

# I. Model treaties

## 24. Model Treaty on Extradition\*<sup>1</sup>

The \_\_\_\_\_ and the

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*Desirous* of making more effective the cooperation of the two countries in the control of crime by concluding a treaty on extradition,

*Have agreed* as follows:

### Article 1

#### *Obligation to extradite*

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence.<sup>2</sup>

### Article 2

#### *Extraditable offences*

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

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\*General Assembly resolution 45/116, as amended by resolution 52/88.

<sup>1</sup>The version of the Model Treaty on Extradition contained in this edition of the *Compendium* is the result of the merging of the model treaty adopted in 1990 by the General Assembly in its resolution 45/116 and the amendments introduced in 1997 in resolution 52/88. The latter have been identified in bold type.

<sup>2</sup>Reference to the imposition of a sentence may not be necessary for all countries.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State.<sup>3</sup>

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

### Article 3

#### *Mandatory grounds for refusal*

Extradition shall not be granted in any of the following circumstances:

(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature. **Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purposes of extradition;**<sup>4</sup>

(b) If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic

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<sup>3</sup>Some countries may wish to omit this paragraph or provide an optional ground for refusal under article 4.

<sup>4</sup>Countries may wish to exclude certain conduct, e.g., acts of violence, such as serious offences involving an act of violence against the life, physical integrity or liberty of a person, from the concept of political offence.

origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;<sup>5</sup>

(f) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14;<sup>6</sup>

(g) If the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence.<sup>7</sup>

#### Article 4

##### *Optional grounds for refusal*

Extradition may be refused in any of the following circumstances:

(a) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;<sup>8</sup>

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<sup>5</sup>Some countries may wish to make this an optional ground for refusal under article 4. **Countries may also wish to restrict consideration of the issue of lapse of time to the law of the requesting State only or to provide that acts of interruption in the requesting State should be recognized in the requested State.**

<sup>6</sup>See General Assembly resolution 2200 A (XXI), annex.

<sup>7</sup>Some countries may wish to add to article 3 the following ground for refusal: "If there is insufficient proof, according to the evidentiary standards of the requested State, that the person whose extradition is requested is a party to the offence." (See also footnote 12.)

<sup>8</sup>**Some countries may also wish to consider, within the framework of national legal systems, other means to ensure that those responsible for crimes do not escape punishment on the basis of nationality, such as, inter alia, provisions that would permit surrender for serious offences or permit temporary transfer of the person for trial and return of the person to the requested State for service of sentence.**

(b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. **Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;**<sup>9</sup>

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State.<sup>10</sup> Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

(h) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

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<sup>9</sup>Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence.

<sup>10</sup>Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its laws at the time of the commission of the offence.

Article 5  
*Channels of communication and required documents*<sup>11</sup>

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(a) In all cases,

- (i) 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;
- (ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, 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 offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission;<sup>12</sup>

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence 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;

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested

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<sup>11</sup>Countries may wish to consider including the most advanced techniques for the communication of requests and means which could establish the authenticity of the documents as emanating from the requesting State.

<sup>12</sup>Countries requiring evidence in support of a request for extradition may wish to define the evidentiary requirements necessary to satisfy the test for extradition and in doing so should take into account the need to facilitate effective international cooperation.

and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

Article 6  
*Simplified extradition procedure*<sup>13</sup>

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 7  
*Certification and authentication*

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.<sup>14</sup>

Article 8  
*Additional information*

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

Article 9  
*Provisional arrest*

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of

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<sup>13</sup>Countries may wish to provide for the waiver of speciality in the case of simplified extradition.

<sup>14</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the [40] days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

#### Article 10

##### *Decision on the request*

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

#### Article 11

##### *Surrender of the person*

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

## Article 12

### *Postponed or conditional surrender*

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

## Article 13

### *Surrender of property*

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

#### Article 14 *Rule of specialty*

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) An offence for which extradition was granted;<sup>15</sup>

(b) Any other offence in respect of which the requested State consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty.<sup>16</sup>

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.<sup>17</sup>

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

#### Article 15 *Transit*

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited

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<sup>15</sup>Countries may also wish to provide that the rule of speciality is not applicable to extraditable offences provable on the same facts and carrying the same or a lesser penalty as the original offence for which extradition was requested.

<sup>16</sup>Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

<sup>17</sup>Countries may wish to waive the requirement for the provision of some or all of these documents.

shall request the other 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 Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby.<sup>18</sup>

3. The State 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 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 of the present article.

#### Article 16

##### *Concurrent requests*

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

#### Article 17

##### *Costs*

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought.<sup>19</sup>

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<sup>18</sup>Some countries may wish to agree on other grounds for refusal, which may also warrant refusal for extradition, such as those related to the nature of the offence (e.g. political, fiscal, military) or to the status of the person (e.g. their own nationals). **However, countries may wish to provide that transit should not be denied on the basis of nationality.**

<sup>19</sup>Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest. **There may also be cases for consultation between the requesting and requested States for the payment by the requesting State of extraordinary costs, particularly in complex cases where there is a significant disparity in the resources available to the two States.**

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

Article 18  
*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

## 25. Model Treaty on Mutual Assistance in Criminal Matters\*<sup>1</sup>

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of extending to each other the widest measure of cooperation to combat crime,

*Have agreed* as follows:

### Article 1 *Scope of application*<sup>2</sup>

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

- (a) Taking evidence or statements from persons;
- (b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
- (c) Effecting service of judicial documents;
- (d) Executing searches and seizures;
- (e) Examining objects and sites;
- (f) Providing information and evidentiary items;
- (g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

- (a) The arrest or detention of any person with a view to the extradition of that person;

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\*General Assembly resolution 45/117, as amended by resolution 53/112.

<sup>1</sup>The version of the Model Treaty on Mutual Assistance in Criminal Matters contained in this edition of the *Compendium* is the result of the merging of the model treaty adopted in 1990 by the General Assembly in its resolution 45/117 and the amendments introduced in 1998 in resolution 53/112. The latter have been identified in bold type.

