

**CIL Selected Documents on  
International Maritime Crimes**

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# I. Global Conventions

## A. 1979 International Convention Against the Taking of Hostages (1979 Hostages)

*Adopted in New York, USA on 17 December 1979.*

The States Parties to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

REAFFIRMING the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

CONSIDERING that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited,

BEING CONVINCED that it is urgently necessary to develop international cooperation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of

taking of hostages as manifestations of international terrorism,

HAVE AGREED AS FOLLOWS:

### Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.
2. Any person who:
  - (a) Attempts to commit an act of hostage-taking, or
  - (b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking,likewise commits an offence for the purposes of this Convention.

### Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

**Article 3**

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.
2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party referred to in article 1, as the case may be, or to the appropriate authorities thereof.

**Article 4**

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

- (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;
- (b) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

**Article 5**

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:
  - (a) in its territory or on board a ship or aircraft registered in that State;
  - (b) by any of its nationals or, if that State considers it appropriate, by those persons who have their habitual residence in its territory;
  - (c) in order to compel that State to do or abstain from doing any act; or
  - (d) with respect to a hostage who is a national of that State, if that State considers it appropriate.
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.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

**Article 6**

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.

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:
  - (a) the State where the offence was committed;
  - (b) the State against which compulsion has been directed or attempted;
  - (c) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;
  - (d) the State of which the hostage is a national or in the territory of which he has his habitual residence;
  - (e) the State of the alleged offender is a national, or if he is a stateless person, in that territory of which he has his habitual residence;
  - (f) the international intergovernmental organization against which compulsion has been directed or attempted;
  - (g) all other States concerned.
3. Any person regarding whom the measures referred to in paragraph 1 of this Article are being taken shall be entitled:
  - (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 com-

munication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

- (b) to be visited by a representative of that State.
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.
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.
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.

#### Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned

and the international intergovernmental organizations concerned.

#### Article 8

1. The State Party 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, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.
2. Any person regarding whom proceedings are being carried out in connection 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.

#### Article 9

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:
  - (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

- (b) That the person's position may be prejudiced:
  - (i) for any of the reasons mentioned in subparagraph (a) of this paragraph, or
  - (ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.
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.

#### Article 10

1. The offences set forth in article 1 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.
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.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognise the offences set forth in article I as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. The offences set forth in article I 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 paragraph I of article 5.

#### Article 11

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article I, including the supply of all evidence at their disposal necessary for the proceedings.
2. The provisions of paragraph I of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

#### Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Additional Protocols to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand

over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article I, paragraph 4, of Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

#### Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

#### Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

#### Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to an-

other State Party to this Convention which is not a party to those Treaties.

#### Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, anyone of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
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.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

#### Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Rus-

sian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.

## **B. 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS), extracts only**

*Adopted in Montego Bay, Jamaica on 10 December 1982.*

### **Preamble**

The States Parties to this Convention,

PROMPTED by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

NOTING that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,

CONSCIOUS that the problems of ocean space are closely interrelated and need to be considered as a whole,

RECOGNIZING the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment,

BEARING IN MIND that the achievement of these goals will contribute to the realization of a just and equitable international

economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,

DESIRING by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared *inter alia* that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,

BELIEVING that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,

AFFIRMING that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

HAVE AGREED AS FOLLOWS: ...

**Article 58. Rights and duties of other States in the exclusive economic zone...**

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part...

**Part VII. High Seas**

**Section 1. General Provisions**

**Article 86. Application of the provisions of this Part**

The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

**Article 87. Freedom of the high seas**

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:
  - (a) freedom of navigation;
  - (b) freedom of overflight;
  - (c) freedom to lay submarine cables and pipelines, subject to Part VI;
  - (d) freedom to construct artificial islands and other installations

permitted under international law, subject to Part VI;

- (e) freedom of fishing, subject to the conditions laid down in section 2;
  - (f) freedom of scientific research, subject to Parts VI and XIII.
2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

**Article 88. Reservation of the high seas for peaceful purposes**

The high seas shall be reserved for peaceful purposes.

**Article 89. Invalidity of claims of sovereignty over the high seas**

No State may validly purport to subject any part of the high seas to its sovereignty.

**Article 90. Right of navigation**

Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

**Article 91. Nationality of ships**

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

#### Article 92. Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.
2. A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

#### Article 93. Ships flying the flag of the United Nations, its specialized agencies and the International Atomic Energy Agency

The preceding articles do not prejudice the question of ships employed on the official service of the United Nations, its specialized agencies or the International Atomic Energy Agency, flying the flag of the organization.

#### Article 94. Duties of the flag State

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:

- (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
  - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
    - (a) the construction, equipment and seaworthiness of ships;
    - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
    - (c) the use of signals, the maintenance of communications and the prevention of collisions.
  4. Such measures shall include those necessary to ensure:
    - (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
    - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, naviga-

tion, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;

(c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.
6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.
7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installa-

tions of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.

#### **Article 95. Immunity of warships on the high seas**

Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.

#### **Article 96. Immunity of ships used only on government non-commercial service**

Ships owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State.

#### **Article 97. Penal jurisdiction in matters of collision or any other incident of navigation**

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.
2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the with-

drawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

#### **Article 98. Duty to render assistance**

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
  - (a) to render assistance to any person found at sea in danger of being lost;
  - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
  - (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

#### **Article 99. Prohibition of transport of slaves**

Every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall *ipso facto* be free.

#### **Article 100. Duty to co-operate in the repression of piracy**

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

#### **Article 101. Definition of Piracy**

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
  - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
  - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

**Article 102. Piracy by a warship, government ship or government aircraft whose crew has mutinied**

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

**Article 103. Definition of a pirate ship or aircraft**

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

**Article 104. Retention or loss of the nationality of a pirate ship or aircraft**

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

**Article 105. Seizure of a pirate ship or aircraft**

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action

to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

**Article 106. Liability for seizure without adequate grounds**

Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the State making the seizure shall be liable to the State the nationality of which is possessed by the ship or aircraft for any loss or damage caused by the seizure.

**Article 107. Ships and aircraft which are entitled to seize on account of piracy**

A seizure on account of piracy may be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

**Article 108. Illicit traffic in narcotic drugs or psychotropic substances**

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.
2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic.

### Article 109. Unauthorized broadcasting from the high seas

1. All States shall cooperate in the suppression of unauthorized broadcasting from the high seas.
2. For the purposes of this Convention, "unauthorized broadcasting" means the transmission of sound radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulations, but excluding the transmission of distress calls.
3. Any person engaged in unauthorized broadcasting may be prosecuted before the court of:
  - (a) the flag State of the ship;
  - (b) the State of registry of the installation;
  - (c) the State of which the person is a national;
  - (d) any State where the transmissions can be received; or
  - (e) any State where authorized radio communication is suffering interference.
4. On the high seas, a State having jurisdiction in accordance with paragraph 3 may, in conformity with article 110, arrest any person or ship engaged in unauthorized broadcasting and seize the broadcasting apparatus.

### Article 110. Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the

high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

- (a) the ship is engaged in piracy;
  - (b) the ship is engaged in the slave trade;
  - (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
  - (d) the ship is without nationality; or
  - (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.
2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.
  3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.
  4. These provisions apply *mutatis mutandis* to military aircraft.
  5. These provisions also apply to any other duly authorized ships or aircraft

clearly marked and identifiable as being on government service.

#### Article 111. Right of hot pursuit

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.
2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.
3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.
4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.
5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.
6. Where hot pursuit is effected by an aircraft:
  - (a) the provisions of paragraphs 1 to 4 shall apply *mutatis mutandis*;
  - (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the

ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on

the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary.

8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

## **C. 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA)**

*Adopted in Rome, Italy on 10 March 1988.*

The States Parties to this Convention,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operation among States,

RECOGNIZING in particular that everyone has the right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

DEEPLY CONCERNED about the worldwide escalation of acts of terrorism in all its forms, which endanger or take innocent human lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

CONSIDERING that unlawful acts against the safety of maritime navigation jeopardize the safety of persons and property, seriously affect the operation of maritime services, and undermine the confidence of the peoples of the world in the safety of maritime navigation,

CONSIDERING that the occurrence of such acts is a matter of grave concern to the international community as a whole,

BEING CONVINCED of the urgent need to develop international co-operation between States in devising and adopting effective and practical measures for the prevention of all unlawful acts against the safety of maritime

navigation, and the prosecution and punishment of their perpetrators.

RECALLING resolution 40/611 of the General Assembly of the United Nations of 9 December 1985 which, inter alia, “urges all States unilaterally and in co-operation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security”,

RECALLING FURTHER that resolution 40/61 “unequivocally condemns, as criminal, all acts, methods and practices of terrorism wherever and by whomever committed, including those which jeopardize friendly relations among States and their security”,

RECALLING ALSO that by resolution 40/61, the International Maritime Organization was invited to “study the problem of terrorism aboard or against ships with a view to making recommendations on appropriate measures”,

HAVING IN MIND resolution A.584(14) of 20 November 1985, of the Assembly of the International Maritime Organization, which called for development of measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews,

NOTING that acts of the crew which are subject to normal shipboard discipline are outside the purview of this Convention,

AFFIRMING the desirability of monitoring rules and standards relating to the prevention and control of unlawful acts against ships and persons on board ships, with a view to updating them as necessary, and, to this effect, taking note with satisfaction of the Measures to Prevent Unlawful Acts against Passengers and Crews on Board Ships, recommended by the Maritime Safety Committee of the International Maritime Organization,

AFFIRMING FURTHER that matters not regulated by this Convention continue to be governed by the rules and principles of general international law,

RECOGNIZING the need for all States, in combating unlawful acts against the safety of maritime navigation, strictly to comply with rules and principles of general international law,

HAVE AGREED as follows:

### Article 1

For the purposes of this Convention, "ship" means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles, or any other floating craft.

### Article 2

- I. This Convention does not apply to:
  - (a) a warship; or
  - (b) a ship owned or operated by a State when being used as a naval

auxiliary or for customs or police purposes; or

- (c) a ship which has been withdrawn from navigation or laid up.
2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes.

### Article 3

- I. Any person commits an offence if that person unlawfully and intentionally:
  - (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
  - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
  - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
  - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
  - (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or

- (f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or
  - (g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).
2. Any person also commits an offence if that person:
- (a) attempts to commit any of the offences set forth in paragraph 1; or
  - (b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or
  - (c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.

#### Article 4

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.

2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

#### Article 5

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

#### Article 6

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
- (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
  - (b) in the territory of that State, including its territorial sea; or
  - (c) by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
- (a) it is committed by a stateless person whose habitual residence is in that State; or
  - (b) during its commission a national of that State is seized, threatened, injured or killed; or
  - (c) it is committed in an attempt to compel that state to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2

shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as “the Secretary-General”). If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.
5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

#### Article 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, 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.
2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:

- (a) 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;
- (b) be visited by a representative of that State.

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 the alleged offender is present, subject to the proviso 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.
5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 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 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.

#### Article 8

1. The master of a ship of a State Party (the “flag State”) may deliver to the

authorities of any other State Party (the “receiving State”) any person who he has reasonable grounds to believe has committed one of the offences set forth in article 3.

2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefore.
3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of Article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.
4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master’s possession which pertains to the alleged offence.
5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State

declines a request, it shall furnish the receiving State with a statement of the reasons therefore.

#### Article 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

#### Article 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, 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 without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. 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.
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.

## Article 11

1. The offences set forth in article 3 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
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 Party may at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 3. Extradition shall be subject to the other conditions provided by the law of the requested State Party.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 3 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
4. If necessary, the offences set forth in article 3 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 a place within the jurisdiction of the State Party requesting extradition.
5. A State Party which receives more than one request for extradition from States which have established jurisdic-

tion in accordance with article [6]<sup>1</sup> and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.
7. 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.

## Article 12

1. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 3, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States

<sup>1</sup> Text between brackets reflects corrections effected by proces-verbal of 21 December 1989.

Parties shall afford each other assistance in accordance with their national law.

### Article 13

1. States Parties shall co-operate in the prevention of the offences set forth in article 3, particularly by:
  - (a) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories;
  - (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 3.
2. When, due to the commission of an offence set forth in article 3, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

### Article 14

Any State Party having reason to believe that an offence set forth in article 3 will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

### Article 15

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
  - (a) the circumstances of the offence;
  - (b) the action taken pursuant to article 13, paragraph 2;
  - (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.
2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the International Maritime Organization (hereinafter referred to as "the Organization"), to the other States concerned, and to the appropriate international intergovernmental organizations.

### Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six

months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

#### Article 17

1. This Convention shall be open for signature at Rome on 10 March 1988 by States participating in the International Conference on the Suppression of Unlawful Acts against the Safety of Maritime Navigation and at the Headquarters of the Organization by all States from 14 March 1988 to 9 March 1989. It shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

#### Article 18

1. This Convention shall enter into force ninety days following the date on which fifteen States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession in respect thereof.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Convention after the conditions for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

#### Article 19

1. This Convention may be denounced by any State Party at any time after the expiry of one year from the date on which this Convention enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the Secretary-General.

#### Article 20

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

#### Article 21

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) Inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:
    - (i) Each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

- (ii) The date of the entry into force of this Convention;
- (iii) The deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect;
- (iv) The receipt of any declaration or notification made under this Convention;

- (b) Transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the Depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

#### Article 22

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

## **D. 1999 International Convention for the Suppression of the Financing of Terrorism (1999 TFC)**

*Adopted in New York, USA on 9 December 1999.*

### **Preamble**

The States Parties to this Convention,

BEARING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and cooperation among States,

DEEPLY CONCERNED ABOUT the worldwide escalation of acts of terrorism in all its forms and manifestations,

RECALLING the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, contained in General Assembly resolution 50/6 of 24 October 1995,

RECALLING ALSO all the relevant General Assembly resolutions on the matter, including resolution 49/60 of 9 December 1994 and its annex on the Declaration on Measures to Eliminate International Terrorism, in which the States Members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

NOTING THAT the Declaration on Measures to Eliminate International Terrorism also encouraged States to review urgently the scope of the existing international legal

provisions on the prevention, repression and elimination of terrorism in all its forms and manifestations, with the aim of ensuring that there is a comprehensive legal framework covering all aspects of the matter,

RECALLING General Assembly resolution 51/210 of 17 December 1996, paragraph 3, subparagraph (f), in which the Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international movements of such funds,

RECALLING ALSO General Assembly resolution 52/165 of 15 December 1997, in which the Assembly called upon States to consider, in particular, the implementation of the measures set out in paragraphs 3 (a) to (f) of its resolution 51/210 of 17 December 1996,

RECALLING FURTHER General Assembly resolution 53/108 of 8 December 1998, in which the Assembly decided that the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 should elaborate a draft international convention for the suppression of terrorist financing to supplement related existing international instruments,

CONSIDERING THAT the financing of terrorism is a matter of grave concern to the international community as a whole,

NOTING THAT the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain,

NOTING ALSO THAT existing multilateral legal instruments do not expressly address such financing,

BEING CONVINCED OF the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators,

HAVE AGREED AS FOLLOWS:

#### Article 1

For the purposes of this Convention:

1. "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques,

bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

2. "A State or governmental facility" means any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
3. "Proceeds" means any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in article 2.

#### Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
  - (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
  - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is

to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

- 2(a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;
- (b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).
4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
5. Any person also commits an offence if that person:
- (a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

- (b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;
- (c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article 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 an offence as set forth in paragraph 1 of this article; or
- (ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

### Article 3

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, paragraph 1, or article 7, paragraph 2, to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases.

### Article 4

Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;

- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.

#### Article 5

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

#### Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

#### Article 7

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:
  - (a) The offence is committed in the territory of that State;
  - (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;
  - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
  - (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;
  - (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;
  - (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;
  - (d) The offence is committed by a stateless person who has his or

her habitual residence in the territory of that State;

- (e) The offence is committed on board an aircraft which is operated by the Government of that State.
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.
  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.
  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.
  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.

## Article 8

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture.
2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in article 2 and the proceeds derived from such offences.
3. Each State Party concerned may give consideration to concluding agreements on the sharing with other States Parties, on a regular or case-by-case basis, of the funds derived from the forfeitures referred to in this article.
4. Each State Party shall consider establishing mechanisms whereby the funds derived from the forfeitures referred to in this article are utilized to compensate the victims of offences referred to in article 2, paragraph 1, subparagraph (a) or (b), or their families.
5. The provisions of this article shall be implemented without prejudice to the rights of third parties acting in good faith.

### Article 9

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.
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.
3. Any person regarding whom the measures referred to in paragraph 2 are being taken shall be entitled to:
  - (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;
  - (b) Be visited by a representative of that State;
  - (c) Be informed of that person's rights under subparagraphs (a) and (b).
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.

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.
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.

### Article 10

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 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 laws of that State. 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.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State 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 State and the State 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.

#### Article 11

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.

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.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.
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.
5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with this Convention.

#### 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.

#### 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.

#### 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.

#### Article 18

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 by taking all practicable measures, *inter alia*, by adapting their domestic legislation, if necessary, to prevent and counter preparations in their respective territories for the commission of those offences within or outside their territories, including:

- (a) Measures to prohibit in their territories illegal activities of persons and organizations that knowingly encourage, instigate, organize or engage in the commission of offences set forth in article 2;
  - (b) Measures requiring financial institutions and other professions involved in financial transactions to utilize the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:
    - (i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
    - (ii) With respect to the identification of legal entities, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity;
    - (iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
    - (iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.
2. States Parties shall further cooperate in the prevention of offences set forth in article 2 by considering:
- (a) Measures for the supervision, including, for example, the licensing, of all money-transmission agencies;
  - (b) Feasible measures to detect or monitor the physical cross-border transportation of cash and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

3. States Parties shall further cooperate in the prevention of the offences set forth in article 2 by exchanging accurate and verified information in accordance with their domestic law and coordinating administrative and other measures taken, as appropriate, to prevent the commission of offences set forth in article 2, in particular by:
- (a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;
  - (b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:
    - (i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;
    - (ii) The movement of funds relating to the commission of such offences.
4. States Parties may exchange information through the International Criminal Police Organization (Interpol).

#### Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of

the United Nations, who shall transmit the information to the other States Parties.

#### Article 20

The States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

#### Article 21

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

#### Article 22

Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by its domestic law.

#### Article 23

- I. The annex may be amended by the addition of relevant treaties that:
  - (a) Are open to the participation of all States;
  - (b) Have entered into force;
  - (c) Have been ratified, accepted, approved or acceded to by at least twenty-two States Parties to the present Convention.

2. After the entry into force of this Convention, any State Party may propose such an amendment. Any proposal for an amendment shall be communicated to the depositary in written form. The depositary shall notify proposals that meet the requirements of paragraph 1 to all States Parties and seek their views on whether the proposed amendment should be adopted.
3. The proposed amendment shall be deemed adopted unless one third of the States Parties object to it by a written notification not later than 180 days after its circulation.
4. The adopted amendment to the annex shall enter into force 30 days after the deposit of the twenty-second instrument of ratification, acceptance or approval of such amendment for all those States Parties having deposited such an instrument. For each State Party ratifying, accepting or approving the amendment after the deposit of the twenty-second instrument, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

#### Article 24

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable

to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

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.
3. Any State which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### Article 25

1. This Convention shall be open for signature by all States from 10 January 2000 to 31 December 2001 at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 26**

1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

**Article 27**

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

**Article 28**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United

Nations Headquarters in New York on 10 January 2000.

