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Fourth report on crimes against humanity

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Addendum

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Annex II

Crimes against humanity: table of relevant treaty provisions

The following table provides the text of specific treaty provisions on which the International Law Commission based itself when provisionally adopting on first reading the draft articles on crimes against humanity, and the commentaries thereto, at its sixty-ninth session.¹

The table is for reference purposes only. The treaty provisions below are not meant to be an exhaustive list of the treaties referred to by the Commission in the commentaries to the draft articles. The States parties to the treaties referred to below were last checked on 9 November 2018.

¹ See *Official Records of the General Assembly, Seventy-second Session, Supplement No. 10 (A/72/10)*, para. 46.

DRAFT PREAMBLE**Preamble**

...

Mindful that throughout history millions of children, women and men have been victims of crimes that deeply shock the conscience of humanity,

Recognizing that crimes against humanity threaten the peace, security and well-being of the world,

Recognizing further that the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*),

Affirming that crimes against humanity, which are among the most serious crimes of concern to the international community as a whole, must be prevented in conformity with international law,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling the definition of crimes against humanity as set forth in article 7 of the Rome Statute of the International Criminal Court,

Recalling also that it is the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity,

Considering that, because crimes against humanity must not go unpunished, the effective prosecution of such crimes must be ensured by taking measures at the national level and by enhancing international cooperation, including with respect to extradition and mutual legal assistance,

Considering as well the rights of victims, witnesses and others in relation to crimes against humanity, as well as the right of alleged offenders to fair treatment,

...

1948 Convention on the Prevention and Punishment of the Crime of Genocide
(149 States parties)

... *Recognizing* that at all periods of history genocide has inflicted great losses on humanity; and
Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required; ...

1998 Rome Statute of the International Criminal Court (123 States parties)

Preamble
... *Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,
Recognizing that such grave crimes threaten the peace, security and well-being of the world,
Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

DRAFT PREAMBLE

	<p><i>Determined</i> to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,</p> <p><i>Recalling</i> that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,</p> <p><i>Reaffirming</i> the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,</p> <p><i>Emphasizing</i> in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State, ...</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Preamble</p> <p>... Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance, ...</p>

DRAFT ARTICLE 2. GENERAL OBLIGATION**Draft article 2**

Crimes against humanity, whether or not committed in time of armed conflict, are crimes under international law, which States undertake to prevent and punish.

1948 Convention on the Prevention and Punishment of the Crime of Genocide (149 States parties)	Article I The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.
1950 Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal ²	Principle VI The crimes hereinafter set out are punishable as crimes under international law: ... c. Crimes against humanity ...
1954 draft code of offences against the peace and security of mankind	Article 1 Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punished.
1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (55 States parties)	Article I No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: ... (b) Crimes against humanity whether committed in time of war or in time of peace ...
1993 Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, updated	Article 5. <i>Crimes against humanity</i> The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: ...

² *Yearbook of the International Law Commission 1950, vol. II, document A/1316, pp. 374 et seq.*

<p>1994 Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994</p>	<p>Article 3. <i>Crimes against humanity</i></p> <p>The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:</p> <p>...</p>
<p>1996 draft code of crimes against the peace and security of mankind</p>	<p>Article 1. <i>Scope and application of the present Code</i></p> <p>2. Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law.</p>

DRAFT ARTICLE 3. DEFINITION OF CRIMES AGAINST HUMANITY**Draft article 3, paragraphs 1 to 3**

1. For the purpose of the present draft articles, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or in connection with the crime of genocide or war crimes;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) “attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) “extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) “enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

DRAFT ARTICLE 3. DEFINITION OF CRIMES AGAINST HUMANITY

(d) “deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) “torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) “persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) “the crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of the present draft articles, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

1998 Rome Statute of the International Criminal Court (123 States parties)

Article 7. *Crimes against humanity*

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1: (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without

DRAFT ARTICLE 3. DEFINITION OF CRIMES AGAINST HUMANITY	
	<p>grounds permitted under international law; (e) “Torture”, means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.</p> <p>3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.</p>
Draft article 3, paragraph 4	
4. This draft article is without prejudice to any broader definition provided for in any international instrument or national law.	
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 1</p> <p>2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.</p>
1998 Rome Statute of the International Criminal Court (123 States parties)	<p>Article 10</p> <p>Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.</p>

DRAFT ARTICLE 4. OBLIGATION OF PREVENTION**Draft article 4, paragraph 1**

1. Each State undertakes to prevent crimes against humanity, in conformity with international law, including through:
- (a) effective legislative, administrative, judicial or other preventive measures in any territory under its jurisdiction;
- and
- (b) cooperation with other States, relevant intergovernmental organizations, and, as appropriate, other organizations.

<p>1948 Convention on the Prevention and Punishment of the Crime of Genocide (149 States parties)</p>	<p>Article I The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.</p> <p>Article V The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.</p> <p>Article VIII Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.</p>
<p>1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)</p>	<p>Article 10 1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.</p>
<p>1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)</p>	<p>Article 4 States Parties shall co-operate in the prevention of the crimes set forth in article 2, particularly by:</p> <p>(a) taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;</p>
<p>1973 International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i> (109 States parties)</p>	<p>Article IV The States Parties to the present Convention undertake:</p> <p>(a) to adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of <i>apartheid</i> and similar segregationist policies or their manifestations and to punish persons guilty of that crime;</p>

1979 International Convention against the taking of hostages (176 States parties)	<p>Article 4</p> <p>States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:</p> <p>(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;</p>
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 2</p> <p>1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</p>
1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	<p>Article 1</p> <p>The State Parties undertake to prevent and punish torture in accordance with terms of this Convention.</p> <p>Article 6</p> <p>In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.</p> <p>The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.</p> <p>The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.</p>
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	<p>Article 11. <i>Prevention of Crimes against United Nations and Associated Personnel</i></p> <p>States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:</p> <p>(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;</p>
1994 Inter-American Convention on Forced Disappearance of Persons (15 States parties)	<p>Article I</p> <p>The States Parties to this Convention undertake: ...</p> <p>c. To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons;</p> <p>d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.</p>
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 15</p> <p>States Parties shall cooperate in the prevention of the offences set forth in article 2 ...</p>

<p>2000 United Nations Convention against Transnational Organized Crime (189 States parties)</p>	<p>Article 9. <i>Measures against corruption</i></p> <p>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.</p> <p>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.</p> <p>...</p> <p>Article 29. <i>Training and technical assistance</i></p> <p>1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. ...</p> <p>Article 31. <i>Prevention</i></p> <p>1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of transnational organized crime.</p>
<p>2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (173 States parties)</p>	<p>Article 9. <i>Prevention of trafficking in persons</i></p> <p>1. States Parties shall establish comprehensive policies, programmes and other measures:</p> <p>(a) To prevent and combat trafficking in persons; and</p> <p>(b) To protect victims of trafficking in persons, especially women and children, from revictimization.</p>
<p>2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (88 States parties)</p>	<p>Preamble</p> <p>... Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures, ...</p> <p>Article 3</p> <p>Each State party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment</p>
<p>2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)</p>	<p>Article 23</p> <p>1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:</p> <p>(a) Prevent the involvement of such officials in enforced disappearances;</p> <p>(b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;</p> <p>(c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.</p> <p>2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.</p>

	3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.
Draft article 4, paragraph 2	
2. No exceptional circumstances whatsoever, such as armed conflict, internal political instability or other public emergency, may be invoked as a justification of crimes against humanity.	
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 2 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	Article 5 The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture. Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	Article 1 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

DRAFT ARTICLE 5. NON-REFOULEMENT**Draft article 5**

1. No State shall expel, return (*refouler*), surrender or extradite a person to territory under the jurisdiction of another State where there are substantial grounds for believing that he or she would be in danger of being subjected to a crime against humanity.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the territory under the jurisdiction of the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

1951 Convention relating to the Status of Refugees (145 States parties)	<p>Article 33. <i>Prohibition of expulsion or return ("refoulement")</i></p> <p>1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.</p> <p>2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.</p>
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 3</p> <p>1. No State Party shall expel, return (<i>refouler</i>) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.</p> <p>2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 16</p> <p>1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.</p> <p>2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.</p>

DRAFT ARTICLE 6. CRIMINALIZATION UNDER NATIONAL LAW**Draft article 6, paragraphs 1 and 2**

1. Each State shall take the necessary measures to ensure that crimes against humanity constitute offences under its criminal law.
2. Each State shall take the necessary measures to ensure that the following acts are offences under its criminal law:
 - (a) committing a crime against humanity;
 - (b) attempting to commit such a crime; and
 - (c) ordering, soliciting, inducing, aiding, abetting or otherwise assisting in or contributing to the commission or attempted commission of such a crime.