<sup>2</sup>Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

- (b) The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and **article 18** of the present Treaty;
- (c) The transfer of persons in custody to serve sentences;
- (d) The transfer of proceedings in criminal matters.

### Article 2<sup>3</sup>

#### *Other arrangements*

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

### Article 3

#### *Designation of **central** authorities*

Each Party shall designate and indicate to the other Party a **central** authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.<sup>4</sup>

### Article 4<sup>5</sup>

#### *Refusal of assistance*

1. Assistance may be refused if:<sup>6</sup>

- (a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (*ordre public*) or other essential public interest;

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<sup>3</sup>Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

<sup>4</sup>**Countries may wish to consider providing for direct communications between central authorities and for the central authorities to play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. Countries may also wish to agree that the central authorities are not the exclusive channel for assistance between the Parties and that the direct exchange of information should be encouraged to the extent permitted by domestic law or arrangements.**

<sup>5</sup>Article 4 provides an illustrative list of the grounds for refusal.

<sup>6</sup>Some countries may wish to delete or modify some of the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), the nature of the applicable penalty (e.g. capital punishment), requirements of shared concepts (e.g. double jurisdiction, no lapse of time) or specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic acid (DNA) tests). **Countries may wish, where feasible, to render assistance, even if the act on which the request is based is not an offence in the requested State (absence of dual criminality). Countries may also consider restricting the requirement of dual criminality to certain types of assistance, such as search and seizure.**

(b) The offence is regarded by the requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) The request relates to an offence the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (*ne bis in idem*);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.<sup>7</sup>

5. Reasons shall be given for any refusal or postponement of mutual assistance.

## Article 5 *Contents of requests*

1. Requests for assistance shall include:<sup>8</sup>

(a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

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<sup>7</sup>States should consult, in accordance with article 21, before assistance is refused or postponed.

<sup>8</sup>This list can be reduced or expanded in bilateral negotiations.

- (b) The purpose of the request and a brief description of the assistance sought;
- (c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
- (d) The name and address of the person to be served, where necessary;
- (e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
- (f) Specification of any time limit within which compliance with the request is desired;
- (g) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.<sup>9</sup>

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

#### Article 6<sup>10</sup> *Execution of requests*

Subject to article 20 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.<sup>11</sup>

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<sup>9</sup>Countries may wish to provide that the request may be made by modern means of communication, including, in particularly urgent cases, verbal requests that are confirmed in writing forthwith.

<sup>10</sup>More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

<sup>11</sup>The requested State should secure such orders, including judicial orders, as may be necessary for the execution of the request. Countries may also wish to agree, in accordance with national legislation, to represent or act on behalf or for the benefit of the requesting State in legal proceedings necessary to secure such orders.

Article 7  
*Return of material to the requested State*

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8<sup>12</sup>  
*Limitation on use*

**Unless otherwise agreed**, the requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9  
*Protection of confidentiality*<sup>13</sup>

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

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<sup>12</sup>Some countries may wish to omit article 8 or modify it, e.g. restrict it to fiscal offences, **or restrict use of evidence only where the requested State makes an express request to that effect.**

<sup>13</sup>Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

Article 10  
*Service of documents*<sup>14</sup>

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [. . .]<sup>15</sup> days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

Article 11<sup>16</sup>  
*Obtaining of evidence*

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.<sup>17</sup>

Article 12  
*Right or obligation to decline to give evidence*

1. A person who is **called upon** to give evidence in the requested or requesting State may decline to give evidence where either:

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<sup>14</sup>More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been effected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

<sup>15</sup>Depending on travel distance and related arrangements.

<sup>16</sup>Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

<sup>17</sup>**Wherever possible and consistent with the fundamental principles of domestic law, the Parties should permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and should ensure that perjury committed under such circumstances is a criminal offence.**

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non existence of that right or obligation.<sup>18</sup>

### Article 13

#### *Availability of persons in custody to give evidence or to assist in investigations<sup>19</sup>*

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

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<sup>18</sup>Some countries may wish to provide that a witness who is testifying in the requesting State may not refuse to testify on the basis of a privilege applicable in the requested State.

<sup>19</sup>In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time limit for the presence of the person in custody in the requesting State.

Article 14  
*Availability of other persons to give evidence  
or assist in investigations*<sup>20</sup>

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15<sup>21</sup>  
*Safe conduct*

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

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<sup>20</sup>Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

<sup>21</sup>The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

#### Article 16

##### *Provision of publicly available documents and other records*<sup>22</sup>

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

#### Article 17

##### *Search and seizure*<sup>23</sup>

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

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<sup>22</sup>The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

<sup>23</sup>Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

**Article 18<sup>24</sup>**  
***Proceeds of crime*<sup>25</sup>**

1. In the present **article** “proceeds of crime” means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

3. In pursuance of a request made under paragraph 2 of the present **article**, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present **article**, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.<sup>26</sup>

6. The Parties shall ensure that the rights of *bona fide* third parties shall be respected in the application of the present **article**.

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<sup>24</sup>The footnotes attached to this article in its original form as the Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime (see General Assembly resolution 45/117) were deleted in accordance with resolution 53/112, annex I, para. 15.

<sup>25</sup>Assistance in forfeiting the proceeds of crime has emerged as an important instrument in international cooperation. Provisions similar to those outlined in the present article appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. Provision could be made for the equitable sharing of the proceeds of crime between the contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

<sup>26</sup>The parties might consider widening the scope of the present article by the inclusion of references to victims’ restitution and the recovery of fines imposed as a sentence in a criminal prosecution.

**Article 19**  
*Certification and authentication*<sup>27</sup>

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

**Article 20**  
*Costs*<sup>28</sup>

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

**Article 21**  
*Consultation*

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

**Article 22**  
*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

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<sup>27</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

<sup>28</sup>More detailed provisions may be included. For example, the requested State would meet the ordinary costs of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

## **26. Model Treaty on the Transfer of Proceedings in Criminal Matters\***

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of further strengthening international cooperation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

*Believing* that such cooperation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

*Bearing in mind* that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

*Aware* that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

*Convinced*, therefore, that the transfer of proceedings in criminal matters should be promoted,

*Have agreed* as follows:

### *Article 1* *Scope of application*

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

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\*General Assembly resolution 45/118, annex.