**Annex**

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

## **E. 2000 United Nations Convention on Transnational Organized Crime (2000 UNTOC)**

*Adopted in New York, USA on 15 November 2000.*

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

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

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

For the purposes of this Convention:

- (a) "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
- (c) "Structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;
- (d) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
- (e) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
- (f) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
- (g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
- (h) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;
- (i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- (j) "Regional economic integration organization" shall mean an organization

constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence.

### Article 3. Scope of application

1. This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of:
  - (a) The offences established in accordance with articles 5, 6, 8 and 23 of this Convention; and
  - (b) Serious crime as defined in article 2 of this Convention;

where the offence is transnational in nature and involves an organized criminal group.

2. For the purpose of paragraph 1 of this article, an offence is transnational in nature if:
  - (a) It is committed in more than one State;
  - (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
  - (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

- (d) It is committed in one State but has substantial effects in another State.

### Article 4. Protection of sovereignty

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

### Article 5. Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
    - (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertak-

en by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of

the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

#### **Article 6. Criminalization of the laundering of proceeds of crime**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such

property is the proceeds of crime;

- (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
- (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups;
- (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is

committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

- (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;
- (e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;
- (f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

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

1. Each State Party:

- (a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

- (b) Shall, without prejudice to articles 18 and 27 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.
2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.
  3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional

and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

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

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party

shall consider establishing as criminal offences other forms of corruption.

3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this article.
4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function.

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

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

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

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

#### **Article 11. Prosecution, adjudication and sanctions**

1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.
2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effective-

ness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with articles 5, 6, 8 and 23 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.
4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.
5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.
6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and

that such offences shall be prosecuted and punished in accordance with that law.

#### **Article 12. Confiscation and seizure**

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:
  - (a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;
  - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.
2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.
3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.
7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

### **Article 13. International cooperation for purposes of confiscation**

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
  - (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
  - (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.
2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of

eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 18 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 18, paragraph 15, requests made pursuant to this article shall contain:
  - (a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
  - (b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
  - (c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.
4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law

and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.
8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

#### **Article 14. Disposal of confiscated proceeds of crime or property**

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 12 or 13, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its

domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with articles 12 and 13 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
  - (a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 30, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against organized crime;
  - (b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

## Article 15. Jurisdiction

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

offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

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

## Article 16. Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.
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.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. States Parties that make extradition conditional on the existence of a treaty shall:

- (a) At the time of deposit of 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
- (b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
9. Subject to the provisions of its domestic law and its extradition treaties,
- the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree

with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

#### **Article 17. Transfer of sentenced persons**

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

#### **Article 18. Mutual legal assistance**

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1

- (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.
2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 10 of this Convention in the requesting State Party.
  3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
    - (a) Taking evidence or statements from persons;
    - (b) Effecting service of judicial documents;
    - (c) Executing searches and seizures, and freezing;
    - (d) Examining objects and sites;
    - (e) Providing information, evidentiary items and expert evaluations;
    - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
    - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
    - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
    - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.
  4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.
  5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case,

advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.
8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.
10. A person who is being detained or is serving a sentence in the territory of

one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;
  - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.
- II. For the purposes of paragraph 10 of this article:
- (a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
  - (b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
  - (c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.
12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.
13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.
14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.
15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
  - (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
  - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
  - (e) Where possible, the identity, location and nationality of any person concerned; and
  - (f) The purpose for which the evidence, information or action is sought.
16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.
17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.
18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.
19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.
20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the

requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, order public or other essential interests;
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

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

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

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are

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

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

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

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory

of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.
29. The requested State Party:
  - (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
  - (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under

its domestic law are not available to the general public.

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

#### **Article 19. Joint investigations**

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

#### **Article 20. Special investigative techniques**

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

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

#### **Article 21. Transfer of criminal proceedings**

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in

particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

#### **Article 22. Establishment of criminal record**

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

#### **Article 23. Criminalization of obstruction of justice**

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

### Article 24. Protection of witnesses

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.
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:
  - (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;
  - (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.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

### Article 25. Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
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.

### Article 26. Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:
  - (a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:
    - (i) The identity, nature, composition, structure, location or activities of organized criminal groups;

- (ii) Links, including international links, with other organized criminal groups;
  - (iii) Offences that organized criminal groups have committed or may commit;
- (b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
  3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.
  4. Protection of such persons shall be as provided for in article 24 of this Convention.
  5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment

set forth in paragraphs 2 and 3 of this article.

#### **Article 27. Law enforcement cooperation**

- I. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:
  - (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
  - (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:
    - (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
    - (ii) The movement of proceeds of crime or property derived from the commission of such offences;
    - (iii) The movement of property, equipment or other instrumentalities used or intended

for use in the commission of such offences;

- (c) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;
- (d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
- (e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;
- (f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned,

the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.

**Article 28. Collection, exchange and analysis of information on the nature of organized crime**

1. Each State Party shall consider analysing, in consultation with the scientific and academic communities, trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved.
2. States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.
3. Each State Party shall consider monitoring its policies and actual measures to combat organized crime and making

assessments of their effectiveness and efficiency.

#### Article 29. Training and technical assistance

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. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:
  - (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
  - (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
  - (c) Monitoring of the movement of contraband;
  - (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money laundering and other financial crimes;
  - (e) Collection of evidence;
  - (f) Control techniques in free trade zones and free ports;
  - (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
  - (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
  - (i) Methods used in the protection of victims and witnesses.
2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.
4. In the case of existing bilateral and multilateral agreements or arrange-

ments, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

**Article 30. Other measures: implementation of the Convention through economic development and technical assistance**

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of organized crime on society in general, in particular on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
  - (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat transnational organized crime;
  - (b) To enhance financial and material assistance to support the efforts of developing countries to fight transnational organized crime effectively and to help them implement this Convention successfully;
  - (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;
  - (d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.
3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.
4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation.

tion provided for by this Convention to be effective and for the prevention, detection and control of transnational organized crime.

### Article 31. Prevention

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.
2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:
  - (a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
  - (b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
  - (c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;
  - (d) The prevention of the misuse of legal persons by organized criminal groups; such measures could include:
    - (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
    - (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;
    - (iii) The establishment of national records of persons disqualified from acting as directors of legal persons; and
    - (iv) The exchange of information contained in the records referred to in subparagraphs (d) (i) and (iii) of this paragraph with the competent authorities of other States Parties.
3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.
4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.
  6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent transnational organized crime.
  7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of transnational organized crime, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.
2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).
  3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:
    - (a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;
    - (b) Facilitating the exchange of information among States Parties on patterns and trends in transnational organized crime and on successful practices for combating it;
    - (c) Cooperating with relevant international and regional organizations and non-governmental organizations;
    - (d) Reviewing periodically the implementation of this Convention;
    - (e) Making recommendations to improve this Convention and its implementation.
  4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures

#### **Article 32. Conference of the Parties to the Convention**

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.

taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

### **Article 33. Secretariat**

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.
2. The secretariat shall:
  - (a) Assist the Conference of the Parties in carrying out the activities set forth in article 32 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
  - (b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 32, paragraph 5, of this Convention; and
  - (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

### **Article 34. Implementation of the Convention**

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. The offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.
3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

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

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are

unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

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

**Article 36. Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instru-

ments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

**Article 37. Relation with protocols**

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

#### Article 38. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

#### Article 39. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the

Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by

the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

#### **Article 40. Denunciation**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.
3. Denunciation of this Convention in accordance with paragraph 1 of this

article shall entail the denunciation of any protocols thereto.

#### **Article 41. Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

## **F. 2005 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (2005 SUA)**

*Adopted in London, UK on 14 October 2005.*

(Consolidated text of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2005 Protocol to the Convention)

### **Preamble to 2005 Protocol**

THE STATES PARTIES to this Protocol,  
BEING PARTIES to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988,

ACKNOWLEDGING that terrorist acts threaten international peace and security,

MINDFUL of resolution A.924(22) of the Assembly of the International Maritime Organization requesting the revision of existing international legal and technical measures and the consideration of new measures in order to prevent and suppress terrorism against ships and to improve security aboard and ashore, and thereby to reduce the risk to passengers, crews and port personnel on board ships and in port areas and to vessels and their cargoes,

CONSCIOUS of the Declaration on Measures to Eliminate International Terrorism, annexed to United Nations General Assembly resolution 49/60 of 9 December 1994, in which, inter alia, the States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those

which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States,

NOTING United Nations General Assembly resolution 51/210 of 17 December 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed thereto,

RECALLING resolutions 1368 (2001) and 1373 (2001) of the United Nations Security Council, which reflect international will to combat terrorism in all its forms and manifestations, and which assigned tasks and responsibilities to States, and taking into account the continued threat from terrorist attacks,

RECALLING ALSO resolution 1540 (2004) of the United Nations Security Council, which recognizes the urgent need for all States to take additional effective measures to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery,

RECALLING FURTHER the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the

General Assembly of the United Nations on 14 December 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; the Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979 and amendments thereto adopted on 8 July 2005; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism adopted by the General Assembly of the United Nations on 13 April 2005,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea done at Montego Bay, on 10 December 1982, and of the customary international law of the sea,

CONSIDERING resolution 59/46 of the United Nations General Assembly, which

reaffirmed that international co-operation as well as actions by States to combat terrorism should be conducted in conformity with the principles of the Charter of the United Nations, international law and relevant international conventions, and resolution 59/24 of the United Nations General Assembly, which urged States to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its Protocol, invited States to participate in the review of those instruments by the Legal Committee of the International Maritime Organization to strengthen the means of combating such unlawful acts, including terrorist acts, and also urged States to take appropriate measures to ensure the effective implementation of those instruments, in particular through the adoption of legislation, where appropriate, aimed at ensuring that there is a proper framework for responses to incidents of armed robbery and terrorist acts at sea,

CONSIDERING ALSO the importance of the amendments to the International Convention for the Safety of Life at Sea, 1974, and of the International Ship and Port Facility Security (ISPS) Code, both adopted by the 2002 Conference of Contracting Governments to that Convention, in establishing an appropriate international technical framework involving co-operation between Governments, Government agencies, national and local administrations and the shipping and port industries to detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade,

CONSIDERING FURTHER resolution 58/187 of the United Nations General Assembly, which reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law,

BELIEVING that it is necessary to adopt provisions supplementary to those of the Convention, to suppress additional terrorist acts of violence against the safety and security of international maritime navigation and to improve its effectiveness,

HAVE AGREED as follows:

#### Article 1

For the purposes of this Protocol:

- (a) “ship” means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles, or any other floating craft.
- (b) “transport” means to initiate, arrange or exercise effective control, including decision-making authority, over the movement of a person or item.
- (c) “serious injury or damage” means:
  - (i) serious bodily injury; or
  - (ii) extensive destruction of a place of public use, State or government facility, infrastructure facility, or public transportation system, resulting in major economic loss; or
- (iii) substantial damage to the environment, including air, soil, water, fauna, or flora.
- (d) “BCN weapon” means:
  - (i) “biological weapons”, which are:
    - (1) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
    - (2) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.
  - (ii) “chemical weapons”, which are, together or separately:
    - (1) toxic chemicals and their precursors, except where intended for:
      - (A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
      - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
      - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of

chemicals as a method of warfare; or

- (D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;
- (2) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (ii)(1), which would be released as a result of the employment of such munitions and devices;
- (3) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii) (2).
- (iii) nuclear weapons and other nuclear explosive devices.
- (e) “toxic chemical” means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.
- (f) “precursor” means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key

component of a binary or multicomponent chemical system.

- (g) “Organization” means the International Maritime Organization (IMO).
- (h) “Secretary-General” means the Secretary-General of the Organization.
- 2. For the purposes of this Convention:
  - (a) the terms “place of public use”, “State or government facility”, “infrastructure facility”, and “public transportation system” have the same meaning as given to those terms in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997; and
  - (b) the terms “source material” and “special fissionable material” have the same meaning as given to those terms in the Statute of the International Atomic Energy Agency (IAEA), done at New York on 26 October 1956.

## Article 2

### 1. This Convention does not apply to:

- (a) a warship; or
- (b) a ship owned or operated by a State when being used as a naval auxiliary or for customs or police purposes; or
- (c) a ship which has been withdrawn from navigation or laid up.

### 2. Nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes

**Article 2bis**

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international human rights, refugee and humanitarian law.
2. This Convention does not apply to the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law.
3. Nothing in this Convention shall affect the rights, obligations and responsibilities under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London and Moscow on 1 July 1968, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, done at Washington, London and Moscow on 10 April 1972, or the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on 13 January 1993, of States Parties to such treaties.

**Article 3**

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
  - (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or
  - (b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or
  - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or
  - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or
  - (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or
  - (f) communicates information which that person knows to be false, thereby endangering the safe navigation of a ship.
2. Any person also commits an offence if that person threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit

any of the offences set forth in paragraphs I (b), (c), and (e), if that threat is likely to endanger the safe navigation of the ship in question.

**Article 3bis**

- I. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally:
  - (a) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act:
    - (i) uses against or on a ship or discharges from a ship any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage; or
    - (ii) discharges, from a ship, oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by subparagraph (a)(i), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or
    - (iii) uses a ship in a manner that causes death or serious injury or damage; or
    - (iv) threatens, with or without a condition, as is provided for under national law, to commit an offence set forth in subparagraph (a)(i), (ii) or (iii); or
  - (b) transports on board a ship:
    - (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, with or without a condition, as is provided for under national law, death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organization to do or to abstain from doing any act; or
    - (ii) any BCN weapon, knowing it to be a BCN weapon as defined in article I; or
    - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
    - (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose.
2. It shall not be an offence within the meaning of this Convention to trans-

port an item or material covered by paragraph 1(b)(iii) or, insofar as it relates to a nuclear weapon or other nuclear explosive device, paragraph 1(b)(iv), if such item or material is transported to or from the territory of, or is otherwise transported under the control of, a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons where:

- (a) the resulting transfer or receipt, including internal to a State, of the item or material is not contrary to such State Party's obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and,
- (b) if the item or material is intended for the delivery system of a nuclear weapon or other nuclear explosive device of a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, the holding of such weapon or device is not contrary to that State Party's obligations under that Treaty.

#### **Article 3ter**

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in article 3, 3bis or 3quater or an offence set forth in any treaty listed in the Annex, and intending to assist that person to evade criminal prosecution.

#### **Article 3quater**

Any person also commits an offence within the meaning of this Convention if that person:

- (a) unlawfully and intentionally injures or kills any person in connection with the commission of any of the offences set forth in article 3, paragraph 1, article 3bis, or article 3ter; or
- (b) attempts to commit an offence set forth in article 3, paragraph 1, article 3bis, paragraph 1(a)(i), (ii) or (iii), or subparagraph (a) of this article; or
- (c) participates as an accomplice in an offence set forth in article 3, article 3bis, article 3ter, or subparagraph (a) or (b) of this article; or
- (d) organizes or directs others to commit an offence set forth in article 3, article 3bis, article 3ter, or subparagraph (a) or (b) of this article; or
- (e) contributes to the commission of one or more offences set forth in article 3, article 3bis, article 3ter or subparagraph (a) or (b) of this article, by a group of persons acting with a common purpose, intentionally and either:
  - (i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence set forth in article 3, 3bis or 3ter; or
  - (ii) in the knowledge of the intention of the group to commit an offence set forth in article 3, 3bis or 3ter.

**Article 4**

1. This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.
2. In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.

**Article 5**

Each State Party shall make the offences set forth in articles 3, *3bis*, *3ter* and *3quater* punishable by appropriate penalties which take into account the grave nature of those offences.

**Article 5bis**

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for management or control of that legal entity has, in that capacity, committed an offence set forth in this Convention. Such liability may be criminal, civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure, in particular, that legal entities liable in ac-

cordance with paragraph 1 are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

**Article 6**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, *3bis*, *3ter* and *3quater* when the offence is committed:
  - (a) against or on board a ship flying the flag of the State at the time the offence is committed; or
  - (b) in the territory of that State, including its territorial sea; or
  - (c) by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
  - (a) it is committed by a stateless person whose habitual residence is in that State; or
  - (b) during its commission a national of that State is seized, threatened, injured or killed; or
  - (c) it is committed in an attempt to compel that State to do or abstain from doing any act.
3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* in cases where the alleged offender is present in its territory and it does not extradite the alleged offender to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article.
5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

#### Article 7

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the offender or the alleged offender is present shall, in accordance with its law, 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.
2. Such State shall immediately make a preliminary inquiry into the facts, in accordance with its own legislation.
3. Any person regarding whom the measures referred to in paragraph 1 are being taken shall be entitled to:
  - (a) 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;
  - (b) be visited by a representative of that State.
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 the alleged offender is present, subject to the proviso 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.
5. When a State Party, pursuant to this article, has taken a person into custody, it shall immediately notify the States which have established jurisdiction in accordance with article 6, paragraph 1 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 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.

#### Article 8

1. The master of a ship of a State Party (the "flag State") may deliver to the authorities of any other State Party (the "receiving State") any person who the master has reasonable grounds to believe has committed an offence set forth in article 3, 3*bis*, 3*ter*, or 3*quater*.
2. The flag State shall ensure that the master of its ship is obliged, whenever practicable, and if possible before

entering the territorial sea of the receiving State carrying on board any person whom the master intends to deliver in accordance with paragraph 1, to give notification to the authorities of the receiving State of his intention to deliver such person and the reasons therefor.

3. The receiving State shall accept the delivery, except where it has grounds to consider that the Convention is not applicable to the acts giving rise to the delivery, and shall proceed in accordance with the provisions of article 7. Any refusal to accept a delivery shall be accompanied by a statement of the reasons for refusal.
4. The flag State shall ensure that the master of its ship is obliged to furnish the authorities of the receiving State with the evidence in the master's possession which pertains to the alleged offence.
5. A receiving State which has accepted the delivery of a person in accordance with paragraph 3 may, in turn, request the flag State to accept delivery of that person. The flag State shall consider any such request, and if it accedes to the request it shall proceed in accordance with article 7. If the flag State declines a request, it shall furnish the receiving State with a statement of the reasons therefor.