1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment
(165 States parties)

Article 4

1. Each State party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

1998 Rome Statute of the International Criminal Court (123 States parties)

Article 25. *Individual criminal responsibility*

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

- (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
- (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
- (d) in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
- (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
- (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

<p>2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)</p>	<p>Article 4 Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.</p> <p>Article 6 1. Each State Party shall take the necessary measures to hold criminally responsible at least: (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance; ...</p>
<p>Draft article 6, paragraph 3</p> <p>3. Each State shall also take the necessary measures to ensure that the following are offences under its criminal law:</p> <p>(a) a military commander or person effectively acting as a military commander shall be criminally responsible for crimes against humanity committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:</p> <p>(i) that military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and</p> <p>(ii) that military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.</p> <p>(b) With respect to superior and subordinate relationships not described in subparagraph (a), a superior shall be criminally responsible for crimes against humanity committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:</p> <p>(i) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;</p> <p>(ii) the crimes concerned activities that were within the effective responsibility and control of the superior; and</p> <p>(iii) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.</p>	
<p>Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (174 States parties)</p>	<p>Article 86. <i>Failure to act</i></p> <p>2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.</p>

<p>1998 Rome Statute of the International Criminal Court (123 States parties)</p>	<p>Article 28. <i>Responsibility of commanders and other superiors</i></p> <p>In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:</p> <p>(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:</p> <ul style="list-style-type: none"> (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. <p>(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:</p> <ul style="list-style-type: none"> (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
<p>2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)</p>	<p>Article 6</p> <p>1. Each State party shall take the necessary measures to hold criminally responsible at least:</p> <p>(b) A superior who:</p> <ul style="list-style-type: none"> (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution; <p>(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.</p>

Draft article 6, paragraphs 4 and 5	
<p>4. Each State shall take the necessary measures to ensure that, under its criminal law, the fact that an offence referred to in this draft article was committed pursuant to an order of a Government or of a superior, whether military or civilian, is not a ground for excluding criminal responsibility of a subordinate.</p> <p>5. Each State shall take the necessary measures to ensure that, under its criminal law, the fact that an offence referred to in this draft article was committed by a person holding an official position is not a ground for excluding criminal responsibility.</p>	
1945 Charter of the International Military Tribunal [established at Nürnberg]	<p>Article 7</p> <p>The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.</p>
1946 Charter of the International Military Tribunal for the Far East ³	<p>Article 6. <i>Responsibility of Accused</i></p> <p>Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.</p>
1948 Convention on the Prevention and Punishment of the Crime of Genocide (149 States parties)	<p>Article IV</p> <p>Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.</p>
1950 Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal	<p>Principle III</p> <p>The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.</p>
1954 draft code of offences against the peace and security of mankind	<p>Article 3</p> <p>The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in this Code.</p>
1973 International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i> (109 States parties)	<p>Article III</p> <p>International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State ...</p>
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 2</p> <p>3. An order from a superior officer or a public authority may not be invoked as a justification of torture.</p>
1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	<p>Article 4</p> <p>The fact of having acted under orders of a superior shall not provide exemption from the corresponding criminal liability.</p>

³ R. Dennett and R. K. Turner (eds.), *Documents on American Foreign Relations*, vol. 8, July 1, 1945–December 31, 1946, Princeton University Press, 1948, pp. 354–358.

1994 Inter-American Convention on Forced Disappearance of Persons (15 States parties)	<p>Article VIII</p> <p>The defense of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty not to obey them. ...</p>
1996 draft code of crimes against the peace and security of mankind	<p>Article 5. <i>Order of a Government or a superior</i></p> <p>The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility, but may be considered in mitigation of punishment if justice so requires.</p> <p>...</p> <p>Article 7. <i>Official position and responsibility</i></p> <p>The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment.</p>
1998 Rome Statute of the International Criminal Court (123 States parties)	<p>Article 27. <i>Irrelevance of official capacity</i></p> <p>1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.</p> <p>...</p> <p>Article 33. <i>Superior orders and prescription of law</i></p> <p>1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:</p> <p>(a) The person was under a legal obligation to obey orders of the Government or the superior in question;</p> <p>(b) The person did not know that the order was unlawful; and</p> <p>(c) The order was not manifestly unlawful.</p> <p>2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 6</p> <p>2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.</p>

Draft article 6, paragraph 6	
6. Each State shall take the necessary measures to ensure that, under its criminal law, the offences referred to in this draft article shall not be subject to any statute of limitations.	
1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (55 States parties)	<p>Article I</p> <p>No statutory limitation shall apply to the following crimes, irrespective of the date of their commission: ...</p> <p>(b) Crimes against humanity ...</p> <p>Article IV</p> <p>The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of this Convention and that, where they exist, such limitations shall be abolished.</p>
1974 European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (3 States parties)	<p>Article 1</p> <p>Each Contracting State undertakes to adopt any necessary measures to secure that statutory limitation shall not apply to the prosecution of the following offences, or to the enforcement of the sentences imposed for such offences, in so far as they are punishable under its domestic law:</p> <p>1. the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;</p> <p>...</p> <p>3. any other violation of a rule or custom of international law which may hereafter be established and which the Contracting State concerned considers according to a declaration under Article 6 as being of a comparable nature to those referred to in paragraph 1 or 2 of this article.</p>
1998 Rome Statute of the International Criminal Court (123 States parties)	<p>Article 29. <i>Non-applicability of statute of limitations</i></p> <p>The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 8</p> <p>Without prejudice to article 5,</p> <p>1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:</p> <p>(a) Is of long duration and is proportionate to the extreme seriousness of this offence;</p> <p>(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.</p> <p>2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.</p>

Draft article 6, paragraph 7

7. Each State shall take the necessary measures to ensure that, under its criminal law, the offences referred to in this draft article shall be punishable by appropriate penalties that take into account their grave nature.

1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 2 2. Each State party shall make these crimes punishable by appropriate penalties which take into account their grave nature.
1979 International Convention against the taking of hostages (176 States parties)	Article 2 Each State party shall make the offences set forth in [this Convention] punishable by appropriate penalties which take into account the grave nature of those offences.
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 4 2. Each State party shall make these offences punishable by appropriate penalties which take into account their grave nature.
1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	Article 6 In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	Article 9. <i>Crimes against United Nations and Associated Personnel</i> 2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.
1994 Inter-American Convention on Forced Disappearance of Persons (15 States parties)	Article III The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined. The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 4</p> <p>Each State party shall adopt such measures as may be necessary: ...</p> <p>(b) To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.</p>
1999 OAU [Organization of African Unity] Convention on the Prevention and Combating of Terrorism (43 States parties)	<p>Article 2</p> <p>States Parties undertake to:</p> <p>(a) review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences;</p>
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 4</p> <p>Each State Party shall adopt such measures as may be necessary:</p> <p>...</p> <p>(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 7</p> <p>1. Each State party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.</p>
<p>Draft article 6, paragraph 8</p> <p>8. Subject to the provisions of its national law, each State shall take measures, where appropriate, to establish the liability of legal persons for the offences referred to in this draft article. Subject to the legal principles of the State, such liability of legal persons may be criminal, civil or administrative.</p>	
2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (175 States parties)	<p>Article 3</p> <p>4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present Article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.</p>
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 10. <i>Liability of legal persons</i></p> <p>2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 26. <i>Liability of legal persons</i></p> <p>2. Subject to the legal principles of the State Party, the liability of persons may be criminal, civil or administrative.</p>

DRAFT ARTICLE 7. ESTABLISHMENT OF NATIONAL JURISDICTION*Draft article 7*

1. Each State shall take the necessary measures to establish its jurisdiction over the offences covered by the present draft articles in the following cases:

(a) when the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State or, if that State considers it appropriate, a stateless person who is habitually resident in that State's territory;

(c) when the victim is a national of that State if that State considers it appropriate.

2. Each State shall also take the necessary measures to establish its jurisdiction over the offences covered by the present draft articles in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite or surrender the person in accordance with the present draft articles.

