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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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Agenda item 3

**Consideration of the draft United Nations Convention against
Transnational Organized Crime, with particular emphasis
on articles 4 *ter*, 5, 6, 9, 10 and 14**

Proposals and contributions received from Governments on the draft United Nations Convention against Transnational Organized Crime

United States of America: amendments to articles 10 (Extradition) and 14 (Mutual legal assistance) of the draft United Nations Convention against Transnational Organized Crime

Article 10: Extradition

1. At the end of paragraph 9 (a), add the following:

“A State Party that submits a case for prosecution following the denial of extradition on grounds of nationality shall treat the investigation and prosecution with diligence, shall devote sufficient resources to conduct the matter effectively and shall coordinate with the requesting State. It shall ensure that its mutual assistance, procedural and evidentiary laws enable effective action to be taken on the basis of evidence obtained from another State.”

Article 14: Mutual legal assistance

2. At the end of paragraph 1, add the following:

“Each State Party shall, to the fullest extent possible under its relevant laws, treaties and arrangements, provide prompt and effective cooperation to another Party for proceedings brought by a Party against a legal person under article 5 of this Convention.”

3. Replace paragraph 14 with the following:

“14. The requested Party may request that the requesting Party not transmit or use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party. If the requested Party makes such a request, the requesting Party shall use its best efforts to comply with the conditions.”
4. Replace subparagraphs (c), (d) and (e) of paragraph 16 with the following:

“(c) 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 gender, race, religion, nationality or political opinion;

“(d) If the request relates to an offence that is considered by the requested State Party to be a political offence.”
5. Replace the first sentence of paragraph 20 with the following:

“If the central authority of the requesting State Party requests that a person appear in the requesting State to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding and the person does appear, he shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty by reason of any acts or convictions that preceded his departure from the requested Party.”
6. After paragraph 21, add the following new paragraphs:

“The requested State Party shall provide copies of publicly available government records, documents or information in its possession.

“The requested State Party may provide copies of any government records, documents or information in its possession that are not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement authorities. The requested Party may at its discretion deny, entirely or in part, a request under this paragraph.¹

“The provisions of this article are intended solely for mutual legal assistance between the Parties and do not give rise to a right on the part of any private person to obtain, suppress or exclude evidence or to impede the execution of a request.”

¹ In addition, in article 14, paragraph 2 (f), “government,” would be added before “bank”.