#### Article 8bis

1. States Parties shall co-operate to the fullest extent possible to prevent and suppress unlawful acts covered by this Convention, in conformity with international law, and shall respond to requests pursuant to this article as expeditiously as possible.
2. Each request pursuant to this article should, if possible, contain the name of the suspect ship, the IMO ship identification number, the port of registry, the ports of origin and destination, and any other relevant information. If a request is conveyed orally, the requesting Party shall confirm the request in writing as soon as possible. The requested Party shall acknowledge its receipt of any written or oral request immediately.
3. States Parties shall take into account the dangers and difficulties involved in boarding a ship at sea and searching its cargo, and give consideration to whether other appropriate measures agreed between the States concerned could be more safely taken in the next port of call or elsewhere.
4. A State Party that has reasonable grounds to suspect that an offence set forth in article 3, 3bis, 3ter or 3quater has been, is being or is about to be committed involving a ship flying its flag, may request the assistance of other States Parties in preventing or suppressing that offence. The States Parties so requested shall use their best endeavours to render such assistance within the means available to them.
5. Whenever law enforcement or other authorized officials of a State Party ("the requesting Party") encounter a

ship flying the flag or displaying marks of registry of another State Party (“the first Party”) located seaward of any State’s territorial sea, and the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship has been, is or is about to be involved in the commission of an offence set forth in article 3, *3bis*, *3ter* or *3quater*, and the requesting Party desires to board,

- (a) it shall request, in accordance with paragraphs 1 and 2 that the first Party confirm the claim of nationality, and
- (b) if nationality is confirmed, the requesting Party shall ask the first Party (hereinafter referred to as “the flag State”) for authorization to board and to take appropriate measures with regard to that ship which may include stopping, boarding and searching the ship, its cargo and persons on board, and questioning the persons on board in order to determine if an offence set forth in article 3, *3bis*, *3ter* or *3quater* has been, is being or is about to be committed, and
- (c) the flag State shall either:
  - (i) authorize the requesting Party to board and to take appropriate measures set out in subparagraph (b), subject to any conditions it may impose in accordance with paragraph 7; or
  - (ii) conduct the boarding and search with its own law en-

forcement or other officials; or

- (iii) conduct the boarding and search together with the requesting Party, subject to any conditions it may impose in accordance with paragraph 7; or
- (iv) decline to authorize a boarding and search.

The requesting Party shall not board the ship or take measures set out in subparagraph (b) without the express authorization of the flag State.

- (d) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secretary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is granted authorization to board and search the ship, its cargo and persons on board, and to question the persons on board in order to locate and examine documentation of its nationality and determine if an offence set forth in article 3, *3bis*, *3ter* or *3quater* has been, is being or is about to be committed, if there is no response from the first Party within four hours of acknowledgement of receipt of a request to confirm nationality.
- (e) Upon or after depositing its instrument of ratification, acceptance, approval or accession, a State Party may notify the Secre-

tary-General that, with respect to ships flying its flag or displaying its mark of registry, the requesting Party is authorized to board and search a ship, its cargo and persons on board, and to question the persons on board in order to determine if an offence set forth in article 3, 3bis, 3ter or 3quater has been, is being or is about to be committed.

The notifications made pursuant to this paragraph can be withdrawn at any time.

6. When evidence of conduct described in article 3, 3bis, 3ter or 3quater is found as the result of any boarding conducted pursuant to this article, the flag State may authorize the requesting Party to detain the ship, cargo and persons on board pending receipt of disposition instructions from the flag State. The requesting Party shall promptly inform the flag State of the results of a boarding, search, and detention conducted pursuant to this article. The requesting Party shall also promptly inform the flag State of the discovery of evidence of illegal conduct that is not subject to this Convention.
7. The flag State, consistent with the other provisions of this Convention, may subject its authorization under paragraph 5 or 6 to conditions, including obtaining additional information from the requesting Party, and conditions relating to responsibility for and the extent of measures to be taken. No additional measures may be taken without the express authorization of the flag State, except when necessary to relieve imminent danger to the lives of persons or where those measures derive from relevant bilateral or multi-lateral agreements.
8. For all boardings pursuant to this article, the flag State has the right to exercise jurisdiction over a detained ship, cargo or other items and persons on board, including seizure, forfeiture, arrest and prosecution. However, the flag State may, subject to its constitution and laws, consent to the exercise of jurisdiction by another State having jurisdiction under article 6.
9. When carrying out the authorized actions under this article, the use of force shall be avoided except when necessary to ensure the safety of its officials and persons on board, or where the officials are obstructed in the execution of the authorized actions. Any use of force pursuant to this article shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.
10. Safeguards:
  - (a) Where a State Party takes measures against a ship in accordance with this article, it shall:
    - (i) take due account of the need not to endanger the safety of life at sea;
    - (ii) ensure that all persons on board are treated in a manner which preserves their basic human dignity, and in compliance with the applicable provisions of international law,

- including international human rights law;
- (iii) ensure that a boarding and search pursuant to this article shall be conducted in accordance with applicable international law;
  - (iv) take due account of the safety and security of the ship and its cargo;
  - (v) take due account of the need not to prejudice the commercial or legal interests of the flag State;
  - (vi) ensure, within available means, that any measure taken with regard to the ship or its cargo is environmentally sound under the circumstances;
  - (vii) ensure that persons on board against whom proceedings may be commenced in connection with any of the offences set forth in article 3, 3*bis*, 3*ter* or 3*quater* are afforded the protections of paragraph 2 of article 10, regardless of location;
  - (viii) ensure that the master of a ship is advised of its intention to board, and is, or has been, afforded the opportunity to contact the ship's owner and the flag State at the earliest opportunity; and
  - (ix) take reasonable efforts to avoid a ship being unduly detained or delayed.

- (b) Provided that authorization to board by a flag State shall not *per se* give rise to its liability, States Parties shall be liable for any damage, harm or loss attributable to them arising from measures taken pursuant to this article when:
  - (i) the grounds for such measures prove to be unfounded, provided that the ship has not committed any act justifying the measures taken; or
  - (ii) such measures are unlawful or exceed those reasonably required in light of available information to implement the provisions of this article.

States Parties shall provide effective recourse in respect of such damage, harm or loss.

- (c) Where a State Party takes measures against a ship in accordance with this Convention, it shall take due account of the need not to interfere with or to affect:
  - (i) the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
  - (ii) the authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the ship.
- (d) Any measure taken pursuant to this article shall be carried out by law enforcement or other authorized officials from warships or

military aircraft, or from other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect and, notwithstanding articles 2 and 2bis, the provisions of this article shall apply.

- (e) For the purposes of this article “law enforcement or other authorized officials” means uniformed or otherwise clearly identifiable members of law enforcement or other government authorities duly authorized by their government. For the specific purpose of law enforcement under this Convention, law enforcement or other authorized officials shall provide appropriate government-issued identification documents for examination by the master of the ship upon boarding.
11. This article does not apply to or limit boarding of ships conducted by any State Party in accordance with international law, seaward of any State’s territorial sea, including boardings based upon the right of visit, the rendering of assistance to persons, ships and property in distress or peril, or an authorization from the flag State to take law enforcement or other action.
12. States Parties are encouraged to develop standard operating procedures for joint operations pursuant to this article and consult, as appropriate, with other States Parties with a view to harmonizing such standard operating procedures for the conduct of operations.

13. States Parties may conclude agreements or arrangements between them to facilitate law enforcement operations carried out in accordance with this article.
14. Each State Party shall take appropriate measures to ensure that its law enforcement or other authorized officials, and law enforcement or other authorized officials of other States Parties acting on its behalf, are empowered to act pursuant to this article.
15. Upon or after depositing its instrument of ratification, acceptance, approval or accession, each State Party shall designate the authority, or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of nationality, and for authorization to take appropriate measures. Such designation, including contact information, shall be notified to the Secretary-General within one month of becoming a Party, who shall inform all other States Parties within one month of the designation. Each State Party is responsible for providing prompt notice through the Secretary-General of any changes in the designation or contact information.

#### Article 9

Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.

### Article 10

1. The State Party in the territory of which the offender or the alleged offender is found shall, in cases to which article 6 applies, 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 without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. 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.
2. Any person who is taken into custody, or regarding whom any other measures are taken or proceedings are being 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.

### Article 11

1. The offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

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 Party may, at its option, consider this Convention as a legal basis for extradition in respect of the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater*. Extradition shall be subject to the other conditions provided by the law of the requested State Party.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* as extraditable offences between themselves, subject to the conditions provided by the law of the requested State Party.
4. If necessary, the offences set forth in articles 3, 3*bis*, 3*ter* and 3*quater* 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 a place within the jurisdiction of the State Party requesting extradition.
5. A State Party which receives more than one request for extradition from States which have established jurisdiction in accordance with article 6 and which decides not to prosecute shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at

the time of the commission of the offence.

6. In considering a request for the extradition of an alleged offender pursuant to this Convention, the requested State shall pay due regard to whether his rights as set forth in article 7, paragraph 3, can be effected in the requesting State.
7. 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.

#### **Article 11bis**

None of the offences set forth in article 3, 3bis, 3ter or 3quater 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 11ter**

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

3, 3bis, 3ter or 3quater 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, political opinion or gender, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

#### **Article 12**

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in articles 3, 3bis, 3ter and 3quater, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them. In the absence of such treaties, States Parties shall afford each other assistance in accordance with their national law.

#### **Article 12bis**

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 3, 3bis, 3ter or 3quater may be transferred if the following conditions are met:

- (a) the person freely gives informed consent; and
  - (b) the competent authorities of both States agree, subject to such conditions as those States may deem appropriate.
2. For the purposes of this 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 the person was transferred for time spent in the custody of the State to which the person was transferred.
3. Unless the State Party from which a person is to be transferred in accordance with this article so agrees,

that person, whatever that person's nationality, shall not be prosecuted or detained or subjected to any other restriction of personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to that person's departure from the territory of the State from which such person was transferred.

### Article 13

- 1. States Parties shall co-operate in the prevention of the offences set forth in articles 3, *3bis*, *3ter* and *3quater*, particularly by:
  - (a) taking all practicable measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;
  - (b) exchanging information in accordance with their national law, and co-ordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in articles 3, *3bis*, *3ter* and *3quater*.
- 2. When, due to the commission of an offence set forth in article 3, *3bis*, *3ter* or *3quater*, the passage of a ship has been delayed or interrupted, any State Party in whose territory the ship or passengers or crew are present shall be bound to exercise all possible efforts to avoid a ship, its passengers, crew or cargo being unduly detained or delayed.

**Article 14**

Any State Party having reason to believe that an offence set forth in article 3, 3*bis*, 3*ter* or 3*quater* will be committed shall, in accordance with its national law, furnish as promptly as possible any relevant information in its possession to those States which it believes would be the States having established jurisdiction in accordance with article 6.

**Article 15**

1. Each State Party shall, in accordance with its national law, provide to the Secretary-General, as promptly as possible, any relevant information in its possession concerning:
  - (a) the circumstances of the offence;
  - (b) the action taken pursuant to article 13, paragraph 2;
  - (c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.
2. The State Party where the alleged offender is prosecuted shall, in accordance with its national law, communicate the final outcome of the proceedings to the Secretary-General.
3. The information transmitted in accordance with paragraphs 1 and 2 shall be communicated by the Secretary-General to all States Parties, to Members of the Organization, to other States concerned, and to the appropriate international intergovernmental organizations.

**Article 16**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by any or all of the provisions of paragraph 1. The other States Parties shall not be bound by those provisions with respect to any State Party which has made such a reservation.
3. Any State which has made a reservation in accordance with paragraph 2 may, at any time, withdraw that reservation by notification to the Secretary-General.

**Article 16bis. Final clauses of the Convention**

The final clauses of this Convention shall be articles 17 to 24 of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.

### **Article 17. Signature, ratification, acceptance, approval and accession**

1. This Protocol shall be open for signature at the Headquarters of the Organization from 14 February 2006 to 13 February 2007 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Protocol by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.
4. Only a State which has signed the Convention without reservation as to ratification, acceptance or approval, or has ratified, accepted, approved or acceded to the Convention may become a Party to this Protocol.

### **Article 18. Entry into force**

1. This Protocol shall enter into force ninety days following the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval, or have deposited an instrument of ratification, acceptance, approval or accession with the Secretary-General.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the conditions in paragraph 1 for entry into force thereof have been met, the ratification, acceptance, approval or accession shall take effect ninety days after the date of such deposit.

### **Article 19. Denunciation**

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol enters into force for that State.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit of the instrument with the Secretary-General.

### **Article 20. Revision and amendment**

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.
2. The Secretary-General shall convene a conference of States Parties to this Protocol for revising or amending the Protocol, at the request of one third of the States Parties, or ten States Parties, whichever is the higher figure.
3. Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to this Protocol shall be

deemed to apply to the Protocol as amended.

### Article 21. Declarations

1. Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the Annex may declare that, in the application of this Protocol to the State Party, the treaty shall be deemed not to be included in article 3ter. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the Secretary-General of this fact.
2. When a State Party ceases to be a party to a treaty listed in the Annex, it may make a declaration as provided for in this article, with respect to that treaty.
3. Upon depositing its instrument of ratification, acceptance, approval or accession, a State Party may declare that it will apply the provisions of article 3ter in accordance with the principles of its criminal law concerning family exemptions of liability.

### Article 22. Amendments to the Annex

1. The Annex may be amended by the addition of relevant treaties that:
  - (a) are open to the participation of all States;
  - (b) have entered into force; and
  - (c) have been ratified, accepted, approved or acceded to by at

least twelve States Parties to this Protocol.

2. After the entry into force of this Protocol, any State Party thereto may propose such an amendment to the Annex. Any proposal for an amendment shall be communicated to the Secretary-General in written form. The Secretary-General shall circulate any proposed amendment that meets the requirements of paragraph 1 to all members of the Organization and seek from States Parties to this Protocol their consent to the adoption of the proposed amendment.
3. The proposed amendment to the Annex shall be deemed adopted after more than twelve of the States Parties to this Protocol consent to it by written notification to the Secretary-General.
4. The adopted amendment to the Annex shall enter into force thirty days after the deposit with the Secretary-General of the twelfth instrument of ratification, acceptance or approval of such amendment for those States Parties to this Protocol that have deposited such an instrument. For each State Party to this Protocol ratifying, accepting or approving the amendment after the deposit of the twelfth instrument with the Secretary-General, the amendment shall enter into force on the thirtieth day after deposit by such State Party of its instrument of ratification, acceptance or approval.

**Article 23. Depository**

1. This Protocol and any amendments adopted under articles 20 and 22 shall be deposited with the Secretary-General.
2. The Secretary-General shall:
  - (a) inform all States which have signed this Protocol or acceded to this Protocol of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;
    - (ii) the date of the entry into force of this Protocol;
    - (iii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect;
    - (iv) any communication called for by any article of this Protocol;
    - (v) any proposal to amend the Annex which has been made in accordance with article 22, paragraph 2;
    - (vi) any amendment deemed to have been adopted in accordance with article 22, paragraph 3;
    - (vii) any amendment ratified, accepted or approved in accordance with article 22, paragraph 4, together with the date on which that amendment shall enter into force; and

(b) transmit certified true copies of this Protocol to all States which have signed or acceded to this Protocol.

3. As soon as this Protocol enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

**Article 24. Languages**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this fourteenth day of October two thousand and five.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

**ANNEX**

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the

- General Assembly of the United Nations on 14 December 1973.
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
  5. Convention on the Physical Protection of Nuclear Material, done at Vienna on 26 October 1979.
  6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
  7. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
  8. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
  9. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

## 2. Regional Documents

### 2.1 AGREEMENTS

#### A. 2002 Agreement on Information Exchange and Establishment of Communication Procedures

*Adopted in Putrajaya, Malaysia on 7 May 2002.*

The Governments of the Republic of the Philippines, the Republic of Indonesia, and Malaysia, hereinafter referred to singularly as “the Party” and collectively as “the Parties”;

RECOGNIZING the value of enhancing the existing bilateral defense, border and security cooperation arrangements between them;

DESIRING to promote further cooperation in and to introduce a system to facilitate the exchange of information and intelligence and establish communication procedures among them;

REALIZING the need to establish a framework to facilitate cooperation and interoperability among themselves to address border and security incidents, transnational crimes, and other illegal activities occurring within their territories;

Have agreed as follows:

##### Article I. Objective

This Agreement shall provide the framework for cooperation in the exchange of information and the establishment of communication procedures.

##### Article II. Scope and Forms of Cooperation

I. The scope of cooperation among the Parties in the exchange of information and the establishment of communica-

tion procedures shall be in relation to the areas enumerated in Article III of this Agreement.

2. Consistent with the laws, regulations and procedures in force in their respective territories, the Parties agree that the areas of cooperation enumerated in Article III of this Agreement may be carried out in the following forms:
  - (i) facilitating proper coordination and collaboration during border and/or security incidents, transnational crimes and other illegal activities where individual resources of a Party may be inadequate;
  - (ii) establishing common understanding and approaches in managing the multiple and complex issues arising from transnational crimes;
  - (iii) strengthening national and sub-regional capacities to manage border and/or security incidents and transnational crimes through information exchanges, agreed communication procedures and training;
  - (iv) reviewing and enhancing internal rules and regulations, both legal and administrative, to ensure proper, effective, and timely collaboration and responses to border and/or security incidents and in times of operational constraints

- in the implementation of defense, border and security arrangements;
- (v) providing opportunities for the Parties' duly authorized representatives to establish linkages to facilitate cooperation;
  - (vi) facilitating dialogue among the Parties on criminal and crime-related activities committed within their respective territories which may adversely affect the interests of any or all of the other Parties; and
  - (vii) establishing mechanisms for immediate response and assistance among the Parties.

### Article III. Areas of Cooperation

The Parties undertake to cooperate among themselves in preventing the utilization by anyone of their land-air-sea territories for the purpose of committing or furthering any or all of the following activities:

- (i) **Terrorism**, which in this Agreement is understood to mean any act of violence or threat thereof perpetrated to carry out within the respective territories of the Parties or in the border area of any of the Parties an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperiling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of Independent States.
- (ii) **Money Laundering**, which in this Agreement is understood to mean any act of a person who -
  - (a) engages directly or indirectly in a transaction that involves the proceeds of any unlawful activity;
  - (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into the territory of any of the Parties proceeds of any unlawful activity; or
  - (c) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;
- (iii) **Smuggling**, which in this Agreement is understood to mean -
  - (a) in relation to goods, the act of bringing into or taking out of the border area of any of the Parties' goods, including arms and explosives, contrary to the laws of the respective Parties;
  - (b) in relation to persons, the act of— smuggling of persons, that is, the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into the territory of a Party of which the person is not a national or a permanent resident;
  - (c) trafficking in persons, that is, the recruitment, transportation, transfer, harboring or receipt of

persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation (which includes, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.)

- (iv) **Piracy / Robbery at Sea**, which in this Agreement is understood to mean any unlawful act of violence, detention, intimidation or depredation committed for private ends by the crew or the passengers of a seaborne vessel and directed against another seaborne vessel or against persons or property on board such vessel or abetting any of the aforementioned acts including the seizing of or exercising of control over a seaborne vessel;
- (v) **Hijacking**, which in this Agreement is understood to mean any unlawful act of interference, seizing or exercising control of an aircraft, or attempting to perform any such act, by the use of force or by threats of any kind;
- (vi) **Intrusion**, which in this Agreement is understood to mean any unlawful clandestine attempt, activity and/or action to introduce unobtrusively any person or small groups of persons,

including insurgent elements, into the territory of any of the Parties in order to undermine the security or subvert the interest of that Party;

- (vii) **Illegal Entry**, which in this Agreement is understood to mean the act of entering or facilitating the entry of any person or group of persons into the territory of any of the Parties contrary to the immigration laws of that Party;
- (viii) **Drug Trafficking**, which in this Agreement is understood to include manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drugs without lawful authority;
- (ix) **Theft of Marine Resources**, which in this Agreement is understood to mean the unlawful extraction or removal, by whatever means, of marine resources, living or non-living on, under or above the seabed and subsoil of the continental shelf and exclusive economic zone of any of the Parties and the superjacent waters thereof;
- (x) **Marine Pollution**, which in this Agreement is understood to mean the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazard to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment

of quality for use of sea water and reduction of amenities; and

- (xi) **Illicit Trafficking in Arms**, which in this Agreement is understood to mean the import, export, acquisition, sale, delivery, movement or transfer of arms, their parts and components and ammunition from or across the territory of one Party to that of another Party if any one of the Parties concerned does not authorize it in accordance with the terms of its laws or if the arms are not marked in accordance with its laws.