3. The present draft articles do not exclude the exercise of any criminal jurisdiction established by a State in accordance with its national law.

1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)

Article 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

(a) when the offence is committed on board an aircraft registered in that State;

(b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)

Article 5.

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

(a) when the offence is committed in the territory of that State;

(b) when the offence is committed against or on board an aircraft registered in that State; ...

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<p>1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)</p>	<p>Article 3</p> <p>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases:</p> <p>(a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;</p> <p>(b) when the alleged offender is a national of that State;</p> <p>(c) when the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.</p> <p>2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.</p> <p>3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.</p>
<p>1979 International Convention against the taking of hostages (176 States parties)</p>	<p>Article 5</p> <p>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:</p> <p>(a) In its territory or on board a ship or aircraft registered in that State;</p> <p>(b) By any of its nationals or, if that State considers it appropriate, by those stateless persons who have their habitual residence in its territory;</p> <p>(c) In order to compel that State to do or abstain from doing any act; or</p> <p>(d) With respect to a hostage who is a national of that State, if that State considers it appropriate.</p> <p>2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.</p> <p>3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.</p>
<p>1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)</p>	<p>Article 5</p> <p>1. Each State party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:</p> <p>(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;</p> <p>(b) When the alleged offender is a national of that State;</p> <p>(c) When the victim is a national of that State if that State considers it appropriate.</p> <p>2. Each State party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 [on extradition] to any of the States mentioned in paragraph 1 of this article.</p> <p>3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.</p>

DRAFT ARTICLE 7. ESTABLISHMENT OF NATIONAL JURISDICTION

<p>1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)</p>	<p>Article 12</p> <p>Every State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention in the following cases:</p> <ul style="list-style-type: none"> a. When torture has been committed within its jurisdiction; b. When the alleged criminal is a national of that State; or c. When the victim is a national of that State and it so deems appropriate. <p>Every State Party shall also take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with Article 11.</p> <p>This Convention does not exclude criminal jurisdiction exercised in accordance with domestic law.</p>
<p>1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)</p>	<p>Article 10. <i>Establishment of Jurisdiction</i></p> <p>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:</p> <ul style="list-style-type: none"> (a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State; (b) When the alleged offender is a national of that State. <p>2. A State Party may also establish its jurisdiction over any such crime when it is committed:</p> <ul style="list-style-type: none"> (a) By a stateless person whose habitual residence is in that State; or (b) With respect to a national of that State; or (c) In an attempt to compel that State to do or to abstain from doing any act. <p>3. Any State Party which has established jurisdiction as mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.</p> <p>4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.</p> <p>5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.</p>
<p>1994 Inter-American Convention on Forced Disappearance of Persons (15 States parties)</p>	<p>Article IV</p> <p>The acts constituting the forced disappearance of persons shall be considered offenses in every State Party. Consequently, each State Party shall take measures to establish its jurisdiction over such cases in the following instances:</p> <ul style="list-style-type: none"> a. When the forced disappearance of persons or any act constituting such offense was committed within its jurisdiction; b. When the accused is a national of that state; c. When the victim is a national of that state and that state sees fit to do so.

DRAFT ARTICLE 7. ESTABLISHMENT OF NATIONAL JURISDICTION

	<p>Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him.</p> <p>This Convention does not authorize any State Party to undertake, in the territory of another State Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its domestic law.</p>
<p>1996 draft code of crimes against the peace and security of mankind</p>	<p>Article 8. <i>Establishment of jurisdiction</i></p> <p>Without prejudice to the jurisdiction of an international criminal court, each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in articles 17, 18, 19 and 20, irrespective of where or by whom those crimes were committed. Jurisdiction over the crime set out in article 16 shall rest with an international criminal court. However, a State referred to in article 16 is not precluded from trying its nationals for the crime set out in that article.</p>
<p>1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)</p>	<p>Article 6</p> <p>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:</p> <p>(a) The offence is committed in the territory of that State; or</p> <p>(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or</p> <p>(c) The offence is committed by a national of that State.</p> <p>2. A State Party may also establish its jurisdiction over any such offence when:</p> <p>(a) The offence is committed against a national of that State; or</p> <p>(b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or</p> <p>(c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or</p> <p>(d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or</p> <p>(e) The offence is committed on board an aircraft which is operated by the Government of that State.</p> <p>3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.</p> <p>4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.</p> <p>5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.</p>

DRAFT ARTICLE 7. ESTABLISHMENT OF NATIONAL JURISDICTION

<p>1999 OAU Convention on the Prevention and Combating of Terrorism (43 States parties)</p>	<p>Article 6</p> <p>1. Each State Party has jurisdiction over terrorist acts as defined in Article 1 when:</p> <p>(a) the act is committed in the territory of that State and the perpetrator of the act is arrested in its territory or outside it if this is punishable by its national law;</p> <p>(b) the act is committed on board a vessel or a ship flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or</p> <p>(c) the act is committed by a national or a group or nationals of that State.</p>
<p>1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)</p>	<p>Article 7</p> <p>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:</p> <p>(a) The offence is committed in the territory of that State;</p> <p>(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;</p> <p>(c) The offence is committed by a national of that State.</p> <p>2. A State Party may also establish its jurisdiction over any such offence when:</p> <p>(a) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of or against a national of that State;</p> <p>(b) The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a State or government facility of that State abroad, including diplomatic or consular premises of that State;</p> <p>(c) The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act;</p> <p>(d) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State;</p> <p>(e) The offence is committed on board an aircraft which is operated by the Government of that State.</p> <p>3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.</p> <p>4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2.</p> <p>5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.</p> <p>6. Without prejudice to the 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.</p>

DRAFT ARTICLE 7. ESTABLISHMENT OF NATIONAL JURISDICTION

2000 United Nations Convention
against Transnational Organized
Crime (189 States parties)

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.

2006 International Convention for the
Protection of All Persons from
Enforced Disappearance
(59 States parties)

Article 9

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

- (a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- (b) When the alleged offender is one of its nationals;
- (c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or

DRAFT ARTICLE 7. ESTABLISHMENT OF NATIONAL JURISDICTION

	<p>surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.</p> <p>3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.</p>
<p>2007 Association of Southeast Asian Nations (ASEAN) Convention on Counter-Terrorism (10 States parties)</p>	<p>Article VII. <i>State jurisdiction</i></p> <p>1. A Party shall take such measures as may be necessary to establish its jurisdiction over the offences covered in article II of this Convention when:</p> <p>(a) The offence is committed in the territory of that Party; or</p> <p>(b) The offence is committed on board a vessel flying the flag of that Party or an aircraft which is registered under the laws of that Party at the time the offence is committed; or</p> <p>(c) The offence is committed by a national of that Party.</p> <p>2. A Party may also establish its jurisdiction over any such offence when:</p> <p>(a) The offence is committed against a national of that Party; or</p> <p>(b) The offence is committed against a state or government facility of that Party abroad, including its embassy or other diplomatic or consular premises; or</p> <p>(c) The offence is committed in an attempt to compel that Party to do or to abstain from doing any act; or</p> <p>(d) The offence is committed by a stateless person with habitual residence in the territory of that Party.</p> <p>3. A Party shall likewise establish its jurisdiction over the offences covered in article II of this Convention in cases where the alleged offender is present in its territory and it does not extradite that person to any of the Parties that have established their jurisdiction in accordance with paragraph 1 or 2 of this article.</p> <p>4. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic laws.</p>

DRAFT ARTICLE 8. INVESTIGATION

Each State shall ensure that its competent authorities proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that acts constituting crimes against humanity have been or are being committed in any territory under its jurisdiction.