*Article 2*  
*Channels of communications*

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

*Article 3*  
*Required documents*

1. The request to take proceedings shall contain or be accompanied by the following information:

- (a) The authority presenting the request;
- (b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
- (c) A statement on the results of investigations which substantiate the suspicion of an offence;
- (d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;
- (e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

*Article 4*  
*Certification and authentication*

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.<sup>1</sup>

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<sup>1</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

*Article 5*  
*Decision on the request*

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

*Article 6*  
*Dual criminality*

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

*Article 7*  
*Grounds for refusal*

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:<sup>2</sup>

- (a) The suspected person is not a national of or ordinary resident in the requested State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the requested State as being of a political nature.

*Article 8*  
*The position of the suspected person*

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.

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<sup>2</sup>When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

2. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

*Article 9*  
*The rights of the victim*

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

*Article 10*  
*Effects of the transfer of proceedings on the  
requesting State (ne bis in idem)*

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

*Article 11*  
*Effects of the transfer of proceedings on the requested State*

1. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1 of the present Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

2. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting

State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

3. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

*Article 12*  
*Provisional measures*

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

*Article 13*  
*The plurality of criminal proceedings*

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

*Article 14*  
*Costs*

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

*Article 15*  
*Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

## **27. Model Agreement on the Transfer of Foreign Prisoners\* and recommendations on the treatment of foreign prisoners\*\***

*The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,*

*Recalling* resolution 13 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>1</sup> in which States Members of the United Nations were urged to consider the establishment of procedures whereby transfers of offenders might be effected,

*Recognizing* the difficulties of foreigners detained in prison establishments abroad owing to such factors as differences in language, culture, customs and religion,

*Considering* that the aim of social resettlement of offenders could best be achieved by giving foreign prisoners the opportunity to serve their sentence within their country of nationality or residence,

*Convinced* that the establishment of procedures for the transfer of prisoners, on either a bilateral or a multilateral basis, would be highly desirable,

*Taking note* of the existing multilateral and bilateral international agreements on the transfer of foreign prisoners,

1. *Adopts* the Model Agreement on the Transfer of Foreign Prisoners contained in annex I to the present resolution;

2. *Approves* the recommendations on the treatment of foreign prisoners contained in annex II below;

3. *Invites* Member States, if they have not yet established treaty relations with other Member States in the matter of the transfer of foreign prisoners to their own countries, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Agreement on the Transfer of Foreign Prisoners annexed hereto;

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\**Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex I.

\*\**Ibid.*, annex II.

<sup>1</sup>*Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

4. *Requests* the Secretary-General to assist Member States, at their request, in the development of agreements on the transfer of foreign prisoners and to report regularly thereon to the Committee on Crime Prevention and Control.

***Annex I***  
***Model Agreement on the Transfer of Foreign Prisoners***

PREAMBLE

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of further developing mutual cooperation in the field of criminal justice,

*Believing* that such cooperation should further the ends of justice and the social resettlement of sentenced persons,

*Considering* that those objectives require that foreigners who are deprived of their liberty as the result of a criminal offence should be given the opportunity to serve their sentences within their own society,

*Convinced* that this aim can best be achieved by transferring foreign prisoners to their own countries,

*Bearing in mind* that the full respect for human rights, as laid down in universally recognized principles, should be ensured,

*Have agreed* on the following:

I. GENERAL PRINCIPLES

1. The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of cooperation.

2. A transfer of prisoners should be effected on the basis of mutual respect for national sovereignty and jurisdiction.

3. A transfer of prisoners should be effected in cases where the offence giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the sending (sentencing) State and the State to which the transfer is to be effected (administering State) according to their national laws.

4. A transfer may be requested by either the sentencing or the administering State. The prisoner, as well as close relatives, may express to either State their interest in the transfer. To that end, the contracting State shall inform the prisoner of their competent authorities.

5. A transfer shall be dependent on the agreement of both the sentencing and the administering State, and should also be based on the consent of the prisoner.

6. The prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.

7. The administering State should be given the opportunity to verify the free consent of the prisoner.

8. Any regulation concerning the transfer of prisoners shall be applicable to sentences of imprisonment as well as to sentences imposing measures involving deprivation of liberty because of the commission of a criminal act.

9. In cases of the person's incapability of freely determining his will, his legal representative shall be competent to consent to the transfer.

## II. OTHER REQUIREMENTS

10. A transfer shall be made only on the basis of a final and definitive sentence having executive force.

11. At the time of the request for a transfer, the prisoner shall, as a general rule, still have to serve at least six months of the sentence; a transfer should, however, be granted also in cases of indeterminate sentences.

12. The decision whether to transfer a prisoner shall be taken without any delay.

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

## III. PROCEDURAL REGULATIONS

14. The competent authorities of the administering State shall: (a) continue the enforcement of the sentence immediately or through a court or administrative order; or (b) convert the sentence, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for a corresponding offence.

15. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.

16. In the case of conversion of sentence, the administering State shall be entitled to adapt the sanction as to its nature or duration according to its national law, taking into due consideration the sentence passed in the sentencing State. A sanction involving deprivation of liberty shall, however, not be converted to a pecuniary sanction.

17. The administering State shall be bound by the findings as to the facts insofar as they appear from the judgement imposed in the sentencing State. Thus the sentencing State has the sole competence for a review of the sentence.

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

20. Any costs incurred because of a transfer and related to transportation should be borne by the administering State, unless otherwise decided by both the sentencing and administering States.

#### IV. ENFORCEMENT AND PARDON

21. The enforcement of the sentence shall be governed by the law of the administering State.

22. Both the sentencing and the administering State shall be competent to grant pardon and amnesty.

#### V. FINAL CLAUSES

23. This agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

24. This agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in \_\_\_\_\_.

25. This agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

26. Either Contracting Party may denounce this agreement in writing to the \_\_\_\_\_ . Denunciation shall take effect six months following the date on which the notification is received by the \_\_\_\_\_ .