#### Article IV. Participation and Organization

1. Each Party shall designate an organization to act as the communication cum liaison center within its respective territory for the purpose of the implementation of this Agreement.
2. The designated communication cum liaison center of each Party shall be staffed by representatives of the respective Parties' defense, security and/or police establishments, and may also include representatives from such other agencies of the Party as it considers fit.
3. The Parties shall designate a communications network to be used among the participating communication cum liaison centers and shall endeavor to maintain easy access to an open channel.
4. Communication procedures shall be established among the communication cum liaison centers of the Parties.

#### Article V. Administrative and Operational Requirements

1. The Parties shall designate a communications system to be used for the purposes of this Agreement, taking into consideration interoperability and security requirements.
2. Logistical arrangements for the exchange of information, the establishment of communication procedures and the maintenance of equipment used within the territory of each Party shall be the responsibility of the respective Parties.
3. The Parties undertake to use their best endeavors to expeditiously relay information about any activity that falls under the areas of cooperation enumerated in Article III to the relevant Party to enable appropriate action to be taken by that Party. The information shall be relayed by any convenient and expeditious means of communication available and shall be followed by a written report or summary.
4. A person arrested for an offense shall be dealt with in accordance with the laws of the arresting Party.
5. If a national of any of the Parties is arrested for an offense by an authorized law enforcement agency of another Party in the latter's territory, the designated communication cum liaison center, shall, subject to its national laws and security considerations, endeavor to inform its counterpart, as expeditiously as possible, of such arrest, giving the status and action taken thereon.

**Article VI. Establishment of a Joint Committee**

1. The Parties shall establish a Joint Committee, consisting of such members as the Parties may consider appropriate for the purpose of carrying out the obligations under this Agreement, in particular:
  - (i) to determine and set out the administrative and operational requirements of exchanging information and establishing communication procedures; and
  - (ii) to undertake implementable projects or activities as listed in Annex I of this Agreement.
2. The Joint Committee shall periodically submit reports to the Senior Officials, for their consideration and action.
3. The Joint Committee shall convene its inaugural meeting on a date and at a venue acceptable to all Parties, as may be determined through diplomatic channels.

**Article VII. Reservations**

Each Party reserves the right, for reasons of national security, public order or health -

- (i) to refuse to exchange any particular information or intelligence; and
- (ii) to suspend temporarily, either in whole or in part, the implementation of this Agreement which shall be effective thirty (30) days after written notification has been given to the other Parties through diplomatic channels.

**Article VIII. Expenses**

The expenses incurred in the implementation of this Agreement shall be borne by the respective Parties.

**Article IX. Disclosure of Information**

Each Party agrees to preserve the confidentiality and secrecy of documents, information, and other data received from the other Parties, including the source thereof, even after the termination of this Agreement.

**Article X. Settlement of Disputes**

Any difference or dispute arising from the implementation of the provisions of this Agreement shall be settled amicably through consultation or negotiation between the Parties concerned, through diplomatic channels, without reference to any third Party or international tribunal.

**Article XI. Entry into Force, Amendment and Termination**

1. This Agreement shall enter into force on the date of the last notification by the Parties, through diplomatic channels, indicating that they have complied with their domestic requirements for its entry into force.
2. Other ASEAN member countries may accede to this Agreement upon consensus by existing Parties. As regards any such Party, the agreement shall come into force at the date of its notification indicating that it has complied with its domestic requirements for its entry into force.

3. Any amendment to the provisions of this Agreement shall be effected by consent of all Parties, and shall enter into force in accordance with paragraph 1 of this Article. Any such amendment shall be without prejudice to the rights and obligations arising from or based on this Agreement prior or up to the date of such amendment.
4. This Agreement shall remain in force until it is terminated, with the written consent of all Parties through diplomatic channels. The termination of this Agreement shall be without prejudice to the rights and obligations arising from or based on this Agreement prior or up to the date of its termination.

This Agreement shall be drawn up in the English language in three (3) original copies, each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

### Annex 1

#### PROJECTS TO IMPLEMENT THE AGREEMENT ON INFORMATION EXCHANGE AND ESTABLISHMENT OF COMMUNICATION PROCEDURES

- 1) Establishing cooperation and Standard Operating Procedures on Search and Rescue;
- 2) Establishing of focal point in each country;
- 3) Setting up of hot lines;
- 4) Sharing of airline passenger lists, as appropriate;
- 5) Providing access to each other's computerized fingerprint databank, as appropriate;
- 6) Conducting consultations on visa waiver lists of third country nationals;
- 7) Sharing blacklists at visa-issuing offices;
- 8) Undertaking joint efforts to combat terrorism;
- 9) Conducting joint training and exercises on combating terrorism and other transnational crimes;
- 10) Strengthening border control through, among others, the establishment of designated entry and exit points and sealanes;
- 11) Increasing harmonization of legislation to combat terrorism and other transnational crimes;
- 12) Recommending/strengthening legislation to combat terrorism and other transnational crimes by, among others, the enhancement of penalties;
- 13) Recommending accession to and ratification of international conventions on terrorism and other transnational crimes;
- 14) Recommending institution and capacity-building and their harmonization against terrorism and other transnational crimes;
- 15) Undertaking joint public diplomacy to counter terrorists' propaganda;
- 16) Recommending the deployment of more law enforcement agents in their respective territories identified as entry and exit points for illegal activities;

- 17) Exchanging information regarding fake or forged documents;
- 18) Increasing public awareness on trafficking in persons by, among others, undertaking a study on this issue in the region; and
- 19) Recommending the creation of a built-in early warning system to counter trafficking in persons.

## **B. 2004 Treaty on Mutual Legal Assistance in Criminal Matters (2004 MLAT)**

*Adopted in Kuala Lumpur, Malaysia on 29 November 2004.*

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Socialist Republic of Vietnam (hereinafter referred to singularly as "the Party" and collectively as "the Parties"):

DESIRING to improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offences through cooperation and mutual legal assistance in criminal matters,

HAVE AGREED as follows:

### **Article 1. Scope of Assistance**

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.
2. Mutual assistance to be rendered in accordance with this Treaty may include:
  - (a) taking of evidence or obtaining voluntary statements from persons;
  - (b) making arrangements for persons to give evidence or to assist in criminal matters;
  - (c) effecting service of judicial documents;
  - (d) executing searches and seizures;
  - (e) examining objects and sites;
  - (f) providing original or certified copies of relevant documents, records and items of evidence;
  - (g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;
  - (h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;
  - (i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;
  - (j) locating and identifying witnesses and suspects; and
  - (k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.
3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

4. For the purposes of this Treaty, the expression “instrumentalities of crime” means property used in connection with the commission of an offence or the equivalent value of such property.

## Article 2. Non-Application

1. This Treaty does not apply to -
- (a) the arrest or detention of any person with a view to the extradition of that person;
  - (b) the enforcement in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
  - (c) the transfer of persons in custody to serve sentences; and
  - (d) the transfer of proceedings in criminal matters.
2. Nothing in this Treaty entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

## Article 3. Limitations on Assistance

1. The Requested Party shall refuse assistance if, in its opinion -
- (a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was com-

mitted, an offence of a political nature;

- (b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would have constituted a military offence under the laws of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party;
- (c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- (d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person -
  - (i) has been convicted, acquitted or pardoned by a competent court or other authority in the Requesting or Requested Party; or
  - (ii) has undergone the punishment provided by the law of that Requesting or Requested Party,
 

in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
- (e) the request relates to the investigation, prosecution or punishment of a person

- in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the laws of the Requested Party except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws;
- (f) the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;
  - (g) the Requesting Party fails to undertake that it will be able to comply with a future request of a similar nature by the Requested Party for assistance in a criminal matter;
  - (h) the Requesting Party fails to undertake that the item requested for will not be used for a matter other than the criminal matter in respect of which the request was made and the Requested Party has not consented to waive such undertaking;
  - (i) the Requesting Party fails to undertake to return to the Requested Party, upon its request, any item obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
  - (j) the provision of the assistance could prejudice a criminal matter in the Requested Party; or
  - (k) the provision of the assistance would require steps to be taken that would be contrary to the laws of the Requested Party.
2. The Requested Party may refuse assistance if, in its opinion –
    - (a) the Requesting Party has, in respect of that request, failed to comply with any material terms of this Treaty or other relevant arrangements;
    - (b) the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or
    - (c) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.
  3. For the purposes of subparagraph 1
    - (a), the following offences shall not be held to be offences of a political nature:
      - (a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;
      - (b) an offence against the life or person of a Head of a central Government, or of a Minister of a central Government;
      - (c) an offence within the scope of any international convention to which both the Requesting and Requested Parties are parties to and which imposes on the Parties thereto an obligation either to extradite or prosecute a person accused of the commission of that offence; and
      - (d) any attempt, abetment or conspiracy to commit any of the offences

referred to in subparagraphs (a) to (c).

4. The Requested Party may restrict the application of any of the provisions made under paragraph 3 according to whether the Requesting Party has made similar provision in its laws.
5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.
6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party.
7. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.
8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.
9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.
10. The Parties shall, subject to their respective domestic laws, reciprocate any assistance granted in respect of an equivalent offence irrespective of the applicable penalty.

#### **Article 4. Designation of Central Authorities**

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. The designation of the Central Authority shall be made at the time of the deposit of the instrument of ratification, acceptance, approval or accession to this Treaty.
3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.
4. The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

#### **Article 5. Form of Requests**

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within five days.
2. Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL) or the

Southeast Asian Police Organization (ASEANAPOL).

#### Article 6. Contents of Requests

1. A request for assistance in criminal matters shall contain such information as the Requested Party requires to execute the request, including –
    - (a) the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;
    - (b) the purpose of the request and the nature of the assistance sought;
    - (c) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;
    - (d) a description of the offence to which the request relates, including its maximum penalty;
    - (e) a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;
    - (f) a description of the essential acts or omissions or matters alleged or sought to be ascertained;
    - (g) a description of the evidence, information or other assistance sought;
    - (h) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
  2. Requests for assistance may also, to the extent necessary, contain the following information:
    - (i) specification of any time limit within which compliance with the request is desired;
    - (j) any special requirements for confidentiality and the reasons for it; and
    - (k) such other information or undertakings as may be required under the domestic laws of the Requested Party or which is otherwise necessary for the proper execution of the request.
- (a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;
  - (b) the identity and location of any person from whom evidence is sought;
  - (c) the identity and location of a person to be served, that person's relationship to the criminal proceedings and the manner in which service is to be made;
  - (d) information on the identity and whereabouts of a person to be located;
  - (e) a description of the manner in which any testimony or statement is to be taken and recorded;
  - (f) a list of questions to be asked of a witness;
  - (g) a description of the documents, records or items of evidence to be produced as well as a description

of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;

- (h) a statement as to whether sworn or affirmed evidence or statements are required;
  - (i) a description of the property, asset or article to which the request relates, including its identity and location; and
  - (j) any court order relating to the assistance requested and a statement relating to the finality of that order.
3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the English language and, if necessary, accompanied by a translation into the language of the Requested Party or another language acceptable to the Requested Party.
  4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

#### **Article 7. Execution of Requests**

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to its domes-

tic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.

2. The Requested Party shall, if requested to do so and subject to its domestic laws and practices, make all necessary arrangements for the representation of the Requesting Party in the Requested Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
3. The Requested Party shall respond as soon as possible to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.
4. The Requested Party may ask the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

#### **Article 8. Limitations on Use of Evidence Obtained**

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or disclose or transfer information or evidence provided by the Requested Party for purposes other than those stated in the request.

2. Notwithstanding paragraph 1, in cases where the charge is amended, the information or evidence provided may be used, with the prior consent of the Requested Party, in so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Treaty, and which is made out by the facts on which the request was made.

#### **Article 9. Protection of Confidentiality**

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.
2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to
  - (a) keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and
  - (b) ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.

#### **Article 10. Obtaining Voluntary Statements**

Where a request is made to obtain a statement from a person for the purpose of a criminal matter in the Requesting Party, the Requested Party shall endeavor, with the consent of that person, to obtain that statement.

#### **Article 11. Obtaining of Evidence**

1. The Requested Party shall, subject to its domestic laws, arrange to have evidence, including sworn or affirmed testimony, documents or records taken or obtained from witnesses for the purpose of a criminal matter for transmission to the Requesting Party.
2. Where sworn or affirmed testimony is to be taken under this Article, the parties to the relevant criminal proceedings in the Requesting Party or their legal representatives may, subject to the domestic laws of the Requested Party, appear and question the person giving that evidence.
3. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party for the purpose of executing this Article if it is expedient in the interests of justice to do so.

#### **Article 12. Right to Decline to Give Evidence**

1. A person who is required to give sworn or affirmed testimony or produce documents, records or other evidence under Article 11 of this Treaty in the Requested Party pursuant to a

request for assistance may decline to do so where –

- (a) the law of the Requested Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requested Party; or
  - (b) the law of the Requesting Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requesting Party.
2. If the person claims that there is a right to decline to give sworn or affirmed testimony or produce documents, records or other evidence under Article 11 of this Treaty under the law of the Requesting Party, the Requesting Party shall, if so requested, provide a certificate to the Requested Party as to the existence or otherwise of that right.

#### **Article 13. Provision of Publicly Available Documents and Other Records**

1. The Requested Party shall provide to the Requesting Party copies of publicly available documents or records in the possession of government departments and agencies.
2. The Requested Party may, subject to its domestic laws and practices, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available. The Requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.

#### **Article 14. Attendance of Person in the Requesting Party**

1. The Requested Party may, subject to its domestic laws and practices, assist in arranging the attendance of a person in the Requested Party, subject to his consent, in the Requesting Party-
  - (a) to assist in the investigations in relation to a criminal matter in the Requesting Party; or
  - (b) to appear in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person charged.
2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting Party. The person shall be informed of any expenses or allowances payable.
3. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take any steps necessary to facilitate the person's attendance in the Requesting Party.
4. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

### Article 15. Attendance of Person in Custody in the Requesting Party

1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations.
2. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold the person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.
3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 14 of this Treaty.
4. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.
5. The period during which such person was under the custody of the Requesting Party shall count towards the period of his imprisonment or detention in the Requested Party.
6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking –

- (a) to bear and be responsible for all the expenses of the transfer of custody;
  - (b) to keep the person under lawful custody throughout the transfer of his custody; and
  - (c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.
7. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

### Article 16. Safe Conduct

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty –
  - (a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;
  - (b) that person shall not, without that person's consent, be required to give evidence in any criminal mat-

ter in the Requesting Party other than the criminal matter to which the request relates; or

- (c) that person shall not be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.
- 2. Paragraph 1 shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 consecutive days after that person has been officially told or notified that his presence is no longer required or, having left, has voluntarily returned.
- 3. A person who attends before a competent authority or court in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not be subject to prosecution based on such testimony except that that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.
- 4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not by reason only of such refusal or failure to consent be subjected to any penalty or liability or otherwise prejudiced in law notwithstanding anything to the contrary in the request.

#### Article 17. Transit of Persons in Custody

- 1. The Requested Party may, subject to its domestic laws and practices, authorize the transit through its territory of a person held in custody, by the Requesting Party or a third State, whose personal appearance has been requested by the Requesting Party in a criminal matter.
- 2. Where the aircraft, vessel or train by which the person is being transported lands or calls or stops in the Requested Party, the custodial or escorting officers of the Requesting Party or, if applicable, the third State that is assisting the Requesting Party to facilitate the transfer shall continue to be responsible for the custody of the person being transported while he is on transit in the Requested Party, unless otherwise agreed by the Requested Party.
- 3. Without prejudice to paragraph 2 and where the Requested Party agrees, the person being transported may be kept temporarily in the custody of a competent authority of the Requested Party until his transportation is continued.
- 4. Where a person is being held in custody in the Requested Party on transit and the person's transportation is not continued within a reasonable time, the Requested Party may direct that the person be transported in custody to the State from which the person was first transported.
- 5. All costs and expenses incurred by the Requested Party in respect of paragraphs 3 and 4 shall be reimbursed by the Requesting Party.

### Article 18. Search and Seizure

1. The Requested Party shall, subject to its domestic laws, execute a request for the search, seizure and delivery of any documents, records or items to the Requesting Party if there are reasonable grounds for believing that the documents, records or items are relevant to a criminal matter in the Requesting Party.
2. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or items which may be delivered to the Requesting Party that are considered necessary by the Requested Party to protect the documents, records or items to be transferred.
3. The Requested Party shall as soon as practicable inform the Requesting Party of the result of any search, the place and circumstances of seizure, and the subsequent custody of the documents, records or items seized.

### Article 19. Return of Evidence

1. The Requesting Party shall at the conclusion of the criminal matter in respect of which the request for assistance was made return to the Requested Party any documents, records or items provided to the Requesting Party pursuant to a request under this Treaty.
2. Notwithstanding paragraph 1, the Requesting Party shall at any time, upon request, temporarily return to the Requested Party any documents,

records or items provided to the Requesting Party pursuant to a request under this Treaty if these are needed for a criminal matter in the Requested Party.

### Article 20. Location or Identification of Persons

The Requested Party shall, subject to its domestic laws, use its best endeavors to ascertain the location or identity of a person specified in the request and who is reasonably believed to be within its territory.

### Article 21. Service of Documents

1. The Requested Party shall, subject to its domestic laws, use its best endeavors to effect service of any document in respect of a criminal matter issued by any court in the Requesting Party.
2. The Requesting Party shall transmit any request for the service of a document which requires a response or appearance in the Requesting Party not later than thirty days before the scheduled response or appearance.
3. The Requested Party shall return a proof of service in the manner mutually agreed by the Parties concerned.
4. For the purposes of paragraph 3, the expression "proof of service" includes information in the form of an affidavit on when and how the document was served and, where possible, a receipt signed by the person on whom it was served and if the serving officer has not been able to cause the document to be served, that fact and the reason for the failure.

### Article 22. Assistance in Forfeiture Proceedings

1. The Requested Party shall, subject to its domestic laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.
2. Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.
3. A request for assistance under this Article shall be made only in respect of orders and judgments that are made after the coming into force of this Treaty.
4. Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.
5. The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order.

### Article 23. Compatibility with Other Arrangements

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their national laws.