1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 12</p> <p>Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.</p>
1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	<p>Article 8</p> <p>... Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. ...</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 12</p> <p>2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.</p>
2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (33 States parties)	<p>Article 49. <i>General obligations</i></p> <p>1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.</p> <p>...</p> <p>Article 55. <i>Ex parte and ex officio proceedings</i></p> <p>1. Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependent upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.</p>

DRAFT ARTICLE 9. PRELIMINARY MEASURES WHEN AN ALLEGED OFFENDER IS PRESENT**Draft article 9**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State in the territory under whose jurisdiction a person alleged to have committed any offence covered by the present draft articles is present shall take the person into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided in the law of that State, but may be continued only for such time as is necessary to enable any criminal, extradition or surrender proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. When a State, pursuant to this draft article, has taken a person into custody, it shall immediately notify the States referred to in draft article 7, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his or her detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this draft article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in article 4, paragraph 1 (c), the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry

DRAFT ARTICLE 9. PRELIMINARY MEASURES WHEN AN ALLEGED OFFENDER IS PRESENT

	contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.
1979 International Convention against the taking of hostages (176 States parties)	<p>Article 6</p> <p>1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.</p> <p>2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:</p> <p>(a) The State where the offence was committed;</p> <p>(b) The State against which compulsion has been directed or attempted;</p> <p>(c) The State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;</p> <p>(d) The State of which the hostage is a national or in the territory of which he has his habitual residence;</p> <p>(e) The State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;</p> <p>(f) The international intergovernmental organization against which compulsion has been directed or attempted;</p> <p>(g) All other States concerned.</p> <p>3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:</p> <p>(a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;</p> <p>(b) To be visited by a representative of that State.</p> <p>4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.</p> <p>5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1 (b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.</p> <p>6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.</p>
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 6</p> <p>1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.</p>

DRAFT ARTICLE 9. PRELIMINARY MEASURES WHEN AN ALLEGED OFFENDER IS PRESENT

	<p>2. Such State shall immediately make a preliminary inquiry into the facts.</p> <p>3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.</p> <p>4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.</p>
<p>1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)</p>	<p>Article 8</p> <p>The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.</p> <p>Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.</p> <p>After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.</p>
<p>1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)</p>	<p>Article 7</p> <p>1. Upon receiving information that a person who has committed or who is alleged to have committed an offence as set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.</p> <p>2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.</p> <p>3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p>(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;</p> <p>(b) Be visited by a representative of that State;</p> <p>(c) Be informed of that person's rights under subparagraphs (a) and (b).</p> <p>4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.</p> <p>5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 6, subparagraph 1 (c) or 2 (c), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.</p> <p>6. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraphs 1 and 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and</p>

DRAFT ARTICLE 9. PRELIMINARY MEASURES WHEN AN ALLEGED OFFENDER IS PRESENT

	of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.
<p>1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)</p>	<p>Article 9</p> <p>1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.</p> <p>2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.</p> <p>3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p>(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;</p> <p>(b) Be visited by a representative of that State;</p> <p>(c) Be informed of that person's rights under subparagraphs (a) and (b).</p> <p>4. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.</p> <p>5. The provisions of paragraphs 3 and 4 shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1, subparagraph (b), or paragraph 2, subparagraph (b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.</p> <p>6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and, if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.</p>
<p>1999 OAU Convention on the Prevention and Combating of Terrorism (43 States parties)</p>	<p>Article 7</p> <p>1. Upon receiving information that a person who has committed or who is alleged to have committed any terrorist act as defined in Article 1 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.</p> <p>2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution.</p> <p>3. Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p>(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;</p>

DRAFT ARTICLE 9. PRELIMINARY MEASURES WHEN AN ALLEGED OFFENDER IS PRESENT

	<p>(b) be visited by a representative of that State;</p> <p>(c) be assisted by a lawyer of his or her choice;</p> <p>(d) be informed of his or her rights under sub-paragraphs (a), (b) and (c).</p> <p>4. The rights referred to in paragraph 3 shall be exercised in conformity with the national law of the State in whose territory the offender or alleged offender is present; subject to the provision that the said laws must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.</p>
<p>2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)</p>	<p>Article 10</p> <p>1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.</p> <p>2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.</p> <p>3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.</p>

2007 Association of Southeast Asian Nations (ASEAN) Convention on Counter-Terrorism (10 States parties)

Article VIII. *Fair treatment*

1. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the laws of the Party in the territory of which that person is present and applicable provisions of international law, including international human rights law.
2. Upon receiving information that a person who has committed or who is alleged to have committed an offence covered in article II of this Convention may be present in its territory, the Party concerned shall take such measures as may be necessary under its domestic laws to investigate the facts contained in the information.
3. Upon being satisfied that the circumstances so warrant, the Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic laws so as to ensure that person's presence for the purpose of prosecution or extradition.
- ...
6. When a Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of ASEAN, the Parties which have established jurisdiction in accordance with paragraph 1 or 2 of article VII, and, if it considers it advisable, any other interested Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The Party which is carrying out the investigation referred to in paragraph 2 of this article shall promptly inform the said Parties of its findings and shall indicate whether it intends to exercise jurisdiction over the said person.

DRAFT ARTICLE 10. AUT DEDERE AUT JUDICARE**Draft article 10**

The State in the territory under whose jurisdiction the alleged offender is present shall submit the case to its competent authorities for the purpose of prosecution, unless it extradites or surrenders the person to another State or competent international criminal tribunal. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	<p>Article 7</p> <p>The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.</p>
1971 Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance (18 States parties)	<p>Article 5</p> <p>When extradition requested for one of the crimes specified in Article 2 is not in order because the person sought is a national of the requested state, or because of some other legal or constitutional impediment, that state is obliged to submit the case to its competent authorities for prosecution, as if the act had been committed in its territory. The decision of these authorities shall be communicated to the state that requested extradition. In such proceedings, the obligation established in Article 4 shall be respected.</p>
1977 Organization of African Unity Convention for the elimination of mercenarism in Africa (32 States parties)	<p>Article 8. <i>Jurisdiction</i></p> <p>Each contracting State shall undertake to take such measures as may be necessary to punish, in accordance with the provisions of Article 7, any person who commits an offence under Article 1 of this Convention and who is found on its territory if it does not extradite him to the State against which the offence has been committed.</p> <p>Article 9. <i>Extradition</i></p> <p>2. A request for extradition shall not be refused unless the requested State undertakes to exercise jurisdiction over the offender in accordance with the provisions of Article 8.</p> <p>3. Where a national is involved in the request for extradition, the requested State shall take proceedings against him for the offence committed if extradition is refused.</p>
1977 European Convention on the suppression of terrorism (46 States parties)	<p>Article 7</p> <p>A Contracting State in whose territory a person suspected to have committed an offence mentioned in article 1 is found and which has received a request for extradition under the conditions mentioned in article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.</p>

DRAFT ARTICLE 10. AUT DEDERE AUT JUDICARE	
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 7</p> <p>1. The State party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.</p> <p>2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.</p>
1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	<p>Article 14</p> <p>When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the crime had been committed within its jurisdiction, for the purposes of investigation, and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that has requested the extradition.</p>
1994 Inter-American Convention on Forced Disappearance of Persons (15 States parties)	<p>Article VI</p> <p>When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the offense had been committed within its jurisdiction, for the purposes of investigation and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the state that has requested the extradition.</p>
1994 Inter-American Convention on International Traffic in Minors (15 States parties)	<p>Article 9</p> <p>The following shall have competence in cases of crimes involving international traffic in minors:</p> <ul style="list-style-type: none"> a) the State Party where the wrongful conduct occurred; b) the State Party that is the habitual residence of the minor; c) the State Party in which the alleged offender is located if said offender has not been extradited. d) the State Party in which the minor who is a victim of said traffic is located. <p>For the purposes of the preceding paragraph, the State Party that first conducted formal proceedings concerning the wrongful act shall have preference.</p>
1996 Inter-American Convention against Corruption (34 States parties)	<p>Article XIII. <i>Extradition</i></p> <p>6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offense, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.</p>

1996 draft code of crimes against the peace and security of mankind	<p>Article 9. <i>Obligation to extradite or prosecute</i></p> <p>Without prejudice to the jurisdiction of an international criminal court, the State Party in the territory of which an individual alleged to have committed a crime set out in article 17, 18, 19 or 20 is found shall extradite or prosecute that individual.</p>
1997 Inter-American Convention against the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials (31 States parties)	<p>Article XIX. <i>Extradition</i></p> <p>6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, the Requested State Party shall submit the case to its competent authorities for the purpose of prosecution under the criteria, laws, and procedures applied by the Requested State to those offenses when they are committed in its own territory. The Requested and Requesting States Parties may, in accordance with their domestic laws, agree otherwise in relation to any prosecution referred to in this paragraph.</p>
1998 Arab Convention on the Suppression of Terrorism	<p>Article 3</p> <p>Contracting States undertake not to organize, finance or commit terrorist acts or to be accessories thereto in any manner whatsoever. In their commitment to the prevention and suppression of terrorist offences in accordance with their domestic laws and procedures, they shall endeavour:</p> <p>...</p> <p>II.1 To arrest the perpetrators of terrorist offences and to prosecute them in accordance with national law or extradite them in accordance with the provisions of this Convention or of any bilateral treaty between the requesting State and the requested State;</p>
1999 Criminal Law Convention on Corruption (48 States parties)	<p>Article 27. <i>Extradition</i></p> <p>5. If extradition for a criminal offence established in accordance with this Convention is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the requesting Party, and shall report the final outcome to the requesting Party in due course.</p>
1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism	<p>Article 6</p> <p>Extradition shall not be permissible in the following cases:</p> <p>...</p> <p>8. If the legal system of the requested State does not permit extradition of its national, then it shall be obliged to prosecute whosoever commits a terrorist crime if the act is punishable in both States by a freedom-restraining sentence for a minimum period of one year or more. The nationality of the person requested for extradition shall be determined according to the date of the crime taking into account the investigation undertaken in this respect by the requesting State.</p>
2001 Convention on cybercrime (61 States parties)	<p>Article 24. <i>Extradition</i></p> <p>6. If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.</p>

