

## Position Papers in the International Court of Justice

While position papers typically outline a country, character, or delegation's specific goals, characteristics, and so on, contributing to the anticipated role you play at the conference, judges in the International Court of Justice represent no character but themselves and their own thinking.

As such, position papers only ask that judges demonstrate a familiarity with the guide that follows on the advisory opinion (The Status of Diplomatic Personnel and Property), and the documents it refers to (Vienna Convention on Diplomatic Relations, Convention Against Transnational Organized Crime, UN Charter). You are free to take a variety of approaches as you write a position paper. It may be useful to examine the relevant sections of the treaty law included in the guide, or the findings of the actual judges in the contentious cases (*Equatorial Guinea, Congo Republic*), or analyze the practical consequences of the judgements. Outstanding position papers will discuss the basic principles and arguments which essentialize the conflicts described by the brief (universal jurisdiction, national sovereignty, diplomatic immunity and its limits).

The position paper must also include a section of **at least three questions** on the content or legal implications of the documents to start deliberation at the first committee session. We suggest avoiding questions about the specific circumstances of any of the countries or persons named, and instead to seek out interpretative or analytic questions which provoke debate, or potentially have prevented you from taking a definitive stance on some document or argument.

The best position papers in each committee will be recognized with a Book Award. Position papers must be submitted to the committee email address ([icj@namun.org](mailto:icj@namun.org)) by the beginning of the conference on February 22, 2018 to be considered for any award.

Please feel free to contact us at the aforementioned email address if you have any questions about the advisory opinion, position paper, or the Court in general.



# INTERNATIONAL COURT OF JUSTICE

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Summary

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## *BACKGROUND GUIDE*

### **Concerning Negotiations Relating to the Status of Diplomatic Personnel and Property (Equatorial Guinea v. The French Republic & Republic of Congo v. The French Republic)**

Prepared by Deputy President, Jerry Zheng Hao Qiu

Dear Honourable Justices,

I am pleased to welcome you to the International Court of Justice at the 33rd iteration of North American Model United Nations- NAMUN 2018.

As the primary judicial organ of the United Nations, the International Court of Justice delivers arbitration on legal disputes between states concerning a variety of matters of international law. This court will preside over the case of *Serbia v. Croatia* regarding the allegations of genocide during the Balkan Wars. Justices and advocates will deliberate over the contentious issues of this case, including the elements of genocide, evidence of war atrocities, and the topic of state succession.

The International Court of Justice will also hear an advisory opinion. The advisory opinion clarifies the Court's position on international legal questions. The court will issue a non-binding statement regarding the interpretation of international laws surrounding the case of *Immunities and Criminal Proceedings*. Justices will work to create a written statement advising the future legal proceedings involving a conflict between sovereignty rights and international law based on the named cases, UN resolutions, other contentious cases, and past advisory opinions.

President Allen Wang, Registrar Marium Vahed, and I look forward to working with our fellow justices at the International Court of Justice of NAMUN 2018 to debate and deliver judgements to international legal issues today.

Sincerely,

Jerry Zheng Hao Qiu

*Deputy President of the International Court of Justice, NAMUN 2018*

## **1.0 Use of the Guide**

I have assembled this guide to provide a brief introduction and overview of the advisory opinion. Our goal is not to debate or question the validity of past rulings, but rather clarify any uncertainties which may have arisen. As mentioned previously, the advisory opinion of NAMUN 2018 aims at creating a legal framework for any future cases involving tensions between a nation's sovereignty and the terms of UN laws and conventions. Each section of the guide will be preceded by instructions on its usage. The key information from each case has been selected and presented in the following sections:

- Case Overview: Equatorial Guinea v. France
  - Case History
  - Prima Facie Jurisdiction
  - Operative Discussion
  - Separate and Dissenting Opinions
- Case Overview: Republic of the Congo v. France
  - Background History
  - Case Withdrawal
- Vienna Convention on Diplomatic Relations
  - Preamble
  - Resolution
- United Nations Convention Against Transnational Organized Crime (Abridged)
  - Articles 1, 2, 4, 6, 7, 8, 9, 10, 15, 18, 35

The similar themes of the two cases and the related UN conventions constitute the basis of the advisory opinion. Justices will be posed with the difficult task of evaluating international law against sovereignty based on interpretation of international law. The pertaining laws and treaties provide the scope of the case and places the advisory opinion within the context of international law. Justices are encouraged to conduct further research and introduce any related UN treaties, agreements, or documents.

