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## Ad Hoc Committee for the Negotiation of a Convention against Corruption

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Item 4 of the provisional agenda\*

### Consideration of the draft United Nations Convention against Corruption

## Draft United Nations Convention against Corruption\*\*

### IV. Promoting and strengthening international cooperation

#### *Article 51* *Extradition*

Option 1<sup>1</sup>

1. This article shall apply to the offences covered by this Convention, [and in cases]<sup>2</sup> where the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that

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\* A/AC.261/1.

\*\* The present text is a consolidated version of proposals submitted by Governments for the Informal Preparatory Meeting of the Ad Hoc Committee, held in Buenos Aires from 4 to 7 December 2001. The consolidation was carried out at the Informal Preparatory Meeting (preamble and chaps. I-IV) and subsequently by the Secretariat at the request and following the guidance of the Informal Preparatory Meeting (chaps. V-VIII) (see also the report of the Informal Preparatory Meeting (A/AC.261/2)). The preamble and chapters I, General provisions, and II, Preventive measures, appear in document A/AC.261/3 (Part I); chapter III, Criminalization, sanctions and remedies, confiscation and seizure, jurisdiction, liability of legal persons, protection of witnesses and victims and law enforcement, appears in document A/AC.261/3 (Part II). Chapter IV, Promoting and strengthening international cooperation, is contained in the present document (A/AC.261/3 (Part III) and document A/AC.261/3 (Part IV) contains chapters V, Preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds, VI, Technical assistance, training and collection, exchange and analysis of information, VII, Mechanisms for monitoring implementation, and VIII, Final clauses.

<sup>1</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4), Colombia (A/AC.261/IPM/14) and Mexico (A/AC.261/IPM/13).

<sup>2</sup> Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).



the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.<sup>3</sup>

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. [For purposes of extradition none of the offences set forth in this Convention shall be considered a political offence.]<sup>2</sup>

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

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<sup>3</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies [solely on the ground that he or she is one of its nationals,]<sup>4</sup> shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

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<sup>4</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 16 of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, the "Organized Crime Convention")).

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Option 2<sup>5</sup>

1. In the event the persons who have committed crimes covered by this Convention are in the territory of the State Party from which their extradition is requested, extradition shall be executed, provided that the crime for which the extradition request is made is a crime in both the requesting and the requested States Parties.

2. A crime for which this article is applied shall be deemed a crime included in all kinds of extradition agreements existing between States Parties. States Parties shall include such extraditable crimes in agreements between themselves.

3. Extradition shall be executed in compliance with the legal rules of the requesting and requested States Parties.

4. In the event that a State Party making extradition conditional on the existence of an extradition agreement receives a request for return from a State Party with which it does not have an extradition agreement, it shall consider this Convention sufficient legal basis for extradition concerning the crimes covered by this Convention.

5. Bound by its own domestic law and its own extradition agreements, in cases where the requesting State Party is satisfied that the situation is critical and urgent and when the requesting State Party so requests, the requested State Party shall take the appropriate measures, including surveillance, to ensure that the person whose extradition is requested and who is in its custody is present throughout the extradition procedure.

6. If the extradition requested for the implementation of penalties covered by this Convention is refused on the ground that the person whose extradition is required is a citizen of the requested State Party, to the extent allowed by the domestic law of the requested State Party, the extradition shall be carried out when the enforcement of the penalty given or the remainder of it, in accordance with the domestic law of the requesting State Party, can take place in the territory of the requested State Party, upon the application of the requesting State Party.

*Article 52<sup>6</sup>*

*Transfer of sentenced persons*

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

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<sup>5</sup> Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

<sup>6</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 17 of the Organized Crime Convention).