2003 African Union Convention on Preventing and Combating Corruption (40 States parties)	<p>Article 15. <i>Extradition</i></p> <p>6. Where a State Party in whose territory any person charged with or convicted of offences is present and has refused to extradite that person on the basis that it has jurisdiction over offences, the Requested State Party shall be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution, unless otherwise agreed with the Requesting State Party, and shall report the final outcome to the Requesting State Party.</p>
2005 Council of Europe Convention on the Prevention of Terrorism (40 States parties)	<p>Article 18. <i>Extradite or prosecute</i></p> <p>1. The Party in the territory of which the alleged offender is present shall, when it has jurisdiction in accordance with Article 14, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that Party. Those authorities shall take their decision in the same manner as in the case of any other offence of a serious nature under the law of that Party.</p> <p>2. Whenever a Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that Party to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this Party and the Party seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.</p>
2005 Council of Europe Convention on Action against Trafficking in Human Beings (47 States parties)	<p>Article 31. <i>Jurisdiction</i></p> <p>3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.</p>
2007 Association of Southeast Asian Nations (ASEAN) Convention on Counter-Terrorism (10 States parties)	<p>Article XIII. <i>Extradition</i></p> <p>1. The Party in the territory of which the alleged offender is present shall, in cases to which article VII of this Convention applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the domestic laws of that Party. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the domestic laws of that Party.</p>

DRAFT ARTICLE 11. FAIR TREATMENT OF THE ALLEGED OFFENDER

Draft article 11, paragraph 1

1. Any person against whom measures are being taken in connection with an offence covered by the present draft articles shall be guaranteed at all stages of the proceedings fair treatment, including a fair trial, and full protection of his or her rights under applicable national and international law, including human rights law.

1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 9 Any person regarding whom proceedings are being carried out in connection with any of the crimes set forth in article 2 shall be guaranteed fair treatment at all stages of the proceedings.
1979 International Convention against the Taking of Hostages (176 States Parties)	Article 8 2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 7 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.
1988 Convention for the suppression of unlawful acts against the safety of maritime navigation (166 States parties)	Article 10 2. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 3 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided for such proceedings by the law of the State in the territory of which he is present.
1989 International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (35 States parties)	Article 11 Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in the present Convention shall be guaranteed at all stages of the proceedings fair treatment and all the rights and guarantees provided for in the law of the State in question. Applicable norms of international law should be taken into account.
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	Article 14 Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	Article 17 Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

DRAFT ARTICLE 11. FAIR TREATMENT OF THE ALLEGED OFFENDER

1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (82 States parties)	<p>Article 17. <i>Prosecution</i></p> <p>2. Without prejudice to, if applicable, the relevant rules of international law, any person regarding whom proceedings are being carried out in connection with the Convention or this Protocol shall be guaranteed fair treatment and a fair trial in accordance with domestic law and international law at all stages of the proceedings, and in no cases shall be provided guarantees less favorable to such person than those provided by international law.</p>
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present</p>
2005 International Convention for the Suppression of Acts of Nuclear Terrorism (114 States parties)	<p>Article 12</p> <p>Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 11</p> <p>3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.</p>
2007 Association of Southeast Asian Nations (ASEAN) Convention on Counter-Terrorism (10 States parties)	<p>Article VIII. <i>Fair treatment</i></p> <p>1. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the laws of the Party in the territory of which that person is present and applicable provisions of international law, including international human rights law.</p>

Draft article 11, paragraphs 2 and 3

2. Any such person who is in prison, custody or detention in a State that is not of his or her nationality shall be entitled:

(a) to communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights;

(b) to be visited by a representative of that State or those States; and

(c) to be informed without delay of his or her rights under this paragraph.

3. The rights referred to in paragraph 2 shall be exercised in conformity with the laws and regulations of the State in the territory under whose jurisdiction the person is present, subject to the proviso that the said laws and regulations must enable full effect to be given to the purpose for which the rights accorded under paragraph 2 are intended.

1963 Vienna Convention on Consular Relations (179 States parties)	<p>Article 36. <i>Communication and contact with nationals of the sending State</i></p> <p>1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:</p> <p>(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;</p> <p>(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;</p> <p>(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.</p> <p>2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.</p>
1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	<p>Article 6</p> <p>3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.</p>
1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)	<p>Article 6</p> <p>3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.</p>

1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	<p>Article 6</p> <p>2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:</p> <p>(a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or, if he is a stateless person, which he requests and which is willing to protect his rights; and</p> <p>(b) to be visited by a representative of that State.</p>
1979 International Convention against the taking of hostages (176 States parties)	<p>Article 6</p> <p>3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:</p> <p>(a) To communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;</p> <p>(b) To be visited by a representative of that State.</p>
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 6</p> <p>3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.</p>
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	<p>Article 17. <i>Fair Treatment</i></p> <p>2. Any alleged offender shall be entitled:</p> <p>(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and</p> <p>(b) To be visited by a representative of that State or those States.</p>
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 7</p> <p>3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p>(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;</p> <p>(b) Be visited by a representative of that State;</p> <p>(c) Be informed of that person's rights under subparagraphs (a) and (b).</p>

<p>1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)</p>	<p>Article 9</p> <p>3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p>(a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;</p> <p>(b) Be visited by a representative of that State;</p> <p>(c) Be informed of that person's rights under subparagraphs (a) and (b).</p>
<p>1999 OAU Convention on the Prevention and Combating of Terrorism (43 States parties)</p>	<p>Article 7</p> <p>3. Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:</p> <p>(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;</p> <p>(b) be visited by a representative of that State;</p> <p>(c) be assisted by a lawyer of his or her choice;</p> <p>(d) be informed of his or her rights under sub-paragraphs (a), (b) and (c).</p>
<p>2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)</p>	<p>Article 10</p> <p>3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.</p>
<p>2007 Association of Southeast Asian Nations (ASEAN) Convention on Counter-Terrorism (10 States parties)</p>	<p>Article VIII. <i>Fair treatment</i></p> <p>4. Any person regarding whom measures referred to in paragraph 3 of this article are being taken shall be entitled:</p> <p>(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights;</p> <p>(b) To be visited by a representative of that State;</p> <p>(c) To be informed of that person's rights under subparagraphs (a) and (b) of paragraph 4 of this article.</p>

DRAFT ARTICLE 12. VICTIMS, WITNESSES AND OTHERS

Draft article 12, paragraph 1

1. Each State shall take the necessary measures to ensure that:

(a) any person who alleges that acts constituting crimes against humanity have been or are being committed has the right to complain to the competent authorities; and

(b) complainants, victims, witnesses, and their relatives and representatives, as well as other persons participating in any investigation, prosecution, extradition or other proceeding within the scope of the present draft articles, shall be protected against ill-treatment or intimidation as a consequence of any complaint, information, testimony or other evidence given. Protective measures shall be without prejudice to the rights of the alleged offender referred to in draft article 11.