### Article 24. Certification and Authentication

1. Each Party shall, upon request, authenticate any documents or other material to be transmitted to the other Party under this Treaty.
2. A document is duly authenticated for the purposes of this Treaty if -
  - (a) it purports to be signed or certified by a judge, magistrate, or officer in or of the Party transmitting the document duly authorized by the law of that Party; and
  - (b) either -
    - (i) it is verified by the oath or affirmation of a witness, or of an officer of the government of that Party; or
    - (ii) it purports to be sealed with an official or public seal of that Party or of a Minister of State, or of a department or officer of the government, of that Party.
3. Nothing in this Article shall prevent the proof of any matter or the admission in evidence of any document in accordance with the law of the Requesting Party.
4. Subject to the domestic laws of each Party -

- (a) a document signed with a digital or electronic signature in accordance with the laws of the Party concerned shall be as legally binding as a document signed with a handwritten signature, an affixed thumb-print or any other mark; and
- (b) a digital or electronic signature created in accordance with the laws of the Party concerned shall be deemed to be a legally binding signature.

#### Article 25. Costs

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear -
  - (a) the fees of counsel retained at the request of the Requesting Party;
  - (b) the fees and expenses of expert witnesses;
  - (c) the costs of translation, interpretation and transcription;
  - (d) the expenses associated with conveying any person to or from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that person is in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty; and
  - (e) the expenses associated with conveying custodial or escorting officers.
2. The cost of establishing live video or television links or other appropriate

communications facilities, the costs related to the servicing of live video or television links or other appropriate communications facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, unless the Parties mutually agree otherwise.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

#### Article 26. Consultation

1. The Central Authorities of the Parties shall consult, at times mutually agreed upon by them, to promote the most effective use of this Treaty.
2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

#### Article 27. Amendment

1. This Treaty may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment will enter into force on such date as may be mutually agreed upon by the Parties and will form part of this Treaty.
2. Any modification or amendment will be without prejudice to the rights and

obligations arising from or based on this Treaty before or up to the date such modification or amendment enters into force.

#### **Article 28. Settlement of Disputes**

Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed between the Parties.

#### **Article 29. Reservations**

This Treaty shall not be subject to reservations.

#### **Article 30. Signature, Ratification, Accession, Deposit and Registration**

1. This Treaty shall be subject to ratification, acceptance, approval or accession in accordance with the constitutional procedure of the signatory States.
2. Any State may accede to this Treaty upon consensus by the original Parties.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Malaysia which is designated as the Depositary State.
4. The Depositary State shall inform the other States that are Parties to this Treaty on the deposit of instruments of ratification, acceptance, approval or accession.

5. The Depositary State shall register this Treaty pursuant to Article 102 of the Charter of the United Nations.

#### **Article 31. Entry Into Force, Application and Termination**

1. This Treaty shall enter into force for each Party ratifying, accepting, approving or acceding to it on the date of the deposit of its instrument of ratification, acceptance, approval or accession.
2. This Treaty shall apply to requests presented after the date of its entry into force for both the Parties concerned whether the relevant acts or omissions constituting the offence occurred before or after that date.
3. Any Party may denounce this Treaty by written notification to the Depositary State. Denunciation shall take effect six months following the date on which notification is received by the Depositary State.
4. Denunciation of this Treaty shall be without prejudice to the rights and obligations arising from or based on this Treaty and to the completion of any requests made pursuant to this Treaty before or up to the date of denunciation.
5. The denunciation of this Treaty shall have effect only as regards the Party that has notified it. The Treaty shall remain in force for the other Parties.

#### **Article 32. Depositary of Treaty**

The original of this Treaty shall be deposited with the Depositary State which shall send certified copies of it to all the Parties.

### **C. 2004 Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (2004 ReCAAP)**

*Adopted in Tokyo, Japan on 11 November 2004.*

The Contracting Parties to this Agreement,

Concerned about the increasing number of incidents of piracy and armed robbery against ships in Asia,

Mindful of the complex nature of the problem of piracy and armed robbery against ships,

Recognizing the importance of safety of ships, including their crew, exercising the right of navigation provided for in the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as "the UNCLOS",

Reaffirming the duty of States to cooperate in the prevention and suppression of piracy under the UNCLOS,

Recalling "Tokyo Appeal" of March 2000, "Asia Anti-Piracy Challenges 2000" of April 2000 and "Tokyo Model Action Plan" of April 2000,

Noting the relevant resolutions adopted by the United Nations General Assembly and the relevant resolutions and recommendations adopted by the International Maritime Organization,

Conscious of the importance of international cooperation as well as the urgent need for greater regional cooperation and coordination of all States affected within Asia, to prevent and suppress piracy and armed robbery against ships effectively,

Convinced that information sharing and capacity building among the Contracting

Parties will significantly contribute towards the prevention and suppression of piracy and armed robbery against ships in Asia,

Affirming that, to ensure greater effectiveness of this Agreement, it is indispensable for each Contracting Party to strengthen its measures aimed at preventing and suppressing piracy and armed robbery against ships,

Determined to promote further regional cooperation and to enhance the effectiveness of such cooperation,

Have agreed as follows:

#### **Part I. Introduction**

#### **Article 1. Definitions**

- I. For the purposes of this Agreement, "piracy" means any of the following acts:
  - (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
    - (i) on the high seas, against another ship, or against persons or property on board such ship;
    - (ii) against a ship, persons or property in a place outside the jurisdiction of any State;
  - (b) any act of voluntary participation in the operation of a ship or of an

aircraft with knowledge of facts making it a pirate ship or aircraft;

- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).
2. For the purposes of this Agreement, “armed robbery against ships” means any of the following acts:
- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party’s jurisdiction over such offences;
  - (b) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;
  - (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

## Article 2. General Provisions

- 1. The Contracting Parties shall, in accordance with their respective national laws and regulations and subject to their available resources or capabilities, implement this Agreement, including preventing and suppressing piracy and armed robbery against ships, to the fullest extent possible.
- 2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under the international agreements to which that Contracting Party is party including the UNCLOS,

and the relevant rules of international law.

- 3. Nothing in this Agreement shall affect the immunities of warships and other government ships operated for non-commercial purposes.
- 4. Nothing in this Agreement, nor any act or activity carried out under this Agreement shall prejudice the position of any Contracting Party with regard to any dispute concerning territorial sovereignty or any issues related to the law of the sea.
- 5. Nothing in this Agreement entitles a Contracting Party to undertake in the territory of another Contracting Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Contracting Party by its national law.
- 6. In applying paragraph 1 of Article 1, each Contracting Party shall give due regard to the relevant provisions of the UNCLOS without prejudice to the rights of the third Parties.

## Article 3. General Obligations

- 1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:
  - (a) to prevent and suppress piracy and armed robbery against ships;

- (b) to arrest pirates or persons who have committed armed robbery against ships;
  - (c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and
  - (d) to rescue victim ships and victims of piracy or armed robbery against ships.
2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

## Part II. Information Sharing Center

### Article 4. Composition

1. An Information Sharing Center, hereinafter referred to as "the Center", is hereby established to promote close cooperation among the Contracting Parties in preventing and suppressing piracy and armed robbery against ships.
2. The Center shall be located in Singapore.
3. The Center shall be composed of the Governing Council and the Secretariat.
4. The Governing Council shall be composed of one representative from each Contracting Party. The Governing Council shall meet at least once every

year in Singapore, unless otherwise decided by the Governing Council.

5. The Governing Council shall make policies concerning all the matters of the Center and shall adopt its own rules of procedure, including the method of selecting its Chairperson.
6. The Governing Council shall take its decisions by consensus.
7. The Secretariat shall be headed by the Executive Director who shall be assisted by the staff. The Executive Director shall be chosen by the Governing Council.
8. The Executive Director shall be responsible for the administrative, operational and financial matters of the Center in accordance with the policies as determined by the Governing Council and the provisions of this Agreement, and for such other matters as determined by the Governing Council.
9. The Executive Director shall represent the Center. The Executive Director shall, with the approval of the Governing Council, make rules and regulations of the Secretariat.

### Article 5. Headquarters Agreement

1. The Center, as an international organization whose members are the Contracting Parties to this Agreement, shall enjoy such legal capacity, privileges and immunities in the Host state of the Center as are necessary for the fulfillment of its functions.
2. The Executive Director and the staff of the Secretariat shall be accorded,

in the Host state, such privileges and immunities as are necessary for the fulfillment of their functions.

3. The Center shall enter into an agreement with the Host State on matters including those specified in paragraphs 1 and 2 of this Article.

#### Article 6. Financing

1. The expenses of the Center, as provided for in the budget decided by the Governing Council, shall be provided by the following sources:
  - (a) Host State financing and support;
  - (b) Voluntary contributions from the Contracting Parties;
  - (c) Voluntary contributions from international organizations and other entities, in accordance with relevant criteria adopted by the Governing Council; and
  - (d) Any other voluntary contributions as may be agreed upon by the Governing Council.
2. Financial matters of the Center shall be governed by a Financial Regulation to be adopted by the Governing Council.
3. There shall be an annual audit of the accounts of the Center by an independent auditor appointed by the Governing Council. The audit report shall be submitted to the Governing Council and shall be made public, in accordance with the Financial Regulation.

#### Article 7. Functions

The functions of the Center shall be:

- (a) to manage and maintain the expeditious flow of information relating to incidents of piracy and armed robbery against ships among the Contracting Parties;
- (b) to collect, collate and analyze the information transmitted by the Contracting Parties concerning piracy and armed robbery against ships, including other relevant information, if any, relating to individuals and transnational organized criminal groups committing acts of piracy and armed robbery against ships;
- (c) to prepare statistics and reports on the basis of the information gathered and analyzed under subparagraph (b), and to disseminate them to the Contracting Parties;
- (d) to provide an appropriate alert, whenever possible, to the Contracting Parties if there is a reasonable ground to believe that a threat of incidents of piracy or armed robbery against ships is imminent;
- (e) to circulate requests referred to in Article 10 and relevant information on the measures taken referred to in Article 11 among the Contracting Parties;
- (f) to prepare non-classified statistics and reports based on information gathered and analyzed under subparagraph (b) and to disseminate them to the shipping community and the International Maritime Organization; and
- (g) to perform such other functions as may be agreed upon by the Governing Council with a view to preventing and

suppressing piracy and armed robbery against ships.

### Article 8. Operation

1. The daily operation of the Center shall be undertaken by the Secretariat.
2. In carrying out its functions, the Center shall respect the confidentiality of information provided by any Contracting Party, and shall not release or disseminate such information unless the consent of that Contracting Party is given in advance.
3. The Center shall be operated in an effective and transparent manner, in accordance with the policies made by the Governing Council, and shall avoid duplication of existing activities between the Contracting Parties.

### Part III. Cooperation through the Information Sharing Center

#### Article 9. Information Sharing

1. Each Contracting Party shall designate a focal point responsible for its communication with the Center, and shall declare its designation of such focal point at the time of its signature or its deposit of an instrument of notification provided for in Article 18.
2. Each Contracting Party shall, upon the request of the Center, respect the confidentiality of information transmitted from the Center.
3. Each Contracting Party shall ensure the smooth and effective communication between its designated focal

point, and other competent national authorities including rescue coordination centers, as well as relevant non-governmental organizations.

4. Each Contracting Party shall make every effort to require its ships, ship owners, or ship operators to promptly notify relevant national authorities including focal points, and the Center when appropriate, of incidents of piracy or armed robbery against ships.
5. Any Contracting Party which has received or obtained information about an imminent threat of, or an incident of, piracy or armed robbery against ships shall promptly notify relevant information to the Center through its designated focal point.
6. In the event that a Contracting Party receives an alert from the Center as to an imminent threat of piracy or armed robbery against ships pursuant to subparagraph (d) of Article 7, that Contracting Party shall promptly disseminate the alert to ships within the area of such an imminent threat.

#### Article 10. Request for Cooperation

1. A Contracting Party may request any other Contracting Party, through the Center or directly, to cooperate in detecting any of the following persons, ships, or aircraft:
  - (a) pirates;
  - (b) persons who have committed armed robbery against ships;
  - (c) ships or aircraft used for committing piracy or armed robbery

against ships, and ships taken by and under the control of pirates or persons who have committed armed robbery against ships; or

(d) victim ships and victims of piracy or armed robbery against ships.

2. A Contracting Party may request any other Contracting Party, through the Center or directly, to take appropriate measures, including arrest or seizure, against any of the persons or ships mentioned in subparagraph (a), (b), or (c) of paragraph 1 of this Article, within the limits permitted by its national laws and regulations and applicable rules of international law.
3. A Contracting Party may also request any other Contracting Party, through the Center or directly, to take effective measures to rescue the victim ships and the victims of piracy or armed robbery against ships.
4. The Contracting Party which has made a direct request for cooperation pursuant to paragraphs 1, 2 and 3 of this Article shall promptly notify the Center of such request.
5. Any request by a Contracting Party for cooperation involving extradition or mutual legal assistance in criminal matters shall be made directly to any other Contracting Party.

#### **Article 11. Cooperation by the Requested Contracting Party**

1. A Contracting Party, which has received a request pursuant to Article 10, shall, subject to paragraph 1 of Article 2, make every effort to take

effective and practical measures for implementing such request.

2. A Contracting Party, which has received a request pursuant to Article 10, may seek additional information from the requesting Contracting Party for the implementation of such request.
3. A Contracting Party, which has taken measures referred to in paragraph 1 of this Article, shall promptly notify the Center of the relevant information on the measures taken.

### **Part IV. Cooperation**

#### **Article 12. Extradition**

A Contracting Party shall, subject to its national laws and regulations, endeavor to extradite pirates or persons who have committed armed robbery against ships, and who are present in its territory, to the other Contracting Party which has jurisdiction over them, at the request of that Contracting Party.

#### **Article 13. Mutual Legal Assistance**

A Contracting Party shall, subject to its national laws and regulations, endeavor to render mutual legal assistance in criminal matters, including the submission of evidence related to piracy and armed robbery against ships, at the request of another Contracting Party.

#### **Article 14. Capacity Building**

1. For the purpose of enhancing the capacity of the Contracting Parties to prevent and suppress piracy and armed

robbery against ships, each Contracting Party shall endeavor to cooperate to the fullest possible extent with other Contracting Parties which request cooperation or assistance.

2. The Center shall endeavor to cooperate to the fullest possible extent in providing capacity building assistance.
3. Such capacity building cooperation may include technical assistance such as educational and training programs to share experiences and best practices.

#### **Article 15. Cooperative Arrangements**

Cooperative arrangements such as joint exercises or other forms of cooperation, as appropriate, may be agreed upon among the Contracting Parties concerned.

#### **Article 16. Protection Measures for Ships**

Each Contracting Party shall encourage ships, ship owners, or ship operators, where appropriate, to take protective measures against piracy and armed robbery against ships, taking into account the relevant international standards and practices, in particular, recommendations adopted by the International Maritime Organization.

### **Part V. Final Provisions**

#### **Article 17. Settlement of Disputes**

Disputes arising out of the interpretation or application of this Agreement, including those relating to liability for any loss or damage caused by the request made under paragraph 2 of Article 10 or any measure taken under paragraph 1 of Article 11, shall be settled amicably by the Contracting

Parties concerned through negotiations in accordance with applicable rules of international law.

#### **Article 18. Signature and Entry into Force**

1. This Agreement shall be open for signature at the depositary referred to in paragraph 2 below by the People's Republic of Bangladesh, Brunei Darussalam, the Kingdom of Cambodia, the People's Republic of China, the Republic of India, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Democratic Socialist Republic of Sri Lanka, the Kingdom of Thailand, the Socialist Republic of Viet Nam.
2. The Government of Singapore is the depositary of this Agreement.
3. This Agreement shall enter into force 90 days after the date on which the tenth instrument of notification by a State listed in paragraph 1, indicating the completion of its domestic requirements, is submitted to the depositary. Subsequently it shall enter into force in respect of any other State listed in paragraph 1 above 30 days after its deposit of an instrument of notification to the depositary.
4. The depositary shall notify all the States listed in paragraph 1 of the entry into force of this Agreement pursuant to paragraph 3 of this Article.
5. After this Agreement has entered into force, it shall be open for accession

by any State not listed in paragraph 1. Any State desiring to accede to this Agreement may so notify the depositary, which shall promptly circulate the receipt of such notification to all other Contracting Parties. In the absence of a written objection by a Contracting Party within 90 days of the receipt of such notification by the depositary, that State may deposit an instrument of accession with the depositary, and become a party to this Agreement 60 days after such deposit of instrument of accession.

#### **Article 19. Amendment**

1. Any Contracting Party may propose an amendment to this Agreement, any time after the Agreement enters into force. Such amendment shall be adopted with the consent of all Contracting Parties.
2. Any amendment shall enter into force 90 days after the acceptance by all Contracting Parties. The instruments of acceptance shall be deposited with the depositary, which shall promptly notify all other Contracting Parties of the deposit of such instruments.

#### **Article 20. Withdrawal**

1. Any Contracting Party may withdraw from this Agreement at any time after the date of its entry into force.
2. The withdrawal shall be notified by an instrument of withdrawal to the depositary.
3. The withdrawal shall take effect 180 days after the receipt of the instrument of withdrawal by the depositary.
4. The depositary shall promptly notify all other Contracting Parties of any withdrawal.

#### **Article 21. Authentic Text**

This Agreement shall be authentic in the English language.

#### **Article 22. Registration**

This Agreement shall be registered by the depositary pursuant to Article 102 of the Charter of the United Nations.

*IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.*

## **D. 2007 ASEAN Convention on Counter Terrorism (2007 ACCT)**

*Adopted in Cebu, Philippines on 13 January 2007.*

Member Countries of the Association of Southeast Asian Nations (ASEAN) - Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, hereinafter referred to as "the Parties";

RECALLING the Charter of the United Nations and relevant principles of international law, the relevant international conventions and protocols relating to counter terrorism and relevant resolutions of the United Nations on measures aimed at countering international terrorism, and reaffirming our commitment to protect human rights, fair treatment, the rule of law, and due process as well as the principles enshrined in the Treaty of Amity and Cooperation in South-east Asia done at Bali on 24 February 1976;

REAFFIRMING that terrorism cannot and should not be associated with any religion, nationality, civilisation or ethnic group;

RECALLING also the ASEAN Declaration on Joint Action to Counter Terrorism and the Declaration on Terrorism adopted at the ASEAN Summits in 2001 and 2002 respectively;

REAFFIRMING our commitment to the Vientiane Action Programme done at Vientiane on 29 November 2004, particularly its thrust on "shaping and sharing of norms"

and the need, among others, to work towards the conclusion of an ASEAN Mutual Legal Assistance Agreement, and an ASEAN Convention on Counter Terrorism, and the establishment of an ASEAN Extradition Treaty as envisaged by the 1976 Declaration of ASEAN Concord;

DEEPLY CONCERNED over the grave danger posed by terrorism to innocent lives, infrastructure and the environment, regional and international peace and stability as well as to economic development;

REALISING the importance of identifying and effectively addressing the root causes of terrorism in the formulation of any counter terrorism measures;

REITERATING that terrorism, in all its forms and manifestations, committed wherever, whenever, and by whomsoever, is a profound threat to international peace and security and a direct challenge to the attainment of peace, progress and prosperity for ASEAN and the realisation of ASEAN Vision 2020;

REAFFIRMING our strong commitment to enhance cooperation in countering terrorism which covers the prevention and suppression of all forms of terrorist acts;

REITERATING the need to improve regional cooperation on counter terrorism and undertake effective measures through deepening cooperation among ASEAN law enforcement agencies and relevant authorities in countering terrorism;

ENCOURAGING the Parties to become parties as soon as possible to the relevant international conventions and protocols relating to counter terrorism;

Have agreed as follows:

### Article I. Objective

This Convention shall provide for the framework for regional cooperation to counter, prevent and suppress terrorism in all its forms and manifestations and to deepen cooperation among law enforcement agencies and relevant authorities of the Parties in countering terrorism.