Each case overview provides the case history and cites the international laws pertaining to the case. Please note that the advisory opinion will not amend any existing international laws, and will only act to clarify them. Moreover, the outcomes of the case will remain valid, as the advisory opinion will respect the authority of all past judgements of contentious cases ruled on by the ICJ. Although of a non-binding nature, the advisory opinion carries significant legal weight and moral authority deriving from the Court's authority and prestige.

For any further inquiries, please do not hesitate to contact us at [icj@namun.org](mailto:icj@namun.org).

## **2.0 Case Overview: Equatorial Guinea v. France**

*This section summarizes the proceedings filed by Equatorial Guinea against France claiming breach of diplomatic immunity. The summary explains the view of the court and cites the conventions pertaining to the case. Please also consider the dissenting and separate opinions provided, which offer further insight into the interpretation of international law.*

THE HAGUE, 13 June 2016. The court recalls that the Republic of Equatorial Guinea (hereinafter “Equatorial Guinea”) instituted proceedings against the French Republic (hereinafter “France”) before the International Court of Justice with regards to the immunity from criminal jurisdiction of the Vice President of the Republic of Equatorial Guinea, and the legal status of the building which houses the Embassy of Equatorial Guinea.

### **2.1 CASE HISTORY**

Certain organizations and individual filed complaints beginning in 2007 against certain African Heads of State and their respective family members with allegations of “misappropriation of public funds in their country of origin, the proceeds of which have allegedly been invested in France”. One of these complaints, filed on 2 December 2008 by the association Transparency International France, was declared admissible by the French courts, and a judicial investigation was opened in respect of the handling of misappropriated public funds, complicity in the misappropriation of public funds, misuse of corporate assets and complicity in misuse of corporate assets, and concealment of each of these offences. The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including the son of the President of Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue, who was at the time Minister for Agriculture and Forestry of Equatorial Guinea.

The Court notes that the French investigations specifically concerned the way in which Mr. Teodoro Nguema Obiang Mangue acquired various objects of considerable value and a building located at 42 avenue Foch in Paris. It notes that, although he challenged the measures taken against him and invoked on a number of occasions the immunity from jurisdiction on the grounds of diplomatic immunity, Mr. Teodoro Nguema Obiang Mangue was indicted. In addition, the building on avenue Foch was attached (saisie pénale immobilière), and various objects therein were seized.

The court recalls that on 29 September 2016, Equatorial Guinea submitted a Request for the indication of provisional measures, requesting that France suspend all the criminal proceedings brought against the Vice-President of Equatorial Guinea; that it ensure that the building located at 42 avenue Foch in Paris is treated as premises of Equatorial Guinea’s

diplomatic mission in France and, in particular, assure its inviolability; and that it refrain from taking any other measure that might aggravate or extend the dispute submitted to the Court.

## 2.2 PRIME FACIE JURISDICTION

Equatorial Guinea seeks to found Court's jurisdiction on Article 35, paragraph 2 of the Convention against Transnational Organized Crime in respect to Mr. Mangué's immunity; and on Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations, in regard to the alleged inviolability of 42 avenue Foch.<sup>1</sup> The Convention against Transnational Organized Crime Concerning Article 4, provision "Protection of sovereignty" – Equatorial Guinea claims France was obliged, in their proceedings against the VP, to respect the rules of immunity ratione personae whereas France denies the existence of a dispute concerning this Convention<sup>2</sup>:

- "1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States"
- "2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law"

In the Court's view, the provision "does not appear to create new rules concerning the immunities of holders of high-ranking office in the State or incorporate rules of customary international law concerning those immunities" and does not have prima facie jurisdiction to entertain Equatorial Guinea's request relating to Mr. Mangué's immunity.

Equatorial Guinea claims a dispute exists between Parties after citing Article 22 of the Vienna Convention, paragraph 3: the "premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution". France maintains that 42 avenue Foch never legally acquired status of "premises of the mission". The Court recognizes the issue may fall within the scope of Article 22, that acts alleged by the Applicant "appear to be capable of contravening such rights" and thus, since there is "no manifest lack of jurisdiction", cannot grant France's request to remove the case from the list.