1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 13</p> <p>Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.</p>
1998 Rome Statute of the International Criminal Court (123 States parties)	<p>Article 68. <i>Protection of the victims and witnesses and their participation in the proceedings</i></p> <p>1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.</p>
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 24. <i>Protection of witnesses</i></p> <p>1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.</p> <p>2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:</p> <p>(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;</p> <p>(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.</p>
2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (175 States parties)	<p>Article 8</p> <p>1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:</p> <p>...</p>

DRAFT ARTICLE 12. *VICTIMS, WITNESSES AND OTHERS*

	<p>(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;</p> <p>(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;</p> <p>...</p> <p>5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.</p> <p>6. Nothing in the present Article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.</p>
<p>2003 United Nations Convention against Corruption (186 States parties)</p>	<p>Article 32. <i>Protection of witnesses, experts and victims</i></p> <p>1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.</p> <p>2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:</p> <p>(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;</p> <p>(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.</p>
<p>2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)</p>	<p>Article 12</p> <p>1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.</p> <p>2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.</p> <p>3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:</p> <p>(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;</p> <p>(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.</p> <p>4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence</p>

DRAFT ARTICLE 12. <i>VICTIMS, WITNESSES AND OTHERS</i>	
	the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.
Draft article 12, paragraph 2	
2. Each State shall, in accordance with its national law, enable the views and concerns of victims of a crime against humanity to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights referred to in draft article 11.	
1998 Rome Statute of the International Criminal Court (123 States parties)	Article 68. <i>Protection of the victims and witnesses and their participation in the proceedings</i> 3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.
2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (175 States parties)	Article 8 1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by: ... (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	Article 25. <i>Assistance to and protection of victims</i> 3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.
2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (173 States parties)	Article 6. <i>Assistance to and protection of victims of trafficking in persons</i> 2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
2003 United Nations Convention against Corruption (186 States parties)	Article 32. <i>Protection of witnesses, experts and victims</i> 5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

DRAFT ARTICLE 12. VICTIMS, WITNESSES AND OTHERS**Draft article 12, paragraph 3**

3. Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity have the right to obtain reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition.

2006 International Convention for the Protection of All Persons from Enforced Disappearance
(59 States parties)

Article 24

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- (a) Restitution;
- (b) Rehabilitation;
- (c) Satisfaction, including restoration of dignity and reputation;
- (d) Guarantees of non-repetition.

DRAFT ARTICLE 13. EXTRADITION**Draft article 13, paragraph 1**

1. Each of the offences covered by the present draft articles shall be deemed to be included as an extraditable offence in any extradition treaty existing between States. States undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	Article 8 1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.
1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)	Article 8 1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 8 1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them.
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 8 1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	Article 15. <i>Extradition of Alleged Offenders</i> 1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
1996 draft code of crimes against the peace and security of mankind	Article 10. <i>Extradition of alleged offenders</i> 1. To the extent that the crimes set out in articles 17, 18, 19 and 20 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	Article 9 1. The offences set forth in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

DRAFT ARTICLE 13. EXTRADITION	
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 13</p> <p>2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.</p> <p>3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.</p>
<p>Draft article 13, paragraph 2</p> <p>2. For the purposes of extradition between States, an offence covered by the present draft articles shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.</p>	
1948 Convention on the Prevention and Punishment of the Crime of Genocide (149 States parties)	<p>Article VII</p> <p>Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.</p>
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 11</p> <p>None of the offences set forth in article 2 shall be regarded, for purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.</p>
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 14</p> <p>None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.</p>

DRAFT ARTICLE 13. EXTRADITION	
2003 United Nations Convention against Corruption (186 States parties)	Article 44. <i>Extradition</i> 4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	Article 13 1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.
Draft article 13, paragraphs 3 and 4	
<p>3. If a State that makes extradition conditional on the existence of a treaty receives a request for extradition from another State with which it has no extradition treaty, it may consider the present draft articles as the legal basis for extradition in respect of any offence covered by the present draft articles.</p> <p>4. A State that makes extradition conditional on the existence of a treaty shall, for any offence covered by the present draft articles:</p> <p style="padding-left: 40px;">(a) inform the Secretary-General of the United Nations whether it will use the present draft articles as the legal basis for cooperation on extradition with other States; and</p> <p style="padding-left: 40px;">(b) if it does not use the present draft articles as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States in order to implement this draft article.</p>	
1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	Article 8 2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. ...
1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 8 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.
1979 International Convention against the taking of hostages (176 States parties)	Article 10 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

DRAFT ARTICLE 13. EXTRADITION	
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 8</p> <p>2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.</p>
1996 draft code of crimes against the peace and security of mankind	<p>Article 10. <i>Extradition of alleged offenders</i></p> <p>2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider the present Code as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.</p>
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 9</p> <p>2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.</p>
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 11</p> <p>2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.</p>
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.</p> <p>5. States Parties that make extradition conditional on the existence of a treaty shall:</p> <p>(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and</p> <p>(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.</p>

2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.</p> <p>6. A State Party that makes extradition conditional on the existence of a treaty shall:</p> <p>(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and</p> <p>(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 13</p> <p>4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.</p>
<p>Draft article 13, paragraph 5</p> <p>5. States that do not make extradition conditional on the existence of a treaty shall recognize the offences covered by the present draft articles as extraditable offences between themselves.</p>	
1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	<p>Article 8</p> <p>3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.</p>
1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)	<p>Article 8</p> <p>3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.</p>
1979 International Convention against the taking of hostages (176 States parties)	<p>Article 10</p> <p>3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.</p>
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	<p>Article 8</p> <p>3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.</p>
1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (190 States parties)	<p>Article 6. <i>Extradition</i></p> <p>4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.</p>

1996 draft code of crimes against the peace and security of mankind	Article 10. <i>Extradition of alleged offenders</i> 3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.
2003 United Nations Convention against Corruption (186 States parties)	Article 44. <i>Extradition</i> 7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	Article 13 5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.
Draft article 13, paragraph 6	
6. Extradition shall be subject to the conditions provided for by the national law of the requested State or by applicable extradition treaties, including the grounds upon which the requested State may refuse extradition.	
1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	Article 8 2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.
1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (188 States Parties)	Article 8 2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 8 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State.
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 8 2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

1985 Inter-American Convention to Prevent and Punish Torture (18 States parties)	<p>Article 13</p> <p>... Every State Party that makes extradition conditional on the existence of a treaty may, if it receives a request for extradition from another State Party with which it has no extradition treaty, consider this Convention as the legal basis for extradition in respect of the crime of torture. Extradition shall be subject to the other conditions that may be required by the law of the requested State. ...</p> <p>States Parties which do not make extradition conditional on the existence of a treaty shall recognize such crimes as extraditable offences between themselves, subject to the conditions required by the law of the requested State. . . .</p>
1994 Inter-American Convention on Forced Disappearance of Persons (15 States parties)	<p>Article V</p> <p>... Extradition shall be subject to the provisions set forth in the constitution and other laws of the request state.</p>
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	<p>Article 15. <i>Extradition of Alleged Offenders</i></p> <p>2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.</p>
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 9</p> <p>2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.</p>
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 11</p> <p>2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.</p>
1999 Criminal Law Convention on Corruption (48 States parties)	<p>Article 27. <i>Extradition</i></p> <p>4. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.</p>
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 13</p> <p>6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.</p>

Draft article 13, paragraph 7	
7. If necessary, the offences covered by the present draft articles shall be treated, for the purposes of extradition between States, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with draft article 7, paragraph 1.	
1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	Article 8 4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4, paragraph 1.
1971 Convention for the suppression of unlawful acts against the safety of civil aviation (188 States parties)	Article 8 4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).
1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 8 4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3.
1979 International Convention against the taking of hostages (176 States parties)	Article 10 4. The offences set forth in article 1 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States required to establish jurisdiction in accordance with paragraph 1 of article 5.
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 8 4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	Article 15. <i>Extradition of Alleged Offenders</i> 4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.
1996 draft code of crimes against the peace and security of mankind	Article 10. <i>Extradition of alleged offenders</i> 4. Each of those crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territory of any other State Party.