*Article 53*  
*Mutual legal assistance*

Option 1<sup>7</sup>

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article [...] [Liability of legal persons] of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.
- [(j) Identifying and tracing funds of illicit origin derived from acts of corruption;
- (k) Returning such funds to their countries of origin.]<sup>8</sup>

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

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<sup>7</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

<sup>8</sup> Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State

Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedure specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

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

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

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

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress in its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person, having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

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

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.<sup>9</sup>

Option 2<sup>10</sup>

1. States Parties shall afford one another the widest measure of mutual legal assistance in criminal and non-criminal investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article [...] [Scope of application], granting, when appropriate, requests originating from authorities that, in accordance with its domestic law, have the power to investigate or try the acts of corruption set forth in this Convention with a view to obtaining evidence and carrying out other acts necessary to facilitate the prosecutions and proceedings pertaining to the investigation or trial of acts of corruption.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article [...] [Liability of legal persons] of this Convention in the requesting State Party.

3. In accordance with applicable national legislation and the relevant agreements or arrangements that may be in force between them, States Parties shall afford one another the widest measure of assistance in the identifying, tracing, confiscating and seizing of property obtained or derived from the commission of offences established in accordance with this Convention, of property used in the commission of such offences or of proceeds of such property.

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<sup>9</sup> Article 18 of the Organized Crime Convention.

<sup>10</sup> Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

4. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and freezing, and seizures;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party; and
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

5. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

6. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

7. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

8. For the purposes of paragraph 7 of this article:

- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
- (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
- (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person; and

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

9. Unless the State Party from which a person is to be transferred in accordance with paragraphs 7 and 8 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which he or she is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

10. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. The central authorities shall be responsible for preparing and receiving the requests for assistance and cooperation to which this Convention refers.

11. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention.

12. A request for mutual assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

13. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party, which should preferably be specified in the request.

14. The requesting State Party shall provide prompt notification when it no longer requires the assistance requested.

15. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

16. The requesting State Party may request information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress in its handling of the request.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

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

19. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

20. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

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

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; and

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

21. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

22. Reasons shall be given for any refusal of mutual legal assistance.

23. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

24. Before refusing a request pursuant to paragraph 20 of this article or postponing its execution pursuant to paragraph 23 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

25. Without prejudice to the application of paragraph 9 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

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

27. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

28. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Option 3<sup>11</sup>

1. States Parties shall provide all kinds of necessary legal assistance to one another during the investigation and prosecution of crimes covered by this Convention. Legal assistance concerning the same legal proceeding being carried out in the territories of both States Parties shall be provided based on the principle of mutuality.
2. Legal assistance shall cover the following under the scope of this Convention:
  - (a) Collecting evidence and taking statements from people;
  - (b) Effecting service of judicial documents;
  - (c) Taking the necessary research measures during investigation and prosecution and enforcing seizure;
  - (d) Examination of objects and places;
  - (e) Exchange of expert reports;
  - (f) Exchange of originals or certified copies of all kinds of document;
  - (g) Exchange of all other kinds of information and document, provided that this is in compliance with the law of the requested State Party.
3. Legal assistance shall be afforded in cases where the State Party that is providing the information and documents believes that such shall be useful in an investigation or prosecution carried out in another State Party, even if a request has not been made.
4. The requesting State Party shall not transfer such information and documents to third States Parties without the permission of the requested State Party.
5. The provisions of this article shall not affect obligations arising from other bilateral or multilateral conventions concerning mutual legal assistance.
6. States Parties shall not prevent the implementation of this article on the ground of bank secrecy.
7. Requests made pursuant to this article shall not be fulfilled when the event forming the subject of the request is not a crime in both the requesting State Party and the requested State Party. The requested State Party may provide legal assistance in an event that is considered a crime by the requesting State Party, irrespective of whether it is a crime under its local law or not.
8. If persons who are in the territory of a State Party are requested for assistance during identification or testimony or for collecting evidence during the investigation or prosecution of a crime covered by this Convention and which has been committed in another State Party, such persons may be transferred, provided that the following conditions are fulfilled:

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<sup>11</sup> Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

- (a) If the person agrees to this of his or her own free will;
- (b) If the authorized officials of both States Parties agree.