In witness whereof the undersigned, being duly authorized thereto by the respective Governments, have signed this treaty.

***Annex II***  
***Recommendations on the treatment of foreign prisoners***

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.
4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.
5. The religious precepts and customs of foreign prisoners should be respected.
6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.
8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.
9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

## 28. Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released\*

The \_\_\_\_\_ and the \_\_\_\_\_

*Desirous* of further strengthening international cooperation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

*Believing* that such cooperation should further the ends of justice, the social resettlement of sentenced persons and the interests of the victims of crime,

*Bearing in mind* that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

*Aware* that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

*Convinced*, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

*Have agreed* as follows:

### *Article 1* *Scope of application*

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

- (a) Placed on probation without sentence having been pronounced;
- (b) Given a suspended sentence involving deprivation of liberty;
- (c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

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\*General Assembly resolution 45/119, annex.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

*Article 2*  
*Channels of communications*

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

*Article 3*  
*Required documents*

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in article 1 of the present Treaty and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

*Article 4*  
*Certification and authentication*

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.<sup>1</sup>

*Article 5*  
*Decision on the request*

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

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<sup>1</sup>The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

*Article 6*  
*Dual criminality*<sup>2</sup>

A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

*Article 7*  
*Grounds for refusal*<sup>3</sup>

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

- (a) The sentenced person is not ordinarily resident in the administering State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the administering State as being of a political nature;
- (e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

*Article 8*  
*The position of the sentenced person*

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

*Article 9*  
*The rights of the victim*

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or

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<sup>2</sup>When negotiating on the basis of the present Model Treaty, States may wish to waive the requirement of dual criminality.

<sup>3</sup>When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

*Article 10*

*The effects of the transfer of supervision on the sentencing State*

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

*Article 11*

*The effects of the transfer of supervision on the administering State*

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

*Article 12*

*Review, pardon and amnesty*

1. The sentencing State alone shall have the right to decide on any application to reopen the case.

2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

*Article 13*

*Information*

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or

enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person’s conduct and compliance with the measures imposed.

*Article 14  
Costs*

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

*Article 15  
Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

\_\_\_\_\_

DONE at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

**29. Model treaty for the prevention of crimes that infringe  
on the cultural heritage of peoples in the  
form of movable property\*<sup>1</sup>**

The \_\_\_\_\_ and the \_\_\_\_\_

*Conscious* of the need to cooperate in the field of criminal justice,

*Wishing* to add to the effectiveness of the cooperation between their two countries in combating criminal activities which involve movable cultural property through the introduction of measures for impeding illicit transnational trafficking in movable cultural property whether or not it has been stolen, the imposition of appropriate and effective administrative and penal sanctions and the provision of a means for restitution,

*Have agreed* as follows:

*Article 1*

*Scope of application and definition<sup>2</sup>*

1. For the purposes of this treaty, movable cultural property<sup>3</sup> shall be understood as referring to property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by reason of its importance for archaeology, prehistory, history, literature, art or science, and as belonging to one or more of the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;

(b) Property relating to history, including the history of science and technology, military history, and the history of societies and religions, as well as to the lives of leaders, thinkers, scientists and artists and other national figures, and to events of national importance;

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\**Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.1, annex.

<sup>1</sup>An alternative title could be "Model treaty concerning crimes relating to the restitution of movable cultural property".

<sup>2</sup>Suggested alternatives to article 1, paragraph 1, are: (i) "This treaty covers all items of movable cultural property specifically designated as such by a State Party, and subject to export control by that State Party."; or (ii) "This treaty covers those items of movable cultural property specifically agreed to between the States Parties as being subject to export control."

<sup>3</sup>The categories follow closely the list contained in article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970. However, this list may not be exhaustive, and States Parties may wish to add other categories.

- (c) Products of archaeological excavations or discoveries, including clandestine excavations or discoveries, whether on land or under water;
- (d) Elements of artistic or historical monuments or archaeological sites which have been dismantled;
- (e) Antiquities, including tools, ceramics, ornaments, musical instruments, pottery, inscriptions of all kinds, coins, engraved seals, jewels, weapons and funerary remains of any description;
- (f) Materials of anthropological, historical or ethnological interest;
- (g) Property of artistic interest, such as:
  - (i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - (ii) Original works of statuary art and sculpture in any material;
  - (iii) Original engravings, prints, lithographs and art photographs;
  - (iv) Original artistic assemblages and montages in any material;
- (h) Rare manuscripts and incunabula, old books, documents and publications of special historical, artistic, scientific, literary or other interest, singly or in collections;
- (i) Postage, revenue and similar stamps, either singly or in collections;
- (j) Archives, including phonographic, photographic and cinematographic archives;
- (k) Articles of furniture, furnishings and musical instruments of more than 100 years of age.

2. This treaty applies to movable cultural property stolen in or illicitly exported from the other State Party after the coming into force of the treaty.<sup>4</sup>

## *Article 2*

### *General principles*

4. Each State Party undertakes:

- (a) To take the necessary measures to prohibit the import and export of movable cultural property (i) which has been stolen in the other State Party or (ii) which has been illicitly exported from the other State Party;

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<sup>4</sup>States Parties may wish to consider providing for a period of limitation after which the right to request recovery of stolen or illicitly exported movable cultural property will be extinguished.