1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	<p>Article 9</p> <p>4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.</p>
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 11</p> <p>4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2.</p>
<p>Draft article 13, paragraph 8</p> <p>8. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State, the requested State shall, if its national law so permits and in conformity with the requirements of such law, upon application of the requesting State, consider the enforcement of the sentence imposed under the national law of the requesting State or the remainder thereof.</p>	
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.</p>

Draft article 13, paragraph 9

9. Nothing in the present draft articles shall be interpreted as imposing an obligation to extradite if the requested State 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, ethnic origin, culture, membership of a particular social group, political opinions or other grounds that are universally recognized as impermissible under international law, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

1979 International Convention against the taking of hostages (176 States parties)	<p>Article 9</p> <p>1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:</p> <p>(a) That the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or</p> <p>(b) That the person's position may be prejudiced:</p> <p>(i) For any of the reasons mentioned in subparagraph (a) of this paragraph, or</p> <p>(ii) For the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.</p> <p>2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.</p>
1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (190 States parties)	<p>Article 6. <i>Extradition</i></p> <p>6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.</p>
1997 International Convention for the Suppression of Terrorist Bombings (170 States Parties)	<p>Article 12</p> <p>Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.</p>
1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 15</p> <p>Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.</p>

2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 13</p> <p>7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership in a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.</p>
<p>Draft article 13, paragraph 10</p> <p>10. Before refusing extradition, the requested State shall, where appropriate, consult with the requesting State to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.</p>	
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 16. <i>Extradition</i></p> <p>16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 44. <i>Extradition</i></p> <p>17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.</p>

DRAFT ARTICLE 14. MUTUAL LEGAL ASSISTANCE**Draft article 14**

1. States shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the present draft articles in accordance with this draft article.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State with respect to investigations, prosecutions, judicial and other proceedings in relation to the offences for which a legal person may be held liable in accordance with draft article 6, paragraph 8, in the requesting State.
3. Mutual legal assistance to be afforded in accordance with this draft article may be requested for any of the following purposes:
 - (a) identifying and locating alleged offenders and, as appropriate, victims, witnesses or others;
 - (b) taking evidence or statements from persons, including by video conference;
 - (c) effecting service of judicial documents;
 - (d) executing searches and seizures;
 - (e) examining objects and sites, including obtaining forensic evidence;
 - (f) providing information, evidentiary items and expert evaluations;
 - (g) providing originals or certified copies of relevant documents and records;
 - (h) identifying, tracing or freezing proceeds of crime, property, instrumentalities or other things for evidentiary or other purposes;
 - (i) facilitating the voluntary appearance of persons in the requesting State; or
 - (j) any other type of assistance that is not contrary to the national law of the requested State.
4. States shall not decline to render mutual legal assistance pursuant to this draft article on the ground of bank secrecy.
5. States 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 draft article.
6. Without prejudice to its national law, the competent authorities of a State may, without prior request, transmit information relating to crimes against humanity to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding investigations, prosecutions and judicial proceedings or could result in a request formulated by the latter State pursuant to the present draft articles.
7. The provisions of this draft 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, except that the provisions of this draft article shall apply to the extent that they provide for greater mutual legal assistance.

DRAFT ARTICLE 14. MUTUAL LEGAL ASSISTANCE

8. The draft annex to the present draft articles shall apply to requests made pursuant to this draft article if the States in question are not bound by a treaty of mutual legal assistance. If those States are bound by such a treaty, the corresponding provisions of that treaty shall apply, unless the States agree to apply the provisions of the draft annex in lieu thereof. States are encouraged to apply the draft annex if it facilitates cooperation.

1999 International Convention for the Suppression of the Financing of Terrorism
(188 States parties)

Article 7

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

Article 12

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in article 2, including assistance in obtaining evidence in their possession necessary for the proceedings.

2. States Parties may not refuse a request for mutual legal assistance on the ground of bank secrecy.

3. The requesting Party shall not transmit nor 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.

4. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 5.

5. States Parties shall carry out their obligations under paragraphs 1 and 2 in conformity with any treaties or other arrangements on mutual legal assistance or information exchange that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 13

None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 14

None of the offences set forth in article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

DRAFT ARTICLE 14. MUTUAL LEGAL ASSISTANCE

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 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 agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

- (a) The State 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 from which the person was transferred;
- (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) The State to which the person is transferred shall not require the State 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 to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained 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 or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

2000 United Nations Convention
against Transnational Organized
Crime (189 States parties)

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.
- ...
6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.
8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
- ...
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.

2003 United Nations Convention
against Corruption (186 States
parties)

Article 46. *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.
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 26 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Examining objects and sites;
 - (e) Providing information, evidentiary items and expert evaluations;
 - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
 - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
 - (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;
 - (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.
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.
- ...
6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those 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.
- ...
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.

DRAFT ARTICLE 15. SETTLEMENT OF DISPUTES	
Draft article 15, paragraph 1	
1. States shall endeavour to settle disputes concerning the interpretation or application of the present draft articles through negotiations.	
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	Article 35. <i>Settlement of disputes</i> 1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (173 States parties)	Article 15. <i>Settlement of disputes</i> 1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2003 United Nations Convention against Corruption (186 States parties)	Article 66. <i>Settlement of disputes</i> 1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
Draft article 15, paragraph 2	
2. Any dispute between two or more States concerning the interpretation or application of the present draft articles that is not settled through negotiation shall, at the request of one of those States, be submitted to the International Court of Justice, unless those States agree to submit the dispute to arbitration.	
1948 Convention on the Prevention and Punishment of the Crime of Genocide (149 States Parties)	Article IX Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.
1999 OAU Convention on the Prevention and Combating of Terrorism (43 States parties)	Article 22 2. Any dispute that may arise between the States Parties regarding the interpretation or application of this Convention shall be amicably settled by direct agreement between them. Failing such settlement, any one of the State Parties may refer the dispute to the International Court of Justice in conformity with the Statute of the Court or by arbitration by other States Parties to this Convention.

Draft article 15, paragraphs 3 and 4

3. Each State may declare that it does not consider itself bound by paragraph 2 of this draft article. The other States shall not be bound by paragraph 2 of this draft article with respect to any State that has made such a declaration.

4. Any State that has made a declaration in accordance with paragraph 3 of this draft article may at any time withdraw that declaration.

1970 Convention for the suppression of unlawful seizure of aircraft (185 States parties)	Article 12 2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (180 States parties)	Article 13 2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
1979 International Convention against the taking of hostages (176 States parties)	Article 16 2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.
1984 Convention against torture and other cruel, inhuman and degrading treatment or punishment (165 States parties)	Article 30 2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.
1994 Convention on the Safety of United Nations and Associated Personnel (94 States parties)	Article 22. <i>Dispute Settlement</i> 2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.
1997 International Convention for the Suppression of Terrorist Bombings (170 States parties)	Article 20 2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.

1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)	<p>Article 24</p> <p>2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other States Parties shall not be bound by paragraph 1 with respect to any State Party which has made such a reservation.</p>
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	<p>Article 35. <i>Settlement of disputes</i></p> <p>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.</p> <p>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.</p>
2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (173 States parties)	<p>Article 15. <i>Settlement of disputes</i></p> <p>3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, 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.</p> <p>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.</p>
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 66. <i>Settlement of disputes</i></p> <p>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.</p> <p>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.</p>
2006 International Convention for the Protection of All Persons from Enforced Disappearance (59 States parties)	<p>Article 42</p> <p>2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.</p> <p>3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time withdraw this declaration by notification to the Secretary-General of the United Nations.</p>

DRAFT ANNEX**Draft annex, paragraphs 1 to 5**

1. This draft annex applies in accordance with draft article 14, paragraph 8.

Designation of a central authority

2. Each State 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 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 by each State of the central authority designated for this purpose. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States. This requirement shall be without prejudice to the right of a State to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States agree, through the International Criminal Police Organization, if possible.

Procedures for making a request

3. 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, under conditions allowing that State to establish authenticity. The Secretary-General of the United Nations shall be notified by each State of the language or languages acceptable to that State. In urgent circumstances and where agreed by the States, requests may be made orally, but shall be confirmed in writing forthwith.

4. A request for mutual legal assistance shall contain:

- (a) the identity of the authority making the request;
- (b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) a description of the assistance sought and details of any particular procedure that the requesting State 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.

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

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1988 United Nations Convention
against Illicit Traffic in Narcotic
Drugs and Psychotropic Substances
(190 States parties)

Article 7. *Mutual legal assistance*

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. 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 proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
- (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned;
- (f) The purpose for which the evidence, information or action is sought.

11. The requested 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.

2000 United Nations Convention
against Transnational Organized
Crime (189 States parties)

Article 18. *Mutual legal assistance*

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.

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	<p>15. A request for mutual legal assistance shall contain:</p> <ul style="list-style-type: none"> (a) The identity of the authority making the request; (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding; (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; (e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought. <p>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.</p>
<p>2003 United Nations Convention against Corruption (186 States parties)</p>	<p>Article 46. <i>Mutual legal assistance</i></p> <p>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.</p> <p>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.</p> <p>15. A request for mutual legal assistance shall contain:</p> <ul style="list-style-type: none"> (a) The identity of the authority making the request; (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding; (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; (e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought.