9. For the purposes of paragraph 8 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the transferred person in custody, unless otherwise requested or authorised by the State Party sending the person;

(b) The State Party to which the person is transferred shall return the person without delay on the date it has agreed or will agree on with the State Party sending the person;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

10. The person transferred cannot be in any way prosecuted, detained or punished or his personal freedom limited in any other way in situations set forth in paragraphs 8 and 9 of this article without the consent of the State Party sending that person.

11. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for legal assistance, to transmit such requests or to execute them.

12. Requests shall be made in writing and in the language of the country the request is being made by. In emergencies, requests may be made orally, provided that they are confirmed in writing.

13. The following shall be included in the request:

(a) The name of the requesting authority;

(b) The main subject of the investigation and prosecution forming the subject of the request and the name of the authority performing the investigation or prosecution;

(c) A summary of the relevant facts, in requests other than for service of judicial documents;

(d) A description of the assistance and procedure requested by the requesting State Party;

(e) Information such as the identification and address of the person in question;

(f) The aim of the request for information, document or action.

14. The requesting State Party may require that the requested State Party keep confidential the elements and main features of the request, except to the extent necessary to execute the request.

15. Mutual legal assistance may be refused when:

(a) The request has not been made in accordance with the provisions of this article;

(b) The requested State Party sees a possibility that the execution of the request may affect its own independence, security, public order or other vital interests;

(c) The requested State Party has forbidden the requested procedure by its domestic law, in the event a similar crime is subject to investigation, prosecution or judicial proceedings under its own jurisdiction;

(d) The execution of the request for mutual legal assistance would violate the legal system of the requested State Party.

16. In the event mutual legal assistance is refused, the reasons for refusal shall be given.

17. A requested State Party shall afford mutual legal assistance as soon as possible and if any possible time limit has been suggested, preferably in the request, for reasons stated by the requesting State Party, this request shall be taken into full consideration. The requested State Party shall respond to reasonable requests by the requesting State Party on progress on its handling of the request. The requesting State Party shall inform the requested State Party immediately in the event the requested assistance is no longer needed.

18. Mutual legal assistance may be postponed by the requested State Party on the ground that such assistance may interfere with an ongoing investigation, prosecution or judicial proceeding.

19. Without prejudice to the implementation of paragraph 10 of this article, a witness, expert or other person accepting to give evidence or to help with an investigation, prosecution or judicial proceeding in the territory of the requesting State Party, upon the request of that State Party, cannot be prosecuted, detained or punished or his personal freedom limited in any other way due to actions, omissions or convictions prior to leaving the territory of the requesting State Party. Such safe conduct shall end either within fifteen days of the official notification that the presence of the witness, expert or other person is no longer required by the judicial authorities or at the end of any period decided on by the States Parties, if the witness, expert or other person remains in the territory of the requesting State Party voluntarily or returns of his or her own free will after leaving.

20. The normal expenses of executing the request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If the execution of the request will require substantial or extraordinary expenditures, States Parties shall consult to determine under which terms and conditions the request will be executed and how the costs shall be borne.

21. The requested State Party:

(a) Shall provide to the requesting State Party the government records, documents or information that it has and that may be revealed to the public under its domestic law;

(b) Shall provide, in whole or in part, the government records, documents or information that it has and that may not be revealed to the public under its domestic law to the requesting State Party at its own discretion.

22. States Parties shall evaluate the possibility of concluding bilateral or multilateral agreements or arrangements in order to give practical effect to the provisions of this article, to serve its purposes or to enhance its provisions, as necessary.

*Article 54*  
*Transfer of criminal proceedings*

Option 1<sup>12</sup>

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Option 2<sup>13</sup>

For the prosecution of a crime covered by this Convention, States Parties shall consider the transfer of the proceeding from one State to the other for the concentration of the prosecution, especially in cases where more than one jurisdiction is involved, where they are of the opinion that proper administration of justice will benefit from such transfer.