The Court, finding it does not have prima facie jurisdiction in relation to alleged violations of the Convention against Transnational Organized Crime, addresses solely Article 22 of the Vienna Convention. The Court concludes that link exists between the right claimed by Equatorial Guinea and the provisional measures being sought. The continuous risk of intrusion was recognized by the Court, given France does not accept the building forms part of Equatorial

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<sup>1</sup> See *Vienna Convention on Diplomatic Relations* in section 3.2

<sup>2</sup> See *United Nations Convention against Transnational Organized Crime (Abridged)* in section 4.

Guinea's diplomatic mission and refuses to grant it immunity, and that France has conducted searches in 2011 and 2012.

Court is of the view that, prior to a final decision, 4 avenue Foch should enjoy treatment equivalent to that required by Article 22.

## 2.3 THE OPERATIVE DISCUSSION

The International Court of Justice,

### I. Unanimously

*Indicates* the following provisional measures:

France shall, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability;

### II. Unanimously

Rejects the request of France to remove the case from the General List

Judge Xue appended a separate opinion to the Order of the Court; Judges Gaja and Gevorgian appended declarations to the Order of the Court; Judge ad hoc Kateka appended a separate opinion to the Order of the Court.

## 2.4 DECLARATIONS OF JUDGES GAJA AND GEVORGIAN

[Judge Gaja] In its orders on provisional measures the Court, when it indicates some measures, does not state in the operative part (*dispositif*) that it rejects some other requests. In the present case, no reference is made in the *dispositif* to the request concerning the immunity of Mr. Teodoro Nguema Obiang Mangue, even if a large part of the Order discusses that issue. In the interest of greater transparency, the *dispositif* of orders on provisional measures should include the decision on all the main issues and the names of the judges who voted in favour and against.

Judge Gevorgian concurs with the conclusions and reasoning of the Order. At the same time, with regard to paragraph 49 of the Order, he finds it necessary to clarify that the rules on the immunity of State officials from foreign criminal jurisdiction derive from the principle of sovereign equality mentioned in Article 4 of the Palermo Convention. In his view, this is supported by the recent work of the International Law Commission and the Court's case law.

## 2.5 SEPARATE OPINION OF JUDGE XUE

Judge Xue wishes at this preliminary stage to place on record her reservation to the Court's interpretation, albeit not yet definitive, of Article 4 of the United Nations Convention against Transnational Organized Crime (hereinafter "the Convention").

She recalls that the Court states in paragraph 49 of the Order that Article 4 does not create any new rules on immunities of holders of high-ranking office of a State. Accordingly, any dispute concerning the interpretation or application of Article 4 could relate only to the manner in which a State party performs its obligations under the Convention. The Court is of the view that the alleged dispute between the Parties appears to concern a distinct issue which is not capable of falling within the provisions of the Convention. Thus it does not have jurisdiction *prima facie* under Article 35, paragraph 2, of the Convention.

Judge Xue considers that this interpretation begs a number of questions. First, the intention of the States parties, as reflected in the travaux préparatoires of Article 4, not to create new rules of immunities of customary international law in the Convention cannot be interpreted to mean that the existing rules on the same subject-matter are precluded in the application of the Convention. On the contrary, as a guideline, Article 4 provides a legal framework within which the other provisions are to be implemented. What is governed under the principle of sovereign equality of States under general international law should remain intact and applicable, when circumstances of a case so require. Rules of jurisdictional immunity of State and its property and jurisdictional immunity of high-ranking officials in foreign courts are, among others, two relevant régimes that directly derive from that principle.

Secondly, the question of jurisdictional immunity *ratione personae* bears on "the manner" in which a State party performs its obligations under the Convention. It is no less relevant to the principle of sovereign equality than an operation being conducted in a foreign territory. In the present case, Mr. Teodoro Nguema Obiang Mangue is a foreign national holding high-ranking office in his country. Although all the acts alleged by Equatorial Guinea were carried out in the French territory and under the French internal law, the essence of the dispute between the Parties is the applicability of the Convention.

Thirdly, whether an incumbent President or a Vice-President of a State enjoys jurisdictional immunity in foreign courts under customary international law is not a "distinct issue" that does not fall within the provisions of the Convention. In implementing its obligations under Article 6 (criminalization of laundering of the proceeds of crime), Article 12 (measures to enable confiscation and seizure), Article 14 (disposal of confiscated proceeds of crime or property), and Article 18 (mutual legal assistance), a State party may have to act differently if rules of jurisdictional immunities apply. The dispute in the present case appears to concern that very question. Given the above considerations, she maintains the view that the Court has, *prima facie*, jurisdiction under Article 35, paragraph 2, of the Convention.