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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.

Draft annex, paragraphs 6 to 12*Response to the request by the requested State*

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

7. The requested State 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 and for which reasons are given, preferably in the request. The requested State shall respond to reasonable requests by the requesting State on progress of its handling of the request. The requesting State shall promptly inform the requested State when the assistance sought is no longer required.

8. Mutual legal assistance may be refused:

- (a) if the request is not made in conformity with the provisions of this draft annex;
- (b) if the requested State 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 would be prohibited by its national 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 relating to mutual legal assistance for the request to be granted.

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

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

11. Before refusing a request pursuant to paragraph 8 of this draft annex or postponing its execution pursuant to paragraph 10 of this draft annex, the requested State shall consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State accepts assistance subject to those conditions, it shall comply with the conditions.

12. The requested State:

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

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(b) may, at its discretion, provide to the requesting State 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 national law are not available to the general public.	
1959 European Convention on Mutual Assistance in Criminal Matters (50 States parties)	<p>Article 2</p> <p>Assistance may be refused:</p> <p>(a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;</p> <p>(b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, <i>ordre public</i> or other essential interests of its country.</p>
1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (190 States parties)	<p>Article 7. <i>Mutual legal assistance</i></p> <p>12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.</p> <p>...</p> <p>15. Mutual legal assistance may be refused:</p> <p>(a) If the request is not made in conformity with the provisions of this article;</p> <p>(b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests;</p> <p>(c) If the authorities of the requested 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 proceedings under their own jurisdiction;</p> <p>(d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.</p> <p>16. Reasons shall be given for any refusal of mutual legal assistance.</p> <p>17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.</p>
1990 Model Treaty on Mutual Assistance in Criminal Matters	<p>Article 4. <i>Refusal of assistance</i></p> <p>1. Assistance may be refused if:</p> <p>(a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (<i>ordre public</i>) or other essential public interests;</p> <p>(b) The offence is regarded by the requested State as being of a political nature;</p> <p>(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;</p> <p>(d) The request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (<i>ne bis in idem</i>);</p>

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	<p>(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;</p> <p>(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.</p> <p>...</p> <p>3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.</p> <p>...</p> <p>5. Reasons shall be given for any refusal or postponement of mutual assistance.</p>
<p>2000 United Nations Convention against Transnational Organized Crime (189 States parties)</p>	<p>Article 18. <i>Mutual legal assistance</i></p> <p>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.</p> <p>...</p> <p>21. Mutual legal assistance may be refused:</p> <p>(a) If the request is not made in conformity with the provisions of this article;</p> <p>(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;</p> <p>(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;</p> <p>(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.</p> <p>...</p> <p>23. Reasons shall be given for any refusal of mutual legal assistance.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>...</p> <p>29. The requested State Party:</p>

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	<p>(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;</p> <p>(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.</p>
<p>2003 United Nations Convention against Corruption (186 States parties)</p>	<p>Article 46. <i>Mutual legal assistance</i></p> <p>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.</p> <p>...</p> <p>21. Mutual legal assistance may be refused:</p> <p>(a) If the request is not made in conformity with the provisions of this article;</p> <p>(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;</p> <p>(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;</p> <p>(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.</p> <p>...</p> <p>23. Reasons shall be given for any refusal of mutual legal assistance.</p> <p>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 requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.</p> <p>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.</p> <p>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.</p> <p>...</p> <p>29. The requested State Party:</p> <p>(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;</p>

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(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.

Draft annex, paragraphs 13 and 14*Use of information by the requesting State*

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

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

1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (190 States parties)

Article 7. *Mutual legal assistance*

13. The requesting Party shall not transmit nor 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.

1990 Model Treaty on Mutual Assistance in Criminal Matters

Article 9. *Protection of confidentiality*

Upon request:

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

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

1999 International Convention for the Suppression of the Financing of Terrorism (188 States parties)

Article 12

3. The requesting Party shall not transmit nor 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.

2000 United Nations Convention against Transnational Organized Crime (189 States parties)

Article 18. *Mutual legal assistance*

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.

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	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.
2003 United Nations Convention against Corruption (186 States parties)	<p>Article 46. <i>Mutual legal assistance</i></p> <p>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.</p> <p>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.</p>
<p>Draft annex, paragraphs 15 and 16</p> <p><i>Testimony of person from the requested State</i></p> <p>15. Without prejudice to the application of paragraph 19 of this draft annex, a witness, expert or other person who, at the request of the requesting State, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in territory under the jurisdiction of the requesting State shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from territory under the jurisdiction of the requested State. 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 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 territory under the jurisdiction of the requesting State or, having left it, has returned of his or her own free will.</p> <p>16. Wherever possible and consistent with fundamental principles of national law, when an individual is in territory under the jurisdiction of a State and has to be heard as a witness or expert by the judicial authorities of another State, the first State 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 territory under the jurisdiction of the requesting State. States may agree that the hearing shall be conducted by a judicial authority of the requesting State and attended by a judicial authority of the requested State.</p>	
1959 European Convention on Mutual Assistance in Criminal Matters (50 States parties)	<p>Article 12</p> <p>1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.</p> <p>2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.</p>

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	<p>3. The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.</p>
<p>1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (190 States parties)</p>	<p>Article 7. <i>Mutual legal assistance</i></p> <p>18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested 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 Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.</p>
<p>1990 Model Treaty on Mutual Assistance in Criminal Matters</p>	<p>Article 15. <i>Safe conduct</i></p> <p>1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:</p> <p>(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;</p> <p>(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.</p> <p>2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of 15 consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.</p> <p>3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.</p>
<p>2000 United Nations Convention against Transnational Organized Crime (189 States parties)</p>	<p>Article 18. <i>Mutual legal assistance</i></p> <p>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.</p> <p>...</p> <p>27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.</p>

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2003 United Nations Convention
against Corruption (186 States
parties)

Article 46. *Mutual legal assistance*

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.

...

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

Draft annex, paragraphs 17 to 19

Transfer for testimony of person detained in the requested State

17. A person who is being detained or is serving a sentence in the territory under the jurisdiction of one State whose presence in another State 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 the present draft articles, may be transferred if the following conditions are met:

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

18. For the purposes of paragraph 17 of this draft annex:

- (a) the State 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 from which the person was transferred;
- (b) the State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- (c) the State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person; and
- (d) the person transferred shall receive credit for service of the sentence being served from the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred.

19. Unless the State from which a person is to be transferred in accordance with paragraphs 17 and 18 of this draft annex so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in territory under the jurisdiction of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from territory under the jurisdiction of the State from which he or she was transferred.

1999 International Convention for the Suppression of the Financing of Terrorism
(188 States parties)

Article 16

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences set forth in article 2 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 agree, subject to such conditions as those States may deem appropriate.

2. For the purposes of the present article:

- (a) The State 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 from which the person was transferred;

	<p>(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;</p> <p>(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;</p> <p>(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 to which he or she was transferred.</p> <p>3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained 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 or convictions anterior to his or her departure from the territory of the State from which such person was transferred.</p>
<p>2000 United Nations Convention against Transnational Organized Crime (189 States parties)</p>	<p>Article 18. <i>Mutual legal assistance</i></p> <p>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:</p> <p>(a) The person freely gives his or her informed consent;</p> <p>(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.</p> <p>11. For the purposes of paragraph 10 of this article:</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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.</p> <p>12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.</p>
<p>2003 United Nations Convention against Corruption (186 States parties)</p>	<p>Article 46. <i>Mutual legal assistance</i></p> <p>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:</p> <p>(a) The person freely gives his or her informed consent;</p> <p>(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.</p>

	<p>11. For the purposes of paragraph 10 of this article:</p> <ul style="list-style-type: none">(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. <p>12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.</p>
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Draft annex, paragraph 20

Costs

20. The ordinary costs of executing a request shall be borne by the requested State, unless otherwise agreed by the States concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States 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.

1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (190 States parties)	Article 7. <i>Mutual legal assistance</i> 19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the 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.
2000 United Nations Convention against Transnational Organized Crime (189 States parties)	Article 18. <i>Mutual legal assistance</i> 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.
2003 United Nations Convention against Corruption (186 States parties)	Article 46. <i>Mutual legal assistance</i> 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.