*Article 55*  
*Law enforcement cooperation*

Option 1<sup>14</sup>

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

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<sup>12</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 21 of the Organized Crime Convention).

<sup>13</sup> Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

<sup>14</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 27 of the Organized Crime Convention (with slight changes)).

- (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
- (ii) The movement of proceeds of crime or property derived from the commission of such offences;
- (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
- (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
- (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
- (e) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to [corruption and criminal acts related specifically to corruption]<sup>15</sup> [acts of corruption]<sup>16</sup> committed through the use of modern technology.

#### Option 2<sup>17</sup>

1. States Parties shall cooperate closely with one another, in compliance with their domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the crimes covered by this Convention. Each State Party shall adopt effective measures, especially in the following matters:

- (a) If the States Parties concerned find it appropriate, developing channels of communication between authorities, agencies and services to provide secure and rapid exchange of information, including links with other criminal activities, and to create them where necessary, regarding all aspects of the crimes covered by this Convention;

<sup>15</sup> Text taken from the proposal submitted by Austria and the Netherlands (A/AC.261/IPM/4).

<sup>16</sup> Text taken from the proposal submitted by Colombia (A/AC.261/IPM/14).

<sup>17</sup> Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

(b) To cooperate with all other States Parties regarding these matters in the investigation of crimes covered by this Convention:

(i) The identification, whereabouts and activities of the persons suspected of such crimes and the location of other persons concerned;

(ii) The movement of proceeds and assets obtained from the commitment of such crimes;

(iii) The movement of the property, equipment or other instrumentalities used or intended for use in the commitment of such crimes or arising from the crimes;

(c) To provide efficient coordination between their authorities, agencies and services and to encourage the exchange of personnel and other experts, including appointment of liaison officers, subject to bilateral agreements or arrangements between the States Parties concerned;

(d) To exchange information with other States Parties concerning specific means and methods used to commit crimes covered by this Convention, including the use of false identities, forged, altered or false documents and other means of hiding activities concerning the crimes covered by this Convention;

(e) To exchange information and coordinate administrative and other suitable measures taken for the early detection of crimes covered by this Convention.

2. In order to implement this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements concerning direct cooperation between their national law enforcement agencies and, where such agreements and arrangements already exist, further develop them. In the absence of such agreements and arrangements between the States Parties concerned, the Parties may consider this Convention sufficient basis for a mutual law enforcement cooperation concerning crimes covered by this Convention. States Parties shall make full use of such agreements or arrangements, as necessary, to develop cooperation between their law enforcement agencies, including international or regional organizations.

3. States Parties shall cooperate in order to deal with corruption committed by the use of modern technology, within their own possibilities.

*Article 56*  
*Joint investigations*

Option 1<sup>18</sup>

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies.

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<sup>18</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14) (art. 19 of the Organized Crime Convention).

In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Option 2<sup>19</sup>

States Parties may conclude bilateral or multilateral agreements or arrangements regarding issues that are the subject of investigations, prosecutions or judicial proceedings carried out in one or more States; competent authorities may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreeing on each case separately. The States Parties involved shall ensure that full respect is paid to the sovereignty and independence of the State Party where such investigation is to be carried out.

*Article 57<sup>20</sup>*

*Other cooperation measures*

1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. They shall also cooperate with one another for the purpose of promoting cooperation and coordination directed towards preventing and combating corruption and related offences. In particular, each State Party shall adopt effective measures and mechanisms:

(a) To establish channels of communication between their competent authorities, institutions and agencies or, where such channels exist, to improve them, in order to facilitate the secure, effective and rapid exchange of information relating to crimes of corruption and to their links with other criminal activities;

(b) To exchange information with other States Parties in connection with ongoing investigations of crimes of corruption and related offences and also during the detection of acts of corruption. To that end, States Parties shall establish, within their respective countries, a data bank containing information about institutions and officials and other persons concerned with the fight against corruption, which could be distributed and circulated to States so requesting;

(c) To cooperate with other States Parties in the conduct of investigations relating to the identity, whereabouts and activities of persons involved in crimes of corruption and in the tracing of third parties involved;

(d) To coordinate the judicial, administrative and other measures necessary for the prompt detection, investigation and punishment of crimes of corruption and related offences;

(e) To compile and share analytical experiences of acts of corruption at the bilateral level and through subregional, regional and international organizations and agencies.