### Article II. Criminal Acts of Terrorism

- I. For the purposes of this Convention, “offence” means any of the offences within the scope of and as defined in any of the treaties listed as follows:
  - a. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
  - b. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
  - c. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973;
  - d. International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979;
  - e. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 26 October 1979;
  - f. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
  - g. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
  - h. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;
  - i. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997;
  - j. International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999;
  - k. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005;
  - l. Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on 8 July 2005;
  - m. Protocol of 2005 to the Convention for the Suppression of

Unlawful Acts Against the Safety of Maritime Navigation, done at London on 14 October 2005; and

- n. Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at London on 14 October 2005.
2. On depositing its instrument of ratification or approval, a Party which is not a Party to a treaty listed in paragraph 1 of this Article may declare that, in the application of this Convention to that Party, that treaty shall be deemed not to be included in paragraph 1 of this Article. This declaration shall cease to have an effect as soon as the treaty enters into force for the Party having made such a declaration, which shall notify the depositary as stated in paragraph 2 of Article XX of this entry into force.
  3. When a Party ceases to be a party to a treaty listed in paragraph 1 of this Article, it may make a declaration as provided for in this Article, with respect to that treaty.

### **Article III. Sovereign Equality, Territorial Integrity and Non-Interference**

The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-interference in the internal affairs of other Parties.

### **Article IV. Preservation of Sovereignty**

Nothing in this Convention entitles a Party to undertake, in the territory of another Party, the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other Party by its domestic laws.

### **Article V. Non-Application**

This Convention shall not apply where the offence is committed within a single Party, the alleged offender and the victims are nationals of that Party, the alleged offender is found in the territory of that Party and no other Party has a basis under this Convention to exercise jurisdiction.

### **Article VI. Areas of Cooperation**

1. The areas of cooperation under this Convention may, in conformity with the domestic laws of the respective Parties, include appropriate measures, among others, to:
  - a. Take the necessary steps to prevent the commission of terrorist acts, including by the provision of early warning to the other Parties through the exchange of information;
  - b. Prevent those who finance, plan, facilitate, or commit terrorist acts from using their respective territories for those purposes against the other Parties and/or the citizens of the other Parties;
  - c. Prevent and suppress the financing of terrorist acts;
  - d. Prevent the movement of terrorists or terrorist groups by effec-

- tive border control and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;
- e. Promote capacity-building including trainings and technical cooperation and the holding of regional meetings;
  - f. Promote public awareness and participation in efforts to counter terrorism, as well as enhance inter-faith and intra-faith dialogue and dialogue among civilisations;
  - g. Enhance cross-border cooperation;
  - h. Enhance intelligence exchange and sharing of information;
  - i. Enhance existing cooperation towards developing regional databases under the purview of the relevant ASEAN bodies;
  - j. Strengthen capability and readiness to deal with chemical, biological, radiological, nuclear (CBRN) terrorism, cyber terrorism and any new forms of terrorism;
  - k. Undertake research and development on measures to counter terrorism;
  - l. Encourage the use of video conference or teleconference facilities for court proceedings, where appropriate; and
  - m. Ensure that any person who participates in the financing, planning, preparation or perpetration of

terrorist acts or in supporting terrorist acts is brought to justice.

2. Subject to the consent of the Parties concerned, Parties shall cooperate to address the root causes of terrorism and conditions conducive to the spread of terrorism to prevent the perpetration of terrorist acts and the propagation of terrorist cells.

#### **Article VII. State Jurisdiction**

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:
  - a. The offence is committed in the territory of that Party; or
  - 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
  - c. The offence is committed by a national of that Party.
2. A Party may also establish its jurisdiction over any such offence when:
  - a. The offence is committed against a national of that Party; or
  - 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
  - c. The offence is committed in an attempt to compel that Party to do or to abstain from doing any act; or

- d. The offence is committed by a stateless person with habitual residence in the territory of that Party.
- 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.
- 4. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic laws.

#### 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.
- 4. Any person regarding whom measures referred to in paragraph 3 of this Article are being taken shall be entitled:
  - 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;
  - b. To be visited by a representative of that State;
  - c. To be informed of that person's rights under subparagraphs (a) and (b) of paragraph 4 of this Article.
- 5. The rights referred to in paragraph 4 of this Article shall be exercised in conformity with the laws and regulations of the Party 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 4 of this Article are intended.
- 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 accor-

dance 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.

#### **Article IX. General Provisions**

1. The Parties shall adopt such measures as may be necessary, including, where appropriate, national legislation, to ensure that offences covered in Article II of this Convention, especially when it is intended to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.
2. Pursuant to Article VI of this Convention, the Parties shall, where possible, establish channels of communication between their competent agencies to facilitate the exchange of information to prevent the commission of offences covered in Article II of this Convention.
3. The Party where the alleged offender is prosecuted shall, upon the request of the other Parties claiming jurisdiction over the same, communicate the

status of the case at any stage of the proceedings to those other Parties.

#### **Article X. Status of Refugees**

The Parties shall take appropriate measures, in conformity with the relevant provisions of their respective domestic laws and applicable international law, including international standards of human rights, before granting refugee status, where the Parties recognise and grant such status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts.

#### **Article XI. Rehabilitative Programmes**

The Parties shall endeavour to promote the sharing of best practices on rehabilitative programmes including, where appropriate, social reintegration of persons involved in the commission of any of the offences covered in Article II of this Convention with the objective of preventing the perpetration of terrorist acts.

#### **Article XII. Mutual Legal Assistance in Criminal Matters**

1. The Parties shall, in conformity with their respective domestic laws, afford the widest measure of assistance in connection with investigations or criminal proceedings brought in respect of the offences covered in Article II of this Convention.
2. The Parties shall, where they are parties to the Treaty on Mutual Legal Assistance in Criminal Matters done in Kuala Lumpur on 29 November 2004, carry out their obligations under para-

graph I of this Article in conformity with that Treaty.

### **Article XIII. Extradition**

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.
2. The offences covered in Article II of this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the Parties before the entry into force of this Convention. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.
3. When a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, the requested Party may, at its option, and in conformity with its domestic laws, consider this Convention as a legal basis for extradition in respect of the offences covered in Article II of this Convention.

### **Article XIV. Political Offences Exception**

None of the offences covered in Article II of this Convention shall be regarded for the purposes of extradition under Article XIII of this Convention or mutual legal assistance in criminal matters under Article XII of this Convention 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 in criminal matters 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 XV. Designation of Central Authorities or Coordinating Structures**

Each Party shall designate, as appropriate, a central authority or coordinating structure to enhance cooperation under this Convention.

### **Article XVI. Implementation, Monitoring and Review**

The relevant ASEAN sectoral bodies involved in ASEAN cooperation on countering terrorism shall be responsible for monitoring and reviewing the implementation of this Convention.

### **Article XVII. Confidentiality**

1. Each Party shall preserve the confidentiality and secrecy of documents, records and other information received from any other Party, including the source thereof.

2. No document, record or other information obtained pursuant to this Convention shall be disclosed to or shared with any other Party, State or person except with the prior written consent of the Party which provided such document, record or information.

#### **Article XVIII. Relationship with Other International Instruments**

This Convention shall not derogate from obligations subsisting between the Parties pursuant to other international agreements nor, where the Parties agree, shall it prevent the Parties from providing assistance to each other pursuant to other international agreements or the provisions of their respective domestic laws.

#### **Article XIX. Settlement of Disputes**

Any difference or dispute between the Parties arising from the interpretation or application of the provisions of this Convention shall be settled amicably through consultation and negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed upon between the Parties.

#### **Article XX. Ratification, Approval and Depositary**

1. This Convention shall be subject to ratification or approval in accordance with the internal procedures of the Parties.
2. The instruments of ratification or approval shall be deposited with the Secretary-General of ASEAN who

shall promptly inform the other Parties of such deposit.

#### **Article XXI. Entry into Force and Amendment**

1. This Convention shall enter into force on the 30th (thirtieth) day following the date of the deposit of the 6th (sixth) instrument of ratification or approval with the Secretary-General of ASEAN in respect of those Parties that have submitted their instruments of ratification or approval.
2. For any Party ratifying or approving this Convention after the deposit of the 6th (sixth) instrument of ratification or approval, but before the day the Convention enters into force, the Convention shall also apply to that Party on the date the Convention enters into force.
3. In respect of a Party ratifying or approving this Convention subsequent to its entry into force pursuant to paragraph 1, it shall enter into force for that Party on the date its instrument of ratification or approval is deposited.
4. This Convention may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment shall enter into force on such date as shall be mutually agreed upon by Parties and shall form part of this Convention.
5. Any modification or amendment shall not affect the rights and obligations of the Parties arising from or based on the provisions of this Convention before the entry into force of such modification or amendment.

**Article XXII. Withdrawal**

1. Any Party may withdraw from this Convention at any time after the date of the entry into force of this Convention for that Party.
2. The withdrawal shall be notified by an instrument of withdrawal to the Secretary-General of ASEAN.
3. The withdrawal shall take effect 180 (one hundred and eighty) days after the receipt of the instrument of withdrawal by the Secretary-General of ASEAN.
4. The Secretary-General of ASEAN shall promptly notify all the other Parties of any withdrawal.

**Article XXIII. Registration**

This Convention shall be registered by the Secretary-General of ASEAN to the United Nations Secretariat pursuant to Article 102 of the Charter of the United Nations.

## **2.2 OTHER RELEVANT DOCUMENTS (extracts only)**

### **A. 1997 ASEAN Declaration on Transnational Crime**

*Adopted by the ASEAN Ministers of Interior/Home Affairs and Representatives of ASEAN Member Countries during the 1st ASEAN Conference on Transnational Crime in Manila, Philippines on 20 December 1997.*

WE, the ASEAN Ministers of Interior/Home Affairs and Representatives of ASEAN Member Countries, participating in the first ASEAN Conference on Transnational Crime held in Manila on 18-20 December 1997;

CONCERNED about the pernicious effects of transnational crime, such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy on regional stability and development, the maintenance of the rule of law and the welfare of the region's peoples;

RECOGNIZING the need for clear and effective regional modalities to combat these forms of crimes, especially on the aspect of information exchange and policy coordination;

RECALLING the Naples Political Declaration and Global Plan of Action of 23 November 1994, which sought international solidarity and effective legal cooperation against these forms of crime;

RECALLING FURTHER the Baguio Communique adopted during the first International Conference on Terrorism held in Baguio City, Philippines, on 18-21 February 1996, which endeavoured to enhance international cooperation against all forms of terrorism through such modalities as

intelligence-sharing, coordinated policies and law enforcement training;

NOTING the decision of the 29th ASEAN Ministerial Meeting (AMM) in Jakarta in July 1996 on the need to focus attention on such issues as narcotics, economic crimes, including money laundering, environment and illegal migration which transcend borders and affect the lives of the people in the region, and the urgent need to manage such transnational issues so that they would not affect the long term viability of ASEAN and its individual member nations;

ENDEAVOURING to further the decision of the First Informal ASEAN Summit in November 1996 in Jakarta to request the relevant ASEAN bodies to study the possibility of regional cooperation on criminal matters, including extradition;

PURSUANT to the decision of the 30th AMM in Kuala Lumpur in July 1997 which stressed the need for sustained cooperation in addressing transnational concerns including the fight against terrorism, trafficking in people, illicit drugs and arms and piracy;

AFFIRMING the agreement among Heads of Government during the Second Informal Summit in December 1997 in Kuala Lumpur to take firm and stern measures to combat transnational crime such as drug trafficking and trafficking of women and children, as well as other transnational crime; and,

CONVINCED that the continuity of existing global framework against transnational

crime rests on consolidated regional action in the institutional and operational spheres:

Have resolved to confront the problem of transnational crime through the following measures:

1. Strengthen the commitment of Member Countries to cooperate at the regional level in combating the transnational crime;
2. Convene at least once every two years ASEAN Ministerial Meeting on Transnational Crime in order to coordinate activities of relevant ASEAN bodies, such as the ASEAN Senior Officials on Drug Matters (ASOD) and the ASEAN Chiefs of National Police (ASEANAPOL);
3. Hold discussions with a view to signing mutual legal assistance agreements, bilateral treaties, memorandum of understanding or other arrangements among Member Countries;
4. Consider the establishment of an ASEAN Centre on Transnational Crime (ACOT) which will coordinate regional efforts against transnational crime through intelligence sharing, harmonisation of policies and coordination of operations;
5. Convene a high-level ad-hoc Experts Group within one year to accomplish the following with the assistance of the ASEAN Secretariat:
  - a. ASEAN Plan of Action on Transnational Crime,
  - b. Institutional Framework for ASEAN Cooperation on Transnational Crime, and,
  - c. Feasibility study on the establishment of ACOT;
6. Encourage Member Countries to consider assigning Police Attaches and/or Police Liaison Officers in each other's capital in order to facilitate cooperation for tackling transnational crime;
7. Encourage networking of the relevant national agencies or organizations in Member Countries dealing with transnational crime to further enhance information exchange and dissemination;
8. Expand the scope of Member Countries' efforts against transnational crime such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy, and to request the ASEAN Secretary-General to include these areas in the work programme of the ASEAN Secretariat;
9. Explore ways by which the Member Countries can work closer with relevant agencies and organizations in Dialogue Partner countries, other countries and international organizations, including the United Nations and its specialised agencies, Colombo Plan Bureau, Interpol and such other agencies, to combat transnational crime;
10. Cooperate and coordinate more closely with other ASEAN bodies such as the ASEAN Law Ministers and Attorneys-General, the ASEAN Chiefs of National Police, the ASEAN Finance

Ministers, the Directors-General of Immigration and the Directors-General of Customs in the investigations, prosecution and rehabilitation of perpetrators of such crimes; and,

- II. Strengthen the ASEAN Secretariat's capacity to assist the Member Countries in initiating, planning, and coordinating activities, strategies, programmes and projects to combat transnational crime.

## **B. 1999 ASEAN Plan of Action to Combat Transnational Crime**

*Adopted by the ASEAN Ministers responsible for transnational crime during the 2<sup>nd</sup> ASEAN Ministerial Meeting on Transnational Crime (AMMTC) in Yangon, Myanmar on 23 June 1999.*

### **A. BACKGROUND**

#### **(a) The Mandate for ASEAN Cooperation in Combating Transnational Crime**

One of the fundamental principles of the Association of Southeast Asian Nations (ASEAN) as enshrined in the Bangkok Declaration of 8 August 1967 was “strengthening the foundation for a prosperous and peaceful community of Southeast Asian Nations.” ASEAN policies, plans, strategies and activities revolve around this principle. Transnational crime has the potential of eroding this central belief thereby affecting the political, economic and social well being of ASEAN. In recognizing the detrimental effects of transnational crime, ASEAN countries have taken concerted efforts to combat such crime since early 1970s.

ASEAN’s initial efforts in combating transnational crime were focused on drug abuse and drug trafficking, the prevalent crime then, which affected the growth and vitality of ASEAN. With globalization, technological advancement and greater mobility of people and resources across national borders, transnational crime has become increasingly pervasive, diversified and organized. The region has to deal with many new forms of organized crimes that transcend national

borders and political sovereignty such as terrorism, new types of drug abuse and trafficking, innovative forms of money laundering activities, arms smuggling, trafficking in women and children and piracy...

... With transnational crime expanding in scope and becoming more organized, ASEAN’s Leaders have called for a comprehensive and coordinated approach in combating crime at the regional level. At the First Informal Summit in November 1996, the ASEAN Leaders called upon the “relevant ASEAN bodies to study the possibility of regional cooperation on criminal matters, including extradition.” At the Second Informal Summit in December 1997, they “resolved to take firm and stern measures to combat transnational crimes such as drug trafficking, trafficking in women and children as well as other transnational crime.” The ASEAN Leaders also adopted the ASEAN Vision 2020 at the Second Informal Summit which, among others, envisioned the evolution of agreed rules of behavior and cooperative measures to deal with problems that can be met only on a regional scale, including drug trafficking, trafficking in women and children and other transnational crimes...

#### **(b) Other Significant Developments**

Recognizing the urgency to tackle transnational crime from the regional dimension, the Philippines hosted the inaugural Meeting of the ASEAN Ministers of Interior/Home Affairs on Transnational Crime on 20 December 1997 in Manila. Apart from present-

ing an opportunity for the Interior and Home Ministers to exchange views on the transnational crime situation in ASEAN, the meeting also reflected on the detrimental impact of such on the Member Countries and the need for enhanced regional cooperation in fighting the crime. The highlight of the meeting was the signing of the ASEAN Declaration on Transnational Crime by the Ministers. The document reflected ASEAN's resolve in dealing with transnational crime and its intention to work together with the international community in combating transnational crime.

The Declaration also established the basic framework for regional cooperation on fighting transnational crime...

## B. OBJECTIVES

### (a) General Objectives

The general objective of the Action Plan is to encourage ASEAN Member Countries to expand their efforts in combating transnational crime at the national and bilateral levels to the regional level. As espoused in the ASEAN Declaration on Transnational Crime, the overall focus of ASEAN collaboration will be to strengthen regional commitment and capacity to combat transnational crimes which include terrorism, drug trafficking, arms smuggling, money laundering, trafficking in persons and piracy. This is in recognition of the fact that tackling transnational crime requires a concerted regional effort in view of its global dimension and pervasive nature. Besides, such efforts will assist in complementing and contributing to the national and bilateral

efforts undertaken by Member Countries in combating such crime.

### (b) Specific Objectives

The specific objectives of the Plan of Action are to urge the ASEAN Member Countries to:

1. Develop a more cohesive, regional strategy aimed at preventing, controlling and neutralizing transnational crime;
2. Foster regional cooperation at the investigative, prosecutorial, and judicial level as well as the rehabilitation of perpetrators;
3. Enhance coordination among ASEAN bodies dealing with transnational crime;
4. Strengthen regional capacities and capabilities to deal with sophisticated nature of transnational crime; and
5. Develop sub-regional and regional treaties on cooperation in criminal justice, including mutual legal assistance and extradition.