(b) To take the necessary measures to prohibit the acquisition of, and dealing within its territory with, movable cultural property which has been imported contrary to the prohibitions resulting from the implementation of subparagraph (a) above;

(c) To legislate in order to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property;

(d) To provide information concerning its stolen movable cultural property to an international database agreed upon between the States Parties;<sup>5</sup>

(e) To take the measures necessary to ensure that the purchaser of stolen movable cultural property which is listed on the international database is not considered to be a purchaser who has acquired such property in good faith;<sup>6</sup>

(f) To introduce a system whereby the export of movable cultural property is authorized by the issue of an export certificate;<sup>7</sup>

(g) To take the measures necessary to ensure that a purchaser of imported movable cultural property which is not accompanied by an export certificate issued by the other State Party and who did not acquire the movable cultural property prior to the entry into force of this treaty shall not be considered to be a person who has acquired the movable cultural property in good faith;<sup>8</sup>

(h) To use all the means at its disposal, including the fostering of public awareness, to combat the illicit import and export, theft, illicit excavation and illicit dealing in movable cultural property.

2. Each State Party undertakes to take the necessary measures to recover and return, at the request of the other State Party, any movable cultural property which is covered by subparagraph (a) above.

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<sup>5</sup>Further developments in this field will provide the international community, particularly potential States Parties, with an opportunity to implement this method of crime prevention. (See *Eighth United Nations Congress . . .*, chap. I, sect. C.6.) The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders may wish to develop initiatives in this direction.

<sup>6</sup>This provision is intended to supplement, and not be in substitution for, the normal rules relating to good faith acquisition.

<sup>7</sup>This procedure is consistent with the validation procedure described in article 6 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

<sup>8</sup>States Parties may wish to consider adding certain types of offences against movable cultural property to the list of extraditable offences covered by an extradition treaty. (See also General Assembly resolution 45/166, annex.)

*Article 3*  
*Sanctions*<sup>8</sup>

Each State Party undertakes to impose sanctions<sup>9</sup> upon:

- (a) Persons or institutions responsible for the illicit import or export of movable cultural property;
- (b) Persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property;
- (c) Persons or institutions that enter into international conspiracies to obtain, export or import movable cultural property by illicit means.

*Article 4*  
*Procedures*

1. Requests for recovery and return shall be made through diplomatic channels. The requesting State Party shall furnish, at its expense, the documentation and other evidence, including the date of export, necessary to establish its claim for recovery and return.

2. All expenses incidental to the return and delivery of the movable cultural property shall be borne by the requesting State Party,<sup>10</sup> and no person or institution shall be entitled to claim any form of compensation from the State Party returning the property claimed. Neither shall the requesting State Party be required to compensate in any way such persons or institutions as may have participated in illegally sending abroad the property in question, although it must pay fair compensation<sup>10</sup> to any person or institution that in good faith acquired or was in legal possession of the property.<sup>11</sup>

3. Both parties agree not to levy any customs or other duties on such movable property as may be discovered and returned in accordance with the present treaty.

4. The States Parties agree to make available to each other such information as will assist in combating crimes against movable cultural property.<sup>12</sup>

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<sup>9</sup>States Parties may wish to consider establishing minimum penalties for certain offences.

<sup>10</sup>States Parties may wish to consider whether the expenses and/or the expense of providing compensation should be shared between them.

<sup>11</sup>States Parties may wish to consider the position of a blameless possessor who has inherited or otherwise gratuitously acquired a cultural object which had been previously dealt with in bad faith.

<sup>12</sup>Some States Parties may wish to preface article 4, paragraph 3, by the following: "Subject to domestic laws, particularly those concerning access to information and the protection of privacy, . . .".

5. Each State Party shall provide information concerning laws which protect its movable cultural property to an international database agreed upon between the States Parties.<sup>13</sup>

*Article 5*  
*Final provisions*<sup>14</sup>

1. This treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible, through diplomatic channels.

2. This treaty shall come into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

3. Either State Party may denounce this treaty by giving notice in writing to the other State Party. Such denunciation shall take effect six months after the date on which such notice is received by the other State Party.

4. This treaty is intended to be complementary to, and does not in any way exclude, participation in other international arrangements.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this treaty.

\_\_\_\_\_

Done at \_\_\_\_\_ on \_\_\_\_\_

in the \_\_\_\_\_ and \_\_\_\_\_ languages,  
[both/all] texts being equally authentic.

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<sup>13</sup>It should be noted that General Assembly resolution 44/18 of 6 November 1989 and quite a number of resolutions of the General Conference of UNESCO have invited member States to establish, with the assistance of UNESCO, national inventories of cultural property. At the date of the drafting of this treaty, national legislative texts on the protection of cultural movable property from 76 countries have been collected, published and disseminated by UNESCO.

<sup>14</sup>States Parties may wish to consider providing for a process for the resolution of disputes concerning the treaty.

### 30. Model Bilateral Treaty for the Return of Stolen or Embezzled Vehicles\*

(The Government of [country name] and the Government of [country name]),<sup>1</sup>

or

(The States Parties to the present Treaty),<sup>2</sup>

Recognizing the growing problem of theft of and illicit trafficking in motor vehicles,

Considering the difficulties faced by innocent owners in securing the return of motor vehicles stolen or embezzled in the territory of one Party that are recovered in the territory of another Party,

Desiring to eliminate such difficulties and to regularize procedures for the expeditious return of such vehicles,

Have agreed as follows:

#### Article 1

For the purposes of the present Treaty:

(a) A “vehicle” shall mean any automobile, truck, bus, motorcycle, motorhome, or trailer;

(b) A vehicle shall be considered “stolen” when possession thereof has been obtained without the consent of the owner or other person legally authorized to use such motor vehicle;

(c) A vehicle shall be considered “embezzled” when:

(i) It is unlawfully converted by the person who had rented it from an enterprise legally authorized for that purpose and in the normal course of business; or

(ii) It is unlawfully converted by a person with whom it has been deposited by official or judicial action;

(d) All references to “days” shall mean calendar days.

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\*Economic and Social Council resolution 1997/29, annex II.

<sup>1</sup>Applicable to bilateral agreements.

<sup>2</sup>Applicable to subregional or regional agreements.

## *Article 2*

Each Party agrees to return, in accordance with the terms of the present Treaty, vehicles that are:

- (a) Registered, titled or otherwise documented in the territory of a Party;
- (b) Stolen or embezzled in the territory of a Party; and
- (c) Found in the territory of a Party.