## 2.6 SEPARATE OPINION OF JUDGE AD HOC KATEKA

1. While Judge Kateka is in favour of the provisional measure granted by the Court, his opinion differs from the Court's Order in two main aspects. First, while he acknowledges the Court's jurisprudence on the prima facie jurisdiction of the Court, he considers that the threshold for prima facie jurisdiction is low. As such, Judge Kateka is unable to agree with the Court's interpretation of Article 4 of the United Nations Convention against Transnational Organized Crime (the Palermo Convention) and its conclusion that it has no prima facie jurisdiction under Article 35 (2) of the said Convention. Specifically, he takes issue with the finding of the Court that a dispute capable of falling within the provisions of the Palermo Convention, and therefore concerning the interpretation or application of Article 4 of that Convention, does not exist between the Parties.
2. Judge Kateka disagrees with the Court that Article 4 relates only to the manner in which States parties perform their obligations under the Palermo Convention and that it does not incorporate any rules of customary international law concerning the immunities of holder of high-ranking office in the State, considering that the Court did not examine Article 4 in its proper context. Judge Kateka compared the legislative history of Article 4 of the Palermo Convention, in conjunction with that of Article 2 (2) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, which is similarly drafted in order to demonstrate that Article 4 of the Palermo Convention is self-standing and can create obligations for States parties.
3. After considering the arguments of both Equatorial Guinea and France on Article 4 of the Palermo Convention, Judge Kateka points out that the Vice-President of Equatorial Guinea is prosecuted in France for a series of crimes, including money laundering, criminalization of which is required by Article 6 of the Palermo Convention. This crime falls within the scope of the Palermo Convention, under Article 3 (1), because it is not only a "serious crime" that is "transnational in nature", but also it is an offence listed under Article 6 of the Convention. In his view, the requirement of an "organized criminal group" is met because some of the charges brought against the Vice-President of Equatorial Guinea include "complicity", which by definition requires the involvement of others.
4. Concluding on his first point of divergence with the Court's Order, Judge Kateka argues that the procedural conditions set out in Article 35 (2) of the Palermo Convention are met due to the refusal of France to negotiate with Equatorial Guinea for the settlement of the dispute. In sum, a dispute exists between the Parties, which concerns the interpretation and application of Article 4 of the Palermo Convention, therefore meeting the prima facie jurisdiction threshold and as such the Court should have entertained the request by Equatorial Guinea relating to the immunity *ratione personae* of the Vice-President. Moreover, Judge Kateka is of the view that the right of Equatorial Guinea to the immunity of its Vice-President, who is number two in the Government, plausibly exists under the Palermo Convention. The criterion of urgency is met given that real and imminent risk will be caused to the right of Equatorial Guinea in light of the fact that a



criminal trial will be conducted before the Paris Tribunal correctionnel in January 2017 against the Vice-President, whose functions would be compromised.

5. 5. Secondly, Judge Kateka finds the provisional measure indicated by the Court inadequate. He criticizes the wording adopted by the Court, namely that France shall take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment “equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations”. He disagrees with the use of the term “equivalent”, pointing out that the requirements of Article 22 are clear: the premises of the mission shall be inviolable. The Court should therefore have issued an unequivocal measure as requested by Equatorial Guinea, namely that “France ensure that the building located at 42 avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability . . .”.

### **3.0 Case Overview: Republic of the Congo v. France**

*This section outlines the proceedings filed by the Republic of the Congo against France claiming damages to the reputation of the country as a result of France’s investigations of alleged crimes against humanity. While the case was withdrawn, the key questions which arose in the case are highlighted in the following section.*

THE HAGUE- 9 December 2002. The court recalls that the Republic of the Congo (hereinafter “Congo”) instituted proceedings against the France before the International Court of Justice seeking the immediate annulment of the the investigation and prosecution measures taken by the French judicial authorities further to a complaint concerning crimes against humanity and torture allegedly committed in the Congo against individuals of Congolese nationality against the President of the Congo, Congolese Minister of the Interior, General Pierre Oba, and others.

#### **3.1 BACKGROUND HISTORY**

On 5 December 2001, the International Federation of Human Rights Leagues (FIDH), the Congolese Observatory of Human Rights (OCDH) and the Human Rights League of France (LDH) filed with the Procureur de la République of the Paris Tribunal de grande instance a complaint for crimes against humanity and torture allegedly committed in the Congo against individuals having Congolese nationality, expressly naming H.E. Mr. Denis Sassou Nguesso, President of the Republic of the Congo, H.E. General Pierre Oba, Minister of the Interior, Public Security and Territorial Administration, General Norbert Dabira, Inspector-General of the Congolese Armed Forces, and General Blaise Adoua, Commander of the Presidential Guard.

