36bis. 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.

**Met opmerkingen [A17]:** Cf. Art. 34 of the Core Group's draft.

### **Article 37. Request and supporting documents**

1. 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;

(b) the text of the relevant provision of the law punishing 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;

(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;

(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;

(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;

(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.

2. 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 38. Extradition of nationals**

1. 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 37, paragraph 1. The requesting State Party shall be informed of the result of its request.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in [paragraph 1 of this article-39](#).

#### **Article 39. 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 [in accordance with article 56 and seq. of this Convention](#).

#### **Article 40. Judgments in absentia**

When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him or her *in absentia*, the requested State Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defense recognized as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting State Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defense.

**Met opmerkingen [A18]:** In light of Art. 37 para. 1 sub-para. e, we believe that this article could be deleted.

#### **Article 41. 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.

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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.

**Met opmerkingen [A19]:** This para. is duplicating Art. 12 para. 4 and could be deleted.

#### **Article 42. 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.
2. The request for provisional arrest shall contain the contents referred to in article 37, paragraph 1, letters a and b, a description of the crime ~~committed giving rise to the request~~ and underlying facts, a statement of the existence of documents referred to in article 37 and a statement that a formal request for extradition of the person sought will follow.
3. The requested State Party shall, without delay, inform the requesting State Party of the result of its handling of the request.
4. Provisional arrest shall be terminated if, within a period of sixty days after the arrest of the person sought, the requested State Party has not received the formal request for extradition. The possibility of provisional release at any time is not excluded, but the requested State Party shall take any measures which it considers necessary to prevent the escape of the person sought.
5. The termination of provisional arrest pursuant to paragraph 4 shall not prejudice the re-arrest and his or her subsequent extradition of the person sought if the requested State Party has subsequently received the formal request for extradition.

#### **Article 43. 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.

#### **Article 44. 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.
2. Upon receipt of such a request, which shall contain relevant information, and be supported by the documents mentioned in article 37, paragraph 1 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.

3. The State Party of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

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.

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, political beliefs, belonging to a certain social group or other grounds that are universally recognized as impermissible under international law.

#### **Article 45. Rule of speciality**

1. In addition to the rules contained in article 6 of this convention, a person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited, nor shall he or she be for any other reason restricted in his or her personal freedom, except in the following cases: (a) when the State Party which surrendered him or her consents. A request for consent shall be submitted, accompanied by the documents mentioned in article 37 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;

(b) when that person, having had an opportunity to leave the territory of the State Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

2. The requesting State Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

3. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition under this Convention.

#### **Article 46. Re-extradition to a third state**

Except as provided for in article 45, paragraph 1, letter b, the requesting State Party shall not, without the consent of the requested State Party, surrender to another State Party or to a third State a person surrendered to the requesting State Party and sought by the said other State Party or third State in respect of offences committed before his surrender. The requested State Party may request the production of the documents mentioned in article 37, [paragraph 1](#).

#### **Article 47. Non bis in idem**

Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested State Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested State Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences [for other than procedural reasons](#).

#### **Article 48. Handing over of property**

1. The requested State Party shall, in so far as its law permits and at the request of the requesting State Party, seize and hand over property: (a) which may be required as evidence; or (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the requested State Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the requested State Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested State Party as soon as possible after the trial.

**Met opmerkingen [A20]:** Part V should contain provisions relating to Articles 17-19 of the European Convention on Extradition.

## Part VI TRANSFER OF SENTENCED PERSONS

### Article 49. 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.
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, [imprisonment](#) 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.

### Article 50. Conditions for transfer

1. Transfer may be requested by the sentencing State Party or the administering State Party.
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 under this Convention only on the following conditions: (a) If that person is a national ~~or a permanent resident~~ of the administering State Party;  
(b) If the judgement is final and enforceable;  
(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;  
(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; ~~and~~  
(e) If the sentencing and the administering States Parties agree to the transfer; [and](#)  
[\(f\) If the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory.](#)
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, is shall consider this Convention as the necessary legal basis for the transfer of sentenced persons in respect of the crimes covered by this Convention.

#### **Article 51. 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 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 his or her interest to the administering State Party, the sentencing State Party shall, on request, communicate to the 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.

#### **Article 52. Requests, replies and supporting documents**

1. Requests for transfer and replies shall be made in writing under conditions allowing States Parties to establish the authenticity of the supporting documents entailed in paragraph 5.
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 of that State Party;  
*(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 57 or 58 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 in the case mentioned in article 54, a written declaration containing the consent to the transfer as referred to in article 53;

(d) 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 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.

#### **Article 53. 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 50, paragraph 3, letter 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.

**Met opmerkingen [A21]:** A provision should be included stating that the consent cannot be revoked.

#### **Article 54. 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.

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 50. 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 [under this article](#) does not require the consent of the sentenced person.

#### **Article 54bis.**

#### **Article 55. 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.

#### **Article 56. 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 57, 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 58.

**Met opmerkingen [A22]:** A provision on sentenced persons subject to an expulsion or deportation order relating to Art. 3 Additional Protocol to the Convention on the Transfer of Sentenced Persons should be included.

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.

#### **Article 57. 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.

#### **Article 58. 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;

*(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.

### **Article 59. Review of judgment**

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

### **Article 60. 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.

### **Article 61. 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.

### **Article 61.bis**

**Met opmerkingen [A23]:** A provision on transit relating to Art. 16 Convention on the Transfer of Sentenced Persons should be included.

## **PART VII FINAL PROVISIONS**

### **Article 62. 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 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 following meeting of the Conference of States Parties. He or she shall 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 conclusion of the meeting of the Conference of States Parties at which he or she is elected, until the conclusion of the meeting he or she is hosting.

**Met opmerkingen [A24]:** We believe that a Conference of States Parties to be convened on a needs basis (on the request of a relevant number of States Parties) would be sufficient for the purpose of this Convention.

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 64;

*(d)* consider and adopt a template for a request for mutual assistance in order to facilitate international cooperation and assistance in accordance with Parts IV, V and VI of this Convention;

*(e)* consider and undertake any additional action that may be required for the achievement of the objectives of this Convention.

6. The United Nations, its specialized agencies, the International Committee of the Red Cross, the International Criminal Court 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 observers shall be subject to the rules of procedure adopted by the Conference of States Parties.

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 63. Settlement of disputes**

1. States Parties shall endeavor to settle disputes concerning the interpretation or application of this Convention through negotiation.

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.

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.

#### **Article 64. 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 depositary ~~at least four months before the next~~ accompanied by the request to convene a meeting of the Conference of States Parties.

The depositary shall circulate the proposal within one month 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 depositary shall also communicate proposed amendments to the signatories to this Convention. Each State Party proposing any amendment is responsible for providing translations of the proposed amendment in all authentic languages of this Convention.

3. States Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this article, States Parties present and voting means States Parties present and casting an affirmative or negative vote.

4. The host of the Conference of States Parties shall communicate any adopted amendments to the depositary, which shall communicate it 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 62 paragraphs 1 to 6 shall enter into force for all States Parties six months after their adoption by the conference. Amendments to article 62 paragraph 7 shall have immediate effect.

#### **Article 65. Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open to all States for signature from [PM] to [PM] in [PM], and thereafter at [PM] until [PM].

2. This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the depositary.

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

#### **Article 66. 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 the Convention 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 the Convention, 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.

#### **Article 67. 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 68. Reservations**

No reservations may be made to Part I, II, III and VII of this Convention other than those expressly provided for in the respective articles.

#### **Article 69. 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.

#### **Article 70. Depositary and languages**

1. The *[PM]* is designated depositary of this Convention.
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.

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

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