## C. PROGRAMME OF ACTION/PRIORITIES

In order to achieve the general and specific objectives, ASEAN Member Countries are encouraged to:

### Information Exchange

1. Improve the ASEANAPOL regional database so as to further facilitate sharing and analysis of critical intelligence information, such as wanted and arrested persons, "modus operandi", syndicates, and maritime offences;

2. Establish a regional repository to compile summaries of national laws of ASEAN Member Countries pertaining to transnational crime;
3. Conduct typology studies to determine trends and “modus operandi” of transnational crime in the ASEAN region;
4. Maximize the use of modern telecommunications technology in facilitating the exchange of data on, among others, criminals, methodologies, arrests, legal documents, requests for assistance, and ensure its restricted transmission;
5. Identify relevant contact persons in the policy, legal, law enforcement, and academic institutions of ASEAN Member Countries, and facilitate networking and lateral coordination among persons and agencies with similar functions;

#### Legal Matters

6. Work for the criminalization in ASEAN Member Countries of specific transnational crimes, such as illicit drug trafficking, money laundering, terrorism, piracy, arms smuggling and trafficking in persons;
7. Ensure the harmonization of relevant national policies among ASEAN Member Countries;
8. Develop multilateral or bilateral legal arrangements to facilitate apprehension, investigation, prosecution, and extradition, exchange of witnesses, sharing of evidence, inquiry,

seizure and forfeiture of the proceeds of the crime in order to enhance mutual legal and administrative assistance among ASEAN Member Countries;

9. Study the possibility of creating a regional programme on witness protection;
10. Coordinate with the ASEAN Senior Law Officials Meeting on the implementation of the ASEAN Legal Information Network System;
11. Strengthen the mechanisms for effective protection of the integrity of travel documents and government control of the ingress/egress of transnational criminal personalities;
12. Seek to ratify and support existing international treaties or agreements designed to combat transnational crime.

#### Law Enforcement Matters

13. Appoint Police Attaché or Police Liaison Officers, whenever feasible, in the capitals of ASEAN Member Countries;
14. Develop programmes for joint tactical exercises and simulations;
15. Develop an exchange programme among ASEAN officials in the policy, legal, law enforcement and academic fields;
16. Implement measures to ensure the protection of judges, prosecutors, witnesses, and law enforcement officials

and personnel from retaliation by transnational criminal organizations;

17. Enhance cooperation and coordination in law enforcement, intelligence sharing, and in preventing the illegal trafficking and use of explosives, firearms, and other deadly weapons, as well as nuclear, chemical and biological materials.

### Training

18. Develop regional training programmes, and conduct regular conferences to enhance existing capabilities in investigation, intelligence, surveillance, detection and monitoring, and reporting.
19. Exchange “best practices” of relevant institutions in ASEAN Member Countries involved in the combat against transnational crime, including transfer of technologies.

### Institutional Capacity-Building

20. Establish the ASEAN Centre for Combating Transnational Crime (ACTC);
21. Rationalize the institutional framework on ASEAN cooperation in transnational crime by making the ASEAN Ministerial Meeting on Transnational Crime the highest policy-making body, with a supervisory role and consultative relations with relevant ASEAN institutions involved in the combat against transnational crime;
22. Promote the efficient networking of relevant national agencies/organiza-

tions in ASEAN Member Countries by creating inter-agency committees/task forces to enhance information exchange and dissemination;

23. Strengthen institutional linkages with the various ASEAN mechanisms involved in combating transnational crime particularly the ASEAN Finance Ministers Meeting, ASEAN Finance Officials Meeting, ASEAN Senior Officials on Drug Matters, ASEAN Directors General of Customs, ASEAN Directors General for Immigration and ASEAN Chiefs of National Police.

### Extra-Regional Cooperation

24. Seek technical assistance from ASEAN Dialogue Partners and relevant specialized agencies of the United Nations and other international organizations, particularly with regard to training and acquisition of equipment.
25. Enhance information exchange with ASEAN Dialogue Partner, regional organizations, relevant specialized agencies of the United Nations and other international organizations, particularly towards the sharing of critical information on the identities, movements and activities of known transnational criminal organizations.
26. Urge ASEAN Dialogue Partners not yet party to existing international treaties against organized transnational crime, in its various forms, to accede to such agreements.
27. Promote interest and support in the international community for ASEAN

initiatives against transnational crime through the participation of ASEAN Member Countries and the ASEAN Secretariat in relevant international conferences.

#### **D. INSTITUTIONAL FRAMEWORK FOR ASEAN COOPERATION ON COMBATING TRANSNATIONAL CRIME**

To strengthen and coordinate ASEAN collaboration in combating transnational crime and implement the Plan of Action, ASEAN Member Countries agree to the establishment of the following framework:

##### **(a) ASEAN Ministerial Meeting on Transnational Crime (AMMTC)**

1. The ASEAN Ministerial Meeting on Transnational Crime shall be the highest policy making body on ASEAN cooperation in combating transnational crime. It shall also coordinate activities of the relevant bodies such as the ASOD, ASEANAPOL, ASEAN Directors-General of Customs, ASEAN Directors General of immigration and the Heads of Consular Affairs of the Ministries of Foreign Affairs;
2. It shall comprise ministerial level representatives of ASEAN Member Countries responsible for combating transnational crime and meet at least once in two years and informally in between when necessary;
3. The Chairmanship of the AMMTC shall be rotated in alphabetical order among the ASEAN Member Countries;
4. The AMMTC shall approve the reports of the Senior Officials Meeting on

Transnational Crime (SOMTC), and the reports of ASOD, ASEANAPOL, ASEAN Directors-General of Customs, and ASEAN Directors-General of Immigration on matters pertaining to transnational crime and the Heads of Consular Affairs of the ministries of Foreign Affairs; and

5. The AMMTC shall report to the ASEAN Summit through the ASEAN Ministerial Meeting (AMM).

##### **(b) Senior Officials Meeting on Transnational Crime (SOMTC)**

1. The Meeting of ASEAN Senior Officials on Transnational Crime shall be convened at least once a year and before the AMMTC, with the chairmanship of the SOMTC coinciding with the chairmanship of the AMMTC;
2. It shall implement policies and plans adopted by the ASEAN Ministerial Meeting on transnational Crime (AMMTC);
3. It shall develop five-year work programmes to implement the ASEAN Plan of Action on Transnational Crime;
4. It shall convene, as and when appropriate, ad-hoc working groups or task forces comprising experts to assist the SOMTC in carrying out its functions;
5. It shall promote cooperation and coordination with other ASEAN bodies dealing with transnational crime such as the ASEAN Senior Officials on Drug

Matters (ASOD), the ASEAN Chiefs of National Police (ASEANAPOL), the ASEAN Directors-General of Customs and the ASEAN Directors-General of Immigration and the Heads of Consular Affairs of the Ministries of Foreign Affairs;

6. It shall seek measures to promote cooperation with international agencies dealing with transnational crime, including those of the ASEAN Dialogue Partners; and,
7. It shall designate a national focal point/ agency who is able to coordinate cooperation on transnational crime at the regional level as well as nationally.

**(c) ASEAN Secretariat**

1. It shall assist the SOMTC in initiating, planning and coordinating activities,

strategies, programmes and projects to facilitate regional cooperation in combating transnational crime;

2. It shall assist SOMTC in formulating the Work Programme;
3. It shall assist in exploring ways by which SOMTC can work closer with relevant agencies and organizations in Dialogue Partner Countries, other countries and international organizations, including the UN and its specialized agencies, Colombo Plan Bureau, Interpol and such agencies, to combat transnational crime; and
4. It shall assist in mobilizing resources and seeking technical assistance from international agencies and ASEAN's Dialogue Partners....

## C. 2001 ASEAN Declaration on Joint Action to Counter Terrorism

*Adopted by the ASEAN Heads of State/Government during the 7<sup>th</sup> ASEAN Summit in Bandar Seri Begawan, Brunei Darussalam on 5 November 2001.*

We, the Heads of State/Government of the Association of Southeast Asian Nations (ASEAN) gathered in Bandar Seri Begawan for the Seventh ASEAN Summit,

Recalling the agreement among Heads of State/Government during the Second Informal Summit in December 1997 in Kuala Lumpur to take firm and stern measures to combat transnational crime, ...

Do hereby, ...

View acts of terrorism in all its forms and manifestations, committed wherever, whenever and by whomsoever, as a profound threat to international peace and security which require concerted action to protect and defend all peoples and the peace and security of the world;

Reject any attempt to link terrorism with any religion or race;

Believe terrorism to be a direct challenge to the attainment of peace, progress and prosperity of ASEAN and the realisation of ASEAN Vision 2020;

Commit to counter, prevent and suppress all forms of terrorist acts in accordance with the Charter of the United Nations and other international law, especially taking into account the importance of all relevant UN resolutions;

Ensure that, in observing the above, all cooperative efforts to combat terrorism at the regional level shall consider joint practical counter-terrorism measures in line with specific circumstances in the region and in each member country;

Recommit ourselves to pursue effective policies and strategies aimed at enhancing the well-being of our people, which will be our national contribution in the fight against terrorism;

Note that, towards this end, ASEAN had established a regional framework for fighting transnational crime and adopted an ASEAN Plan of Action that outlines a cohesive regional strategy to prevent, control and neutralise transnational crime;

Approve fully the initiatives of the Third ASEAN Ministers Meeting on Transnational Crime (AMMTC) held in October 2001 to focus on terrorism and deal effectively with the issue at all levels and endorse the convening of an Ad Hoc Experts Group Meeting and special sessions of the SOMTC and AMMTC that will focus on terrorism;

Warmly welcome Malaysia's offer to host the Special AMMTC on issues of terrorism in April 2002. This meeting would represent a significant step by ASEAN to the United Nations' call to enhance coordination of national, sub-regional and international efforts to strengthen a global response to this serious challenge and threat to international security;

*In strengthening* further ASEAN's counter-terrorism efforts, we task our Ministers concerned to follow-up on the implementation of this declaration to advance ASEAN's efforts to fight terrorism by undertaking the following additional practical measures.

1. Review and strengthen our national mechanisms to combat terrorism;
2. Call for the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism;
3. Deepen cooperation among our front-line law enforcement agencies in combating terrorism and sharing "best practices";
4. Study relevant international conventions on terrorism with the view to integrating them with ASEAN mechanisms on combating international terrorism;
5. Enhance information/intelligence exchange to facilitate the flow of information, in particular, on terrorists and terrorist organisations, their movement and funding, and any other information needed to protect lives, property and the security of all modes of travel;
6. Strengthen existing cooperation and coordination between the AMMTC and other relevant ASEAN bodies in countering, preventing and suppressing all forms of terrorists acts. Particular attention would be paid to finding ways to combat terrorist organisations, support infrastructure and funding and bringing the perpetrators to justice;
7. Develop regional capacity building programmes to enhance existing capabilities of ASEAN member countries to investigate, detect, monitor and report on terrorist acts;
8. Discuss and explore practical ideas and initiatives to increase ASEAN's role in and involvement with the international community including extra-regional partners within existing frameworks such as the ASEAN + 3, the ASEAN Dialogue Partners and the ASEAN Regional Forum (ARF), to make the fight against terrorism a truly regional and global endeavour;
9. Strengthen cooperation at bilateral, regional and international levels in combating terrorism in a comprehensive manner and affirm that at the international level the United Nations should play a major role in this regard.

We, the Leaders of ASEAN, pledge to remain seized with the matter, and call on other regions and countries to work with ASEAN in the global struggle against terrorism.

## **D. 2002 Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime**

*Approved by the ASEAN Ministers responsible for transnational crime issues in Kuala Lumpur, 17 May 2002.*

...

### **3. Sea-Piracy**

#### **3.1 Information Exchange**

- a. Establish a compilation of national laws and regulations of ASEAN Member Countries pertaining to piracy and armed robbery at sea leading towards establishing a regional repository of such national laws and regulations within a certain time frame to be made available on the ASEANWEB.

**Action Line:** ASEAN Member Countries (with the exception of landlocked country - Lao PDR) to submit all national laws and regulations and international agreements and Conventions as applicable on piracy and armed robbery at sea to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC for compilation and dissemination.

- b. Exchange of information and enhance cooperation with the specialised UN agency - the International Maritime Organization (IMO) - as well as with other bodies involved in combating piracy and armed robbery at sea such as the International Maritime Bureau (IMB), Federation of ASEAN Ship-owners Association (FASA) and ASEANAPOL.

**Action Line:** ASEAN Member Countries to submit directory of Focal Points to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC.

- c. Compile national studies to determine trends and “modus operandi” of piracy in South-east Asian waters.

**Action Line:** The ASEAN Secretariat to write to INTERPOL as well as other think-tanks in the region to undertake these studies within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC and at the same time to determine the costs of these studies.

#### **3.2 Legal Matters**

Consider the feasibility of developing multi-lateral or bilateral legal arrangements to facilitate apprehension, investigation, hot pursuit, prosecution and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of the proceeds of the crime in order to enhance mutual legal and administrative assistance among ASEAN Member Countries.

**Action Line:** The ASEAN Secretariat together with the Chair of the Task Force to work within a year to develop the mechanism to consider the feasibility of the matter.

#### **3.3 Law Enforcement Matters**

- a. Enhance programmes for anti-piracy coordinated patrols.

**Action Line:** Member Countries to submit existing programme and activities to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC for dissemination.

- b. Enhance cooperation and coordination in law enforcement and intelligence sharing of piracy and armed robbery at sea activities and that of other unlawful transnational crimes.

**Action Line:** To involve National Focal Point/National Maritime Authorities of the respective countries in the above initiative.

### 3.4 Training

To enhance and seek training programmes within ASEAN and ASEAN Dialogue Partners to equip Maritime, Customs, the Police, Port Authorities and other relevant officials on the prevention and suppression of sea piracy and other maritime crime.

**Action Line:** Malaysia will explore the possibility of conducting feasible training programmes with the cooperation of ASEAN Dialogue Partners.

### 3.5 Institutional Capacity-building

Strengthen and enhance the existing cooperation among National Focal Points of ASEAN Countries involved in combating and suppressing piracy and armed robbery at sea.

**Action Line:** The ASEAN Secretariat to work closely with Member Countries in identifying the National Focal Points with regard to piracy and armed robbery at sea within 6 months after the endorsement of

the Work Programme by the 2<sup>nd</sup> Annual SOMTC.

### 3.6 Extra-regional cooperation

- a. Seek technical assistance from ASEAN Dialogue Partners, users of the waterways and other relevant specialised agencies of the United Nations and international organisations, particularly with regards to training and acquisition of effective communication equipment and assets. This would be in consideration of Article 43 of the UN Convention on the Law of the Sea 1982

**Action Line:** ASEAN Member Countries to identify and prioritise workable programme, where applicable, to be submitted to the Chairman of the Task Force with a view of seeking assistance from ASEAN Dialogue Partners.

- b. Financial assistance for increased patrolling of particular vulnerable sea areas and assistance in terms of training programmes for law enforcement officials at sea and agencies concerned.

**Action Line:** The ASEAN Secretariat together with the Chairman of the Task Force to identify and match relevant programmes, where applicable, with a view of proposing them to the ASEAN Dialogue Partners...

## 5. Money Laundering

### 5.1 Exchange of information

- a. Establish a compilation of national laws and regulations of ASEAN Member Countries in pertaining to anti-money laundering legislation leading towards

establishing a regional repository of such laws within a certain timeframe on-site and on the ASEANWEB.

**Action Line:** ASEAN Member Countries to submit their respective national laws, regulations, bilateral agreements, if feasible, and information on international treaties that have been ratified and/or signed, where applicable, within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC to the ASEAN Secretariat for compilation and distribution to Member Countries.

**Action Line:** To compile a matrix of all the laws and regulations relating to money laundering by Member Countries, building upon the information already available with the Asia/Pacific Group on Money Laundering in 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC for compilation and distribution.

b. Conduct typology studies to determine trends and “modus operandi” of money laundering activities in ASEAN Member Countries.

**Action Line:** ASEAN Member Countries to refer to typologies and trends available on the Asia/Pacific Group on Money Laundering and the Financial Action Task Force on Money Laundering websites.

c. Identify relevant contact persons in the policy, legal, law enforcement and academic institutions of ASEAN Member Countries and facilitate networking and lateral coordination among persons and agencies with similar functions.

**Action Line:** Member Countries to submit list of contact persons and focal points

to ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC for compilation and distribution.

## 5.2 Legal Matters

a. Work towards the criminalisation in ASEAN Member Countries of money laundering activities.

**Action Line:** Each Member Country to explore the feasibility of criminalising money laundering, where applicable.

**Action Line:** Each Member Country to explore the feasibility of having bilateral treaties and MOU subject to domestic laws and policies. A progress report should be submitted to the ASEAN Secretariat.

## 5.3 Law Enforcement Matters

a. Enhance cooperation and coordination in law enforcement and intelligence sharing.

**Action Line:** Member Countries to submit relevant Focal Points and details of contact persons to ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC for collation and dissemination

## 5.4 Training

a. Develop regional training programmes and conduct regular conferences to enhance existing capabilities in investigation, intelligence, surveillance, detection and monitoring and reporting for ASEAN Member Countries officials concerned on anti-money laundering.

**Action Line:** Malaysia will propose training modules for money laundering investiga-

tions and suspicious transactions activity relating to money laundering in banking and non-banking institutions within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC. The ASEAN Secretariat will submit the proposal to the SOMTC for endorsement and thereafter for the appraisal process.

The money laundering investigations training will include modules on asset tracing, forensic accounting and the efficient collection, analysis and distribution of financial intelligence and effective use of the same by law enforcement units and the training of financial evaluators of anti-money laundering measures.

#### 5.5 Institutional capacity-building

- a. Coordinate with ASEANAPOL for the analysis of information on regional money laundering activities.

**Action Line:** ASEAN Secretariat will be liaising directly with ASEANAPOL to study the feasibility of this and to report at the next SOMTC Meeting.

- b. Promote the efficient networking of relevant national agencies/organizations in ASEAN Member Countries by creating inter-agency committees/task forces to enhance information exchange and dissemination.

**Action Line:** Member Countries to submit to the ASEAN Secretariat the existing framework within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC for compilation and distribution.

- c. Member Countries to establish financial intelligence/ investigative units consistent with domestic laws and policies.

**Action Line:** Member Countries to report on the status of establishment of the FIU (Financial Investigation Units) at the next Meeting.

#### 5.6 Extra-regional cooperation

- a. Seek assistance from ASEAN Dialogue Partners and relevant specialized agencies of the UN and other international organizations, particularly with regards to training.

**Action Line:** ASEAN Secretariat to give priority to the technical assistance sought to be used for funding of the training needs set out in paragraph 5.3 within the year.

### 6. Terrorism

#### Information Exchange

- a. Establish a compilation of national laws and regulations of ASEAN Member Countries, including international treaties and agreements, pertaining to terrorism leading towards establishing a regional repository of such laws within a certain timeframe on-site and on the ASEANWEB.

**Action Line:** ASEAN Member Countries to submit their respective national laws, regulations, bilateral agreements, if feasible, and information on international treaties that have been ratified and/or signed, where applicable, within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC to the ASEAN Secretariat for compilation and distribution to Member Countries

- b. Explore ways for ASEAN to cooperate with ASEANAPOL and relevant international organizations concerned with terrorism matters to further facilitate sharing of information and analysis of critical intelligence information such as “modus operandi” and offences involving terrorist activities.