The Court recalls the Congo alleged that “by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed in

connection with the exercise of his powers for the maintenance of public order in his country”, France acted against the founding principles of the United Nations. This violation entails a direct breach against the United Nations Charter, specifically Article 2, paragraph 1, “the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations”.

The Court further recalls that the Congo requested the International Court of Justice “to declare that the French Republic shall cause to be annulled the measures of investigation and prosecution taken by the Procureur de la République of the Paris Tribunal de grande instance, the Procureur de la République of the Meaux Tribunal de grande instance and the investigating judges of those courts”.

The Court observes that during the hearings, the Congo emphasized the irreparable prejudice which the government of the Congo would be subjected to if French authorities continued criminal proceedings before the Tribunal de grande instance. Furthermore, the Court observes that the Congo holds the right to, first, require a State, in this case France, to abstain from exercising universal jurisdiction in criminal matters in a manner contrary to international law, and second, the right to respect by France for the immunities conferred by international law on the Congolese Head of State.

The Court recalls noting two primary questions of interest pertaining to the case. The first question is thus whether the criminal proceedings currently pending in France entail a risk of irreparable prejudice to the right of the Congo to respect by France for the immunities of President Sassou Nguesso as Head of State, such as to require, as a matter of urgency, the indication of provisional measures. The second question of interest is thus whether the proceedings before the Tribunal de grande instance of Meaux involve a threat of irreparable prejudice to the rights invoked by the Congo justifying, as a matter of urgency, the indication of provisional measures.

### 3.2 CASE WITHDRAWAL

In accordance with Article 101 of the Rules of Court and taking into account the agreement of the Parties and the case’s exceptional circumstances, the Court authorized the submission of an additional pleading by the Congo. It fixed 16 February 2010 and 17 May 2010 as the respective time-limits for the filing of those pleadings.

Hearings scheduled to open case on 6 December 2010. However, by a letter dated 5 November 2010, the Agent of the Congo, referring to Article 89 of the Rules of Court, informed the Court that his Government was “withdraw[ing] its Application instituting proceedings” and requested the Court “to make an Order officially recording the discontinuance of the proceedings

and directing the removal of the case from the List.” Given that France had no objection, the Court placed on record the discontinuance on 16 December 2010.

#### **4.0 Vienna Convention on Diplomatic Relations- 1961**

*The following convention concerns the status of diplomatic personnel and property. 191 nations are party to the agreement. Please take special note of Article 22, as the article was specifically cited in the case brought against France by Equatorial Guinea.*

##### **4.1 PREAMBLE**

*Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents,

*Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

*Believing* that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

*Affirming* that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

##### **4.2 RESOLUTION**

###### **Article 1**

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- a) the "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;
- b) the "members of the mission" are the head of the mission and the members of the staff of the mission;
- c) the "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- d) the "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;

- e) a "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;
- f) the "members of the administrative and technical staff" are the members of the staff of the mission employed in the administrative and technical service of the mission;
- g) the "members of the service staff" are the members of the staff of the mission in the domestic service of the mission;
- h) a "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

## **Article 2**

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

## **Article 3**

1. The functions of a diplomatic mission consist inter alia in:
  - a) representing the sending State in the receiving State;
  - b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
  - c) negotiating with the Government of the receiving State;
  - d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
  - e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

## **Article 4**

1. The sending State must make certain that the agrément of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.
2. The receiving State is not obliged to give reasons to the sending State for a refusal of agrément.

## **Article 5**

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a chargé d'affaires ad interim in each State where the head of mission has not his permanent seat.
3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

#### **Article 6**

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

#### **Article 7**

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

#### **Article 8**

1. Members of the diplomatic staff of the mission should in principle of the nationality of the sending State.
2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

#### **Article 9**

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared non grata or not acceptable before arriving in the territory of the receiving State.
2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

#### **Article 10**

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:
  - a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;

- b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
  - c) the arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
  - d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.
2. Where possible, prior notification of arrival and final departure shall also be given.