## *Article 3*

1. Whenever police, customs or other authorities of a Party impound or seize a vehicle that they have reason to believe is registered, titled or otherwise documented in the territory of another Party, the first Party shall, within [thirty] days of such impoundment or seizure, notify, in writing, [the Embassy] of the other Party that its authorities have custody of the motor vehicle.

2. Such notification shall include all available identifying data about the vehicle of the type listed in appendix I, a description of the condition of the motor vehicle, the current location of the vehicle, the identity of the authority with physical custody of the vehicle and [any] information that indicates whether it was being used in connection with the commission of a crime.

## *Article 4*

Authorities of the Party who have impounded or seized a vehicle that they have reason to believe is registered, titled or otherwise documented in the territory of another Party shall promptly take it to a storage area and shall take reasonable steps regarding the safekeeping of the vehicle. Thereafter, the said authorities shall not operate, auction, dismantle or otherwise alter or dispose of the vehicle. However, the present Treaty shall not preclude the said authorities from operating, auctioning, dismantling or otherwise altering or disposing of the vehicle if:

(a) No request for the return of the vehicle is filed within [sixty] days of the notification made pursuant to article 3 above;

(b) A determination is made in accordance with article 7, paragraph 1, below that a request for the return of the vehicle does not meet the requirements of the present Treaty and notification of such determination has been made in accordance with article 7, paragraph 3, below;

(c) The vehicle has not been retrieved within the time period stated in article 7, paragraph 2, below by the person identified in the request for return as the owner or the authorized representative of the owner after the vehicle has been made available as provided in article 7, paragraph 2, below; or

(d) There is no obligation under the present Treaty pursuant to article 8, paragraphs 2 or 3, below to return the vehicle.

### Article 5

1. After receiving a notification made pursuant to article 3 above, a Party may submit a request for the return of the vehicle.

2. The request for return [shall be transmitted under seal of a consular officer of the Requesting Party and] shall follow the form shown in appendix II. A copy of the request shall be transmitted under cover of a note to the [Ministry of Foreign Affairs] of the Requested Party. A request shall be made only after receipt by the consular officer of properly notarized certified copies of the following documents:

- (a) (i) The title of ownership to the vehicle, if the vehicle is subject to titling, but, if a title is not available, a certified statement from the titling authority affirming that the motor vehicle is titled and specifying the person or entity to whom it is titled;
- (ii) The certificate of registration of the vehicle, if the vehicle is subject to registration, but, if the registration document is not available, a certified statement from the registering authority affirming that the vehicle is registered and specifying the person or entity to whom it is registered;
- (iii) The bill of sale or other documentation that establishes ownership of the vehicle, in the event the vehicle is not titled or registered;

(b) The document of transfer, if, subsequent to the theft or embezzlement of the vehicle, the owner at the time of the theft or embezzlement has transferred ownership to a third party;

(c) The theft report, made within a reasonable time to a competent authority in the Requesting Party, and a translation thereof. In the event that the theft report is made after the vehicle is seized or otherwise comes into possession of the Requested Party, the person seeking its return shall furnish a document justifying the reasons for the delay in reporting the theft and may provide any supporting documentation therefor; and

(d) In cases in which the person requesting the return of a vehicle is not the owner, a power of attorney, granted in the presence of a notary public by the owner or his or her legal representative, authorizing that person to recover the vehicle.

3. Except as noted in paragraph 2 (c) above, translations of documents need not be provided. The requirement for translation of a theft report may be waived by authorities of the Requested Party. No further legalization or authentication of documents will be required by the Requested Party.

### *Article 6*

If a Party learns, through means other than a notification made pursuant to article 3 above, that the authorities of another Party may have impounded, seized or otherwise taken possession of a vehicle that may be registered or otherwise documented in the territory of the first Party, that Party:

(a) May, through a note to the [Ministry of Foreign Affairs] of the other Party, seek official confirmation of this and may request the other Party to provide the notification described in article 3, in which case the other Party shall either provide the notification or explain, in writing, why notification is not required; and

(b) May also, in appropriate cases, submit a request for the return of the vehicle as described in article 5 above.

### *Article 7*

1. Except as provided for in article 8 below, the Requested Party shall, within [thirty] days of receiving a request for the return of a stolen or embezzled vehicle, determine whether the request for return meets the requirements of the present Treaty and shall notify [the Embassy] of the Requesting Party of its determination.

2. If the Requested Party determines that the request for the return of a stolen or embezzled vehicle meets the requirements of the present Treaty, the Requested Party shall within [fifteen] days of such determination make the vehicle available to the person identified in the request for return as the owner or the authorized representative of the owner. The vehicle shall remain available for the person identified in the request for return as the owner or the authorized representative of the owner to take delivery for at least [ninety] days. The Requested Party shall take the necessary measures to permit the owner or the authorized representative of the owner to take delivery of the vehicle and return it to the territory of the Requesting Party.

3. If the Requested Party determines that the request for return does not meet the requirements of the present Treaty, it shall provide written notification to [the Embassy] of the Requesting Party.

### *Article 8*

1. If a vehicle whose return is being requested is being held in connection with a criminal investigation or prosecution, its return pursuant to the present Treaty shall be effected when its presence is no longer required for purposes of that investigation or prosecution. The Requested Party shall, however, take all practicable measures to assure that substitute pictorial or other evidence is used wherever possible in such investigation or prosecution so that the vehicle may be returned as soon as possible.

2. If the ownership or custody of a vehicle whose return is requested is the subject of a pending judicial action in the Requested Party, its return pursuant to the present Treaty shall be effected at the conclusion of that judicial action. However, a Party shall have no obligation under the Treaty to return the vehicle if such judicial action results in the award of the vehicle to a person other than the person identified in the request for return as the owner of the vehicle or the authorized representative of the owner.

3. A Party shall have no obligation under the present Treaty to return a vehicle whose return is requested if the vehicle is subject to forfeiture under its laws because it was used in its territory for the commission of a crime. The Requested Party shall not forfeit the vehicle without giving the owner or the authorized representative of the owner reasonable notice and an opportunity to contest such forfeiture in accordance with its laws.