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<sup>19</sup> Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).

<sup>20</sup> Text taken from the proposal submitted by Peru (A/AC.261/IPM/11).

2. In order to facilitate and improve the efficiency of the measures and mechanisms referred to in paragraph 1 of this article, each State Party shall designate a liaison officer or responsible central official whose name and functions shall be communicated, for registration and circulation to States Parties, to the Centre for International Crime Prevention.

3. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

4. States Parties shall cooperate with one another in implementing appropriate and effective measures in order that their banking and financial systems can prevent acts of corruption and related offences by, inter alia, recording transactions in a transparent manner; identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; and facilitating the detection and subsequent freezing of assets.

5. States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might permit or give rise to acts of corruption and related offences.

6. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences in accordance with this Convention.

7. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and combating corruption and promoting ethics and transparency in public administration, for the purpose of exchanging successful experiences and promoting transparency in public administration and the private sector by, inter alia, adopting transparent auditing and public procurement regulations and procedures.

8. States Parties shall, with a view to facilitating efficient implementation of the provisions arising from this Convention, conclude bilateral or multilateral agreements or arrangements on direct cooperation among their respective law enforcement agencies and, where such agreements or arrangements already exist, amend them in order to increase cooperation and coordination. In the absence of such agreements and arrangements between States Parties, this Convention shall be considered the basis for cooperation in preventing and combating corruption and related offences. Where appropriate, States Parties shall also conclude agreements and arrangements with subregional, regional and international organizations for the purpose of increasing cooperation and coordination among their respective national authorities.

9. In coordination with the Office for Drug Control and Crime Prevention, States Parties shall cooperate in maintaining a database that includes evaluations and national plans for combating corruption, with a view to establishing a guide to best practices that may help in promoting cooperation among them.

10. States Parties shall support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially ones aimed at developing countries, with a view to implementing this Convention.

*Article 58<sup>21</sup>*

*Bank secrecy*

1. The requested State Party shall not invoke bank secrecy as a ground for refusal to provide the assistance sought by the requesting State Party. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.

3. States Parties shall strengthen their laws in order to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to the subject of this Convention.

*Article 59*

*Special investigative techniques*

Option 1<sup>22</sup>

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating corruption.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and

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<sup>21</sup> Text taken from the proposal submitted by Mexico (A/AC.261/IPM/13).

<sup>22</sup> Consolidated text taken from the proposals submitted by Austria and the Netherlands (A/AC.261/IPM/4) and Colombia (A/AC.261/IPM/14).

understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Option 2<sup>23</sup>

1. If the basic principles of its domestic law allow it, each State Party shall take the necessary measures to allow the appropriate use of electronic or other surveillance techniques and confidential operations in their territories and in suitable places by their own authorities for the purpose of effectively combating the crimes covered by this Convention, under the conditions prescribed by its domestic law.

2. States Parties are encouraged, when necessary, to conclude bilateral or multilateral agreements or arrangements for using such special investigative techniques at the international level within the framework of cooperation, to investigate crimes covered by this Convention. Such agreements and arrangements shall be concluded in full compliance with the principles of sovereign equality and independence of States and shall be implemented in strict compliance with the provisions of these agreements and arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be taken on a case-by-case basis and, when necessary, shall take into consideration the need to respect the jurisdiction of the State Party concerned and the financial arrangements.

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<sup>23</sup> Text taken from the proposal submitted by Turkey (A/AC.261/IPM/22).