#### **Article 11**

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances conditions in the receiving State and to the needs of the particular mission.
2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

#### **Article 12**

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

#### **Article 13**

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials, or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.
2. The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

#### **Article 14**

1. Heads of mission are divided into three classes, namely:
  - a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
  - b) that of envoys, ministers and internuncios accredited to Heads of State;
  - c) that of chargés d'affaires accredited to Ministers for Foreign Affairs.
2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

### **Article 15**

The class to which the heads of their missions are to be assigned shall be agreed between States.

### **Article 16**

1. Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.
2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.
3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

### **Article 17**

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

### **Article 18**

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

### **Article 19**

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

### **Article 20**

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

### **Article 21**

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

#### **Article 22**

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

#### **Article 23**

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by person contracting with the sending State or the head of the mission.

#### **Article 24**

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

#### **Article 25**

The receiving State shall accord full facilities for the performance of the functions of the mission.

#### **Article 26**

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

#### **Article 27**

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ



all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.
3. The diplomatic bag shall not be opened or detained.
4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.
5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.
7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

#### **Article 28**

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

#### **Article 29**

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention.

The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

#### **Article 30**

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

#### **Article 31**

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
  - a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
  - b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
  - c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
2. A diplomatic agent is not obliged to give evidence as a witness.
3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.
4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

#### **Article 32**

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.
2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

#### **Article 33**

1. Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:
  - a) that they are not nationals of or permanently resident in the receiving State; and
  - b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.
5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

#### **Article 34**

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- e) charges levied for specific services rendered;
- f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

#### **Article 35**

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

#### **Article 36**

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
  - a) articles for the official use of the mission;
  - b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.
2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is

prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

#### **Article 37**

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.
2. Member of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.
3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.
4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### **Article 38**

1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanent resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.
2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

#### **Article 39**

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.
2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.
3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.
4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

#### **Article 40**

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.
2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.
3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.
4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official

communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.

#### **Article 41**

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

#### **Article 42**

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

#### **Article 43**

The function of a diplomatic agent comes to an end, *inter alia*:

- a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

#### **Article 44**

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

#### **Article 45**

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

- b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

#### **Article 46**

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

#### **Article 47**

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.
2. However, discrimination shall not be regarded as taking place:
  - a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
  - b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

#### **Article 48**

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

#### **Article 49**

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 50**

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 51**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article 52**

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

- a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;
- b) of the date on which the present Convention will enter into force, in accordance with Article 51.

#### **Article 53**

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

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

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.



## **5.0 Convention Against Transnational Organized Crime (Abridged)**<sup>3</sup>

*This convention is an agreement between 188 nations (Republic of the Congo has signed but not yet ratified the treaty) concerning the methods to combat organized crime. The articles of the treaty which pertain to the case have been selected. Please pay attention to articles 4, and 35, which pertain to both cases.*

### **Article 1. Statement of purpose**

The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

### **Article 2. Use of terms**

1. For the purposes of this Convention:
  - a. “Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
  - b. “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
  - c. “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
  - d. “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
  - e. “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
  - f. “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority; Annex I United Nations Convention against Transnational Organized Crime 6
  - g. “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

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<sup>3</sup> For full version, please see: [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERET\\_O.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERET_O.pdf)

- h. “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- i. “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- j. “Regional economic integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

#### **Article 4. Protection of sovereignty**

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

#### **Article 6. Criminalization of the Laundering of Proceeds of Crime**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - a. (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
  - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- b. Subject to the basic concepts of its legal system:
  - i. The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

- ii. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.
2. For purposes of implementing or applying paragraph 1 of this article:
  - a. Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
  - b. Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;
  - c. For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;
  - d. Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
  - e. If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;
  - f. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

#### **Article 7. Measures to combat money-laundering**

1. Each State Party:
  - a. Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;
  - b. Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the

national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.
4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

#### **Article 8. Criminalization of corruption**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - a. The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - b. The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences other forms of corruption.
3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

### **Article 9. Measures against corruption**

1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.
2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

### **Article 10. Liability of legal persons**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

### **Article 15. Jurisdiction**

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:
  - a. The offence is committed in the territory of that State Party; or
  - b. The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
  - a. The offence is committed against a national of that State Party;
  - b. The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
  - c. The offence is:

- i. One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;
  - ii. One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.
3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.
4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.
5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.
6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

#### **Article 18. Mutual Legal Assistance**

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 as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, 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 10 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.
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.
  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 21 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, <sup>22</sup> 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; 23
  - 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 procedures 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 of 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 25 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.

### **Article 35. Settlement of disputes**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.