4. A Party shall have no obligation under the present Treaty to return a stolen or embezzled vehicle if no request for return is made within [sixty] days of a notification made pursuant to article 3 above.

5. If the return of a stolen or embezzled vehicle whose return is requested is postponed, pursuant to paragraphs 1 or 2 of the present article, the Requested Party shall so notify [the Embassy] of the Requesting Party in writing within [thirty] days of receiving a request for the return of the vehicle.

### *Article 9*

1. The Requested Party shall not impose any import or export duties, taxes, fines or other monetary penalties or charges on vehicles returned in

accordance with the present Treaty, or on their owners or authorized representatives, as a condition for the return of such vehicles.

2. Actual expenses incurred in the return of the vehicle, including towing, storage, maintenance, and transportation costs, as well as the costs of translation of documents required under the present Treaty, shall be borne by the person or entity seeking its return and shall be paid prior to the return of the vehicle. The Requested Party shall use its best efforts to keep such expenses at reasonable levels.

3. In particular cases, the expenses of return may include the costs of any repairs or reconditioning of a vehicle which may have been necessary to permit the vehicle to be moved to a storage area or to maintain it in the condition in which it was found. The person or entity seeking the return of a vehicle shall not be responsible for the costs of any other work performed on the vehicle while it was in the custody of the authorities of the Requested Party.

#### *Article 10*

The mechanisms for the recovery and return of stolen or embezzled vehicles under the present Treaty shall be in addition to those available under the laws of the Requested Party. Nothing in the Treaty shall impair any rights for the recovery of stolen or embezzled vehicles under applicable law.

#### *Article 11*

1. Any differences regarding the interpretation or application of the present Treaty shall be resolved through consultations between the Parties.

2. The present Treaty shall be subject to ratification. It shall enter into force on the date of exchange of instruments of ratification.

3. The present Treaty may be terminated by either Party upon a minimum of [ninety] days' written notification.<sup>3</sup>

DONE at [site], this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in duplicate, in the \_\_\_\_\_ and \_\_\_\_\_ languages, both texts being equally authentic.

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<sup>3</sup>Applicable to bilateral agreements. Other suitable provisions, in accordance with international law and standard practice, would need to be inserted for subregional or regional agreements.

**Appendix I. Identifying information to be provided in a notification made pursuant to article 3 of the present Treaty**

1. Vehicle identification number.
2. Name of manufacturer of vehicle.
3. Vehicle model and year of manufacture, if known.
4. Colour of vehicle.
5. Licence plate number of vehicle and jurisdiction of issuance, if available.
6. City/other jurisdiction tag or sticker number and name of city/other jurisdiction, if available.
7. A description of the condition of the vehicle, including mobility of vehicle, if known, and repairs that appear necessary.
8. The current location of the vehicle.
9. The identity of the authority having physical custody of the vehicle and a contact point, including the name, address and telephone number of the official having recovery information.
10. Any information which indicates whether the vehicle was being used in connection with the commission of a crime.
11. Any indication that the vehicle may be subject to forfeiture under the laws of the notifying State.

**Appendix II. Request for the return of a stolen or embezzled vehicle**

(The Embassy of [country name]) respectfully requests that (the appropriate authority of [country name]) return the vehicle described below to (its owner/the authorized representative of its owner) in accordance with the Treaty for the Return of Stolen or Embezzled Vehicles:

Make:

Model (year):

Type:

Vehicle identification number:

Licence plates:

Registered owner:

(The Embassy of [country name]) certifies that it has examined the following documents, which have been presented by (identity of person submitting documents) as evidence of (his or her ownership of the vehicle/ownership of the vehicle by the person for whom he or she is acting as authorized representative) and found them to be properly certified under the laws of (appropriate jurisdiction):

- (a) (Document description);
- (b) (Document description);
- (c) (Document description);
- (d) (Document description).

Complimentary close

Place and date

Attachments.

### 31. Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property\*<sup>1</sup>

*Agreement between the Government of \_\_\_\_\_ and the Government of \_\_\_\_\_ regarding the sharing of confiscated proceeds of crime or property*

*The Government of \_\_\_\_\_ and the Government of \_\_\_\_\_ (hereinafter referred to as “the Parties”),*

*Recalling* the United Nations Convention against Transnational Organized Crime,<sup>2</sup> in particular its article 12, paragraph 1, and articles 13 and 14,

*Recalling also* the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,<sup>3</sup> in particular article 5, paragraphs 1, 4 and 5,

*Recognizing* that this Agreement should not prejudice the principles set forth in the United Nations Convention against Corruption<sup>4</sup> or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention,

*Reaffirming* that nothing in the provisions of this Agreement should prejudice in any way the provisions and the principles on international cooperation set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organized Crime, and that this Agreement is intended to enhance the effectiveness of international cooperation envisioned in those Conventions,

*Considering [reference to a treaty on mutual legal assistance if one exists between the Parties],*

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\*Economic and Social Council resolution 2005/14, annex.

<sup>1</sup>The present model agreement may be useful for the implementation of other relevant instruments developed in multilateral forums to which the parties to the agreement may also be parties, such as the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex) and the 40 recommendations of the Financial Action Task Force against Money Laundering.

<sup>2</sup>General Assembly resolution 55/25, annex I.

<sup>3</sup>United Nations, *Treaty Series*, vol. 1582, No. 27627.

<sup>4</sup>General Assembly resolution 58/4, annex.

*Desiring* to create an appropriate framework for sharing confiscated proceeds of crime or property,

*Have agreed as follows:*

*Article 1*  
*Definitions*

For the purposes of this Agreement:

(a) The terms “proceeds of crime”, “confiscation” and “property” shall be understood as defined in article 2 of the United Nations Convention against Transnational Organized Crime and article 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

(b) “Cooperation” shall mean any assistance described in articles 13, 16, 18-20, 26 and 27 of the United Nations Convention against Transnational Organized Crime or article 5, paragraph 4, and articles 6, 7, 9-11 and 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as cooperation between entities foreseen in article 7 of the United Nations Convention against Transnational Organized Crime, which has been given by one Party and which has contributed to, or facilitated, confiscation of proceeds of crime or property.

*Article 2*  
*Scope of application*

This Agreement is intended solely for the purposes of mutual assistance between the Parties.

*Article 3*  
*Circumstances in which confiscated proceeds of crime  
or property [may] [shall] be shared*

Where a Party is in possession of confiscated proceeds of crime or property and has cooperated with, or received cooperation from, the other Party, it [may] [shall] share such proceeds of crime or property with the other Party, in accordance with this Agreement, without prejudice to the principles enumerated in article 14, paragraphs 1, 2 and 3 (a), of the United Nations Convention against Transnational Organized Crime and article 5, paragraph 5 (b) (i), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.<sup>5</sup>

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<sup>5</sup>It may be necessary to insert a specific provision in the agreement regarding the return of works of art or archaeological objects that have been purchased or exported illegally from their country of origin.

#### Article 4

##### *Requests for sharing confiscated proceeds of crime or property*

1. A request for sharing confiscated proceeds of crime or property shall be made within a time limit to be agreed between the Parties, shall set out the circumstances of the cooperation to which it relates and shall include sufficient details to identify the case, the confiscated proceeds of crime or property and the agency or agencies involved or such other information as may be agreed between the Parties.

##### *Option 1*

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall consider, in consultation with the other Party, whether to share such proceeds of crime or property, as set out in article 3 of this Agreement.]

##### *Option 2*

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall share with the other Party such proceeds of crime or property, as set out in article 3 of this Agreement.]

#### Article 5

##### *Sharing of confiscated proceeds of crime or property*

##### *Option 1*

[1. Where a Party proposes to share confiscated proceeds of crime or property with the other Party, it shall:

(a) Determine, at its discretion and in accordance with its domestic law and policies, the proportion of the confiscated proceeds of crime or property to be shared, which, in its view, corresponds to the extent of the cooperation afforded by the other Party; and

(b) Transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Party holding the confiscated proceeds of crime or property may include any interest and appreciation

that has accrued on the confiscated proceeds of crime or property and may deduct reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

### *Option 2*

[1. In sharing confiscated proceeds of crime or property in accordance with this Agreement:

(a) The proportion of the confiscated proceeds of crime or property to be shared shall be determined by the Parties on a *quantum meruit* basis or on any other reasonable basis agreed upon by the Parties;

(b) The Party holding the confiscated proceeds of crime or property shall transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Parties shall agree on any issues related to interest and appreciation that has accrued on the confiscated proceeds of crime or property and the deduction of reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

3. The Parties agree that it may not be appropriate to share where the value of the confiscated proceeds of crime or property is *de minimis*, subject to previous consultations between them.

## *Article 6*

### *Payment of shared proceeds of crime or property*

1. Unless the Parties agree otherwise, any sum transferred pursuant to article 5, paragraph 1 (b), of this Agreement shall be paid:

(a) In the currency of the Party where the proceeds of crime or property are located; and

(b) By means of an electronic transfer of funds or by cheque.

2. Payment of any such sum shall be made:

(a) In any case in which the Government of \_\_\_\_\_ is receiving payment, to [identify the pertinent office or designated account as specified in the request];

(b) In any case in which the Government of \_\_\_\_\_ is receiving payment, to [identify the pertinent office or designated account as specified in the request]; or

(c) To such other recipient or recipients as the Party receiving payment may from time to time specify by notification for the purposes of this article.

*Article 7*  
*Terms of transfer*

1. In making the transfer, the Parties recognize that all right or title to and interest in the transferred proceeds of crime or property have already been adjudicated and that no further judicial proceedings are necessary to complete the confiscation. The Party transferring the proceeds of crime or property assumes no liability or responsibility for the proceeds of crime or property once they have been transferred and relinquishes all right or title to and interest in the transferred proceeds of crime or property.<sup>6</sup>

2. Unless otherwise agreed, where a Party transfers confiscated proceeds of crime or property pursuant to article 5, paragraph 1 (b), of this Agreement, the other Party shall use the proceeds of crime or property for any lawful purpose at its discretion.

*Article 8*  
*Channels of communication*

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through [*the central authorities designated pursuant to article [. . .] of the treaty on mutual legal assistance referred to in the preamble to the agreement*] or by the following:

(a) For the Government of \_\_\_\_\_, by the Office of \_\_\_\_\_;

(b) For the Government of \_\_\_\_\_, by the Office of \_\_\_\_\_; or

(c) By such other nominees as the Parties, for their own part, may from time to time specify by notification for the purposes of this article.

*Article 9*  
*Territorial application*

This Agreement shall apply [*if applicable, designate any territories to which the agreement should be extended for each Government*].

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<sup>6</sup>Where the domestic law of a State requires it to sell confiscated proceeds of crime or property and only permits it to share funds, this provision may be unnecessary.

*Article 10*  
*Amendments*

This Agreement may be amended when both Parties have agreed in writing to such amendment.

*Article 11*  
*Consultations*

The Parties shall consult promptly, at the request of either Party, concerning the interpretation, application or implementation of this Agreement, either generally or in relation to a particular case.

*Article 12*  
*Entry into force*

This Agreement shall enter into force upon signature by both Parties or upon notification by the Parties that the necessary internal procedures have been completed.<sup>7</sup>

*Article 13*  
*Termination of the Agreement*

Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective [. . .] months after receipt of the notice. The provisions shall, however, continue to apply in relation to confiscated proceeds of crime or property to be shared under this Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at [location], this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

For the Government of \_\_\_\_\_:

For the Government of \_\_\_\_\_:

\_\_\_\_\_: \_\_\_\_\_:

*[Signature]* \_\_\_\_\_ *[Signature]* \_\_\_\_\_

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<sup>7</sup>This may be upon signature, ratification, publication in a legal gazette or by other means.