**Action Line:** ASEAN Secretariat to explore linkages with ASEANAPOL and relevant international organizations within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC.

- c. Enhance cooperation in the exchange of information among Member Countries as well as with international agencies to combat terrorism.

**Action Line:** ASEAN Member Countries to submit to the ASEAN Secretariat, within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC, their respective focal points on terrorism. The ASEAN Secretariat will then publish a directory for dissemination to all ASEAN Member Countries.

- d. Exchange of information on technologies to detect and deter the use of materials of mass destruction, including biological agents or toxins, in terrorist attacks and develop means to deter terrorist attacks on electronic and computer infrastructure.

**Action Line:** ASEAN Member Countries shall enhance the exchange of the above mentioned information on technologies.

- e. Exchange of information on security practices for international special events, strengthen and expand interna-

tional cooperation and consultation in anti-terrorist activities.

**Action Line:** ASEAN Member Countries shall enhance the exchange of the above-mentioned information on security practices.

- f. A comprehensive database of international treaties and agreements pertaining to terrorism/transnational crime be established.

**Action Line:** ASEAN Secretariat to approach dialogue partners and other donor countries and funding agencies on assistance to set up the database.

- g. Enhance information/intelligence exchange to facilitate the flow of information, in particular, on terrorists and terrorist organizations, their movement and funding, and any other information needed to protect lives, property and the security of all modes of travel.

**Action Line:** ASEAN Member Countries to begin exchange of information on the above initiative.

## 6.2 Legal Matters

- a. Work towards the criminalisation of terrorism in ASEAN Member Countries.

**Action Line:** ASEAN Member Countries should provide information among each other and to the ASEAN Secretariat on the progress of their efforts to enact domestic legal instruments, within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC.

- b. Consider the feasibility of developing multilateral or bilateral legal arrangements to facilitate apprehension, investigation, prosecution, extradition, exchange of witnesses, sharing of evidence, inquiry and seizure in order to enhance mutual legal and administrative assistance among ASEAN Member Countries.

**Action Line:** Interested ASEAN Member Countries to explore the modalities through exchange visits, seminars and other means.

- c. Work towards the early signing/ratification of or accession to all relevant anti-terrorist conventions including the International Convention for the Suppression of the Financing of Terrorism.

**Action Line:** ASEAN Member Countries to work towards the early signing/ratification by first reviewing the current anti-terrorist conventions.

- d. Study relevant international conventions on terrorism with the view to integrating them with ASEAN mechanisms on combating international terrorism.

**Action Line:** ASEAN Secretariat shall finalise, within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC, the compilation of the relevant international conventions and further conduct, within six months after this finalisation, a study on the feasibility of integrating them with ASEAN mechanisms on combating international terrorism.

- e. Working on a regional operational convention or agreement to combat terrorism.

**Action Line:** ASEAN Secretariat shall conduct a study within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC to consider the formulation of a regional operational convention or agreement to combat terrorism.

- f. Work towards a bilateral or multilateral mutual legal assistance agreement or arrangement to enhance cooperation in combating terrorist acts and deliberating on various aspects of the issue in a comprehensive manner including its definition and root causes.

**Action Line:** ASEAN Secretariat to consult with Member Countries on the feasibility of holding an ASEAN Meeting to formulate an ASEAN agreement or arrangement in Mutual Legal Assistance among ASEAN Member Countries on combating terrorism as soon as possible.

### 6.3 Law Enforcement Matters

- a. Enhance cooperation and coordination in law enforcement and intelligence sharing on terrorism issues affecting ASEAN Member Countries.

**Action Line:** ASEAN Secretariat to publish a directory of focal points and contact persons in charge of terrorism for dissemination to all ASEAN Member Countries within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC.

- b. Deepen cooperation among front-line law enforcement agencies in combating terrorism and sharing best practices.

**Action Line:** ASEAN Secretariat to explore the possibility of conducting a seminar on terrorism.

#### 6.4 Training

- a. Develop regional training programmes and conduct regular conferences to enhance existing capabilities in investigation, intelligence, surveillance, counter-terrorism, detection and monitoring and reporting of terrorist activities.

**Action Line:** Interested ASEAN Member countries are urged to submit their project proposals on training programmes/ conferences to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC. The ASEAN Secretariat to seek funding from dialogue partners/international organizations for the projects. ASEAN Member Countries conducting national training programmes may extend invitations to other ASEAN Member Countries to join their existing programs.

- b. Hold a multilateral seminar on emergency response to terrorist threats.

**Action Line:** Interested ASEAN Member countries are urged to submit their project proposals on convening such a seminar to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC. The ASEAN Secretariat to seek funding from dialogue partners/international organizations to convene the seminar.

#### 6.5 Institutional Capacity Building

- a. Review and strengthen national mechanisms of ASEAN Member Countries to combat terrorism.

**Action Line:** ASEAN Secretariat shall assist Member Countries in strengthening their national mechanisms of Member Countries to combat terrorism. Assistance from ASEAN Member Countries in providing necessary documentation and information would be welcome.

- b. Strengthen existing cooperation and coordination between the AMMTC and other relevant ASEAN bodies in countering, preventing and suppressing all forms of terrorist acts. Particular attention would be paid to finding ways to combat terrorist organizations, support infrastructure and funding and bringing the perpetrators to justice.

**Action Line:** ASEAN Secretariat to explore the possibility of inviting the chair the of task forces or heads of other ASEAN bodies that are directly involved in the fight against terrorism, for example DGICM, ASEANAPOL, to attend SOMTC meetings.

- c. Develop regional capacity building programs to enhance existing capabilities of ASEAN Member Countries to investigate, detect, monitor and report on terrorist acts.

**Action Line:** Interested ASEAN Member countries are urged to submit their project proposals on capacity building programmes to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2<sup>nd</sup> Annual SOMTC. The ASEAN Secretariat to seek funding from

dialogue partners/international organizations for the programmes.

- d. Convene specialized workshops, seminars and training courses for ASEAN law enforcement officials on new forms of terrorism such as bio-terrorism and cyber-terrorism. The areas for discussion could include the review of laws and legislation in these new areas with a view towards harmonization where feasible.

**Action Line:** ASEAN Member Countries will provide the ASEAN Secretariat a list of research institutions in each country with the capabilities of carrying out chemical analysis of biological agents and toxins, which would be useful in combating bio-terrorism. The list would be circulated to all Member Countries.

### 6.6 Extra-regional cooperation

- a. Discuss and explore practical ideas and initiatives to increase ASEAN's role in and involvement with the international

community including extra-regional partners within existing frameworks such as the ASEAN + 3, the ASEAN Dialogue Partners and the ASEAN Regional Forum (ARF), to make the fight against terrorism a truly regional and global endeavor.

**Action Line:** AMMTC Chair and the ASEAN Secretariat may look into the possibility of inviting the Plus Three Countries – China, Japan and the Republic of Korea - and other dialogue partners to the SOMTC and AMMTC meetings.

- b. Strengthen cooperation at bilateral, regional and international levels in combating terrorism in a comprehensive manner and affirm that at the international level the United Nations should play a major role in this regard.

**Action Line:** ASEAN Secretariat to conduct a study on how ASEAN programmes/projects could complement/support UN resolutions...

## **E. 2003 ARF Statement on Cooperation Against Piracy and Other Threats to Security**

*Issued during the 10th Meeting of the ASEAN Regional Forum in Phnom Penh, Cambodia on 18 June 2003.*

The Chairman of the ASEAN Regional Forum (ARF), on behalf of the participating states and organization, issues the following statement:

Recognizing that:

- a) Piracy and armed robbery against ships and the potential for terrorist attacks on vulnerable sea shipping threaten the growth of the Asia-Pacific region and disrupt the stability of global commerce, particularly as these have become tools of transnational organized crime;
  - b) ARF Countries represents approximately 80 percent of the world's GDP and trade, and even more of maritime or container shipping trade;
  - c) Maritime security is an indispensable and fundamental condition for the welfare and economic security of the ARF region. Ensuring this security is in the direct interest of all countries, and in particular the ARF countries;
  - d) Most maritime armed-robberies in the Asia-Pacific region tend to occur in the coastal and archipelagic waters. Trends over the last few years indicate that piracy and armed-robbery against ships continue to threaten to be a significant problem in the Asia-Pacific region;
  - e) To deal with this increasingly violent international crime, it is necessary to step up broad-based regional cooperative efforts to combat transnational organized crime, including through cooperation and coordination among all institutions concerned, such as naval units, coastal patrol and law enforcement agencies, shipping companies, crews, and port authorities;
  - f) Such efforts must be based on relevant international law, including the 1982 Law of the Sea Convention;
  - g) It is important that there be national and regional cooperation to ensure that maritime criminals and pirates do not evade prosecution;
  - h) Effective responses to maritime crime require regional maritime security strategies and multilateral cooperation in their implementation;
  - i) National, Regional and International efforts to combat terrorism also enhance the ability to combat transnational organized crime and armed-robberies against ships.
2. The Participants of ARF endeavour to achieve effective implementation of the relevant international instruments

and recommendations/guidelines for the suppression of piracy and armed-robbery against ships, including the United Nations Convention on the Law of the Sea, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; and the International Maritime Organization's recommendations and guidelines for preventing and suppressing piracy and armed-robbery against ships at sea; the International Convention for the Safety of Life at Sea, 1974 particularly the new Chapter XI-2 and the International Ship and Port Facilities Security (ISPS Code); and to enhance their coordination and cooperation to that end. The members of ARF express their commitment to become parties to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelves as soon as possible, if they have not yet done so.

3. The ARF Participants will work together to protect ships engaged in international voyages by:
  - a) Enhancing cooperation on fighting piracy and armed-robbery in the region between ARF participants' shipping and organizations such as the International Maritime Organization (IMO) and the Piracy

- Reporting Center of the International Maritime Bureau (IMB);
- b) Early implementation of the comprehensive amendment to the International Convention for the Safety of Life at Sea, 1974, and the new ISPS Code adopted by the Diplomatic Conference on Maritime Security in December 2002; as called for in Conference Resolution 6.
- c) Affirming their responsibilities to prosecute, in accordance with relevant domestic laws, perpetrators of acts of piracy and armed-robbery against ships.
- d) Endorsing the development by the International Maritime Organization of the following instruments and recommendations/ guidance for use in preventing and suppressing piracy and armed-robbery against ships:
  - Recommendations to Governments for preventing and suppressing piracy and armed-robbery against ships, MSC/Circ. 622/Rev. 1, 16 June 1999;
  - Guidance to ship-owners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed-robbery against ships, MSC/Circ. 623/Rev. 3, 29 May 2002; Directives for Maritime Rescue Coordination Centers (MRCCs), MSC/Circ. 967, 6 June 2000;

- Interim Procedures for MRCCs on Receipt of Distress Alerts, MSC/Circ. 959, 20 June 2000;
  - Resolution A. 922 (22) - Code of Practice for the investigation of the crimes of piracy and armed-robberies against ships;
  - Resolution A. 923 (22) - "Phantom" ships and registration process; and
  - Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.
4. The ARF participants **commit** to undertake the following actions:
- a) Encourage bilateral and multilateral maritime cooperation among ARF members to combat piracy, including at the present increased personnel contact among personnel, information exchanges and anti-piracy exercises on the basis of respecting territorial integrity, sovereignty, sovereign rights and jurisdiction and in accordance with the principles of voluntary participation and agreement in line with the respective applicable international conventions.
  - b) Encourage ARF consideration and future discussion of new IMB proposals (10/23/02) on prescribed traffic lanes for large supertankers with coastguard or naval escort whenever and wherever possible on the high sea upon the consent of all ARF countries concerned. If considered feasible, forward to IMO for adoption as appropriate.
  - c) Provide, where and when possible, technical assistance and capacity-building infrastructure to countries that need help in developing necessary laws, extending training, and where and when possible, providing equipment.
  - d) Enhance ARF participants' ability to share information domestically and internationally as a vital component in the fight against maritime piracy and armed-robberies.
  - e) Institute regional ARF cooperation and training in anti-piracy and security. Cooperate with the world maritime university (under the IMO) as regards education and training of personnel engaged in anti-piracy and security.
  - f) Encourage greater ARF member states' transport industries and shipping community to report incidents to the relevant coastal states and to ships' flag administration for follow up action by the proper authorities as prescribed in MSC/Circ. 623. In addition to the IMO, ships may also report to secondary reporting centers such as the International Maritime Bureau's Piracy Reporting Center in Kuala Lumpur.

- g) Encourage the ARF Chair to explore with the ASEAN Secretariat or an ARF participant whether it would be willing to coordinate logging of requests for assistance by ARF participants in implementing the provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf and other relevant instruments.
- h) Review progress on efforts to combat maritime piracy and armed-robberies against ships at the 11<sup>th</sup> ARF Ministerial meeting, in 2004 and share their experiences with member states of the IMO.
- i) Endorse the ongoing efforts to establish a legal framework for regional cooperation to combat piracy and armed-robberies against ships.
- j) Welcome the discussion in the IMO on various issues relating to the delivery of criminals who have committed crimes on a ship on the high sea or on the exclusive economic zone to the authorities of port state by the master of the ship, and hope to reach a conclusion as soon as possible. (IMO document “LEG 85/10”).
- k) Nothing in this statement, nor any act or activity carried out in pursuant to this statement, should prejudice the position of ARF countries with regard to any unsettled dispute concerning sovereignty or other rights over territory.

## **F. 2003 ARF Statement on Cooperative Counter-Terrorist Action on Border Security**

*Issued during the 10th Meeting of the ASEAN Regional Forum in Phnom Penh, Cambodia on 18 June 2003.*

The Chairman of the ASEAN Regional Forum, on behalf of the ARF participating states and organization, issues the following statement:

Recognizing that:

Terrorism constitutes a grave threat to stability, peace and security in the Asia-Pacific and beyond. It has links with transnational organized crime, such as money laundering, arms smuggling, people smuggling, and the production of and trafficking in illicit drugs. It is also associated with the illegal movement of nuclear, chemical, biological, and other deadly materials. Because terrorism has multiple dimensions, manifestations and causes and respects no national boundaries, it is a complex phenomenon that requires a comprehensive approach and unprecedented international cooperation. More than ever, it is important to ensure the secure flow of goods and people, to create and reinforce sound border infrastructures, and to coordinate information sharing and enforcement.

The fight against terrorism requires a comprehensive approach and unprecedented international cooperation.

In this regard, we recall the Statement by the ARF Chairman dated 4 October 2001, which stated "The threat of international terrorism to international peace and security requires concerted action to protect

and defend all peoples and the peace and security of the world. It is important that the underlying causes of this phenomenon be addressed to resolve the scourge of international terrorism."

Critical to such an approach and to effective international cooperation are the control of states over their borders and the denial of cross-border movement to terrorists and that of their goods, funds and material.

It is imperative therefore that borders should not be thought of only in terms of land frontiers between nations. Airports and seaports are also border crossing points so that air transport and maritime transport need to figure in the overall concept of border security.

If one is not simply to encourage the threat to move from one mode of transport to another then progress needs to be made in parallel across the entire spectrum of modes of border-crossing transport.

We stress the leading role of the UN in the fight against terrorism and call upon ARF participants to become parties as soon as possible to the international conventions and protocols relating to terrorism fully implement the relevant UN Security Council Resolutions, including Resolution 1373, and remain fully committed to supporting the work of the UN Counter Terrorism Committee and other pertinent UN bodies.

Acknowledging that terrorism and its linkage with transnational organized crime form part of a complex set of new security chal-

lenges, we stress the necessity to address them urgently in all aspects and in all fora, including the ASEAN Regional Forum...

We acknowledge that terrorism, including its links with trans-national organized crime such as money laundering, arms-trafficking and the production of and trafficking in illicit drugs, people smuggling, as well as illegal movements of nuclear, chemical, biological and other potentially deadly materials, forms part of a complex set of new security challenges, which have to be addressed urgently in all aspects and in all fora, including the ASEAN Regional Forum...

The challenge for ARF participating states is to implement effective border security and documentation practices while facilitating the cost-effective and efficient flow of people and goods for legitimate economic and social purposes and without undermining the principles and policies that promote our common security, and well being. The ARF has already joined other multilateral fora in taking substantive steps to enhance information sharing.

The ARF notes the significant progress that has been made by ARF participants in addressing counter-terrorism aspects of border security and encourages ARF governments to further enhance their efforts and commitment to combat terrorism in a more comprehensive manner on a voluntary basis and taking into account resources and capacity of ARF participants, in particular their efforts:

- to strengthen the capability of law enforcement and intelligence agencies;

- to ensure that border security forces are carefully screened, receiving good initial and ongoing training and motivated both by a desire to protect the community and by an adequate wage structure;
- to strengthen cooperation in sharing of intelligence in order to effectively deal with terrorism and transnational crimes such as illicit arms trafficking, drug trafficking and human and cargo smuggling;
- to strengthen cooperation in, and the legal framework for, where possible, prosecuting and extraditing terrorists, and to ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of terrorist acts;
- to cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- to ensure that the free flow of people and goods across borders is secure and not subject to exploitation by terrorists, drug traffickers, arms smugglers, people smugglers and other criminals.

The challenge for ARF and its participants is to implement border security and documentation practices that confront the terrorist threat without undermining these basic principles that promote our common security, including respect for human rights and the rule of law.

In this light, ARF participating states undertake to carry out the following cooperative actions for strengthening border security:

Movement of People...

Movement of Goods...

Document Security...

### General Measures

- Encourage multilateral cooperation on border security among ARF members to combat terrorism.
- Encourage ARF consideration and adoption of new measures for border security proposed by the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the World Customs Organization (WCO) and other relevant international organizations.
- Provide, where necessary and possible, technical assistance and capacity-building infrastructure to states that need help in developing laws, training, and or in acquiring the equipment to enhance border security.
- Enhance ARF participants' efforts to share information useful on terrorism and trans-national organized crimes such as illegal arms trafficking, drug trafficking, people smuggling, and money laundering, where feasible domestically and internationally as a vital component in the fight against terrorism.

## **G. 2004 ARF Statement on Strengthening Transport Security Against International Terrorism**

*Issued during the 11th Meeting of the ASEAN Regional Forum in Jakarta, Indonesia on 2 July 2004.*

The Chairman of the ASEAN Regional Forum (ARF), on behalf of the participating states and organization issues the following statement:

**Strongly condemning** all terrorist acts regardless of objectives or motivations;

**Drawing attention** to the significant threat to transportation posed by terrorist organizations and criminal groups and their growing coalescence, including those involved in piracy and smuggling;

**Recognizing** that despite the increased anti-terrorist efforts of the international community terrorism remains a direct threat to international peace, security and stability, and economic prosperity, including in the Asia-Pacific region;

**Stressing** that the complex, multi-dimensional and global nature of terrorism requires active and concerted actions by the international community, and a comprehensive approach – combining political, diplomatic, economic, legislative, law enforcements and other means – to address its manifestations and its causes;

**Recognizing** the need to enhance international, regional and sub-regional cooperation to promote counter-terrorist capacity by sovereign states;

**Stressing** the need for all states to create an environment where terrorism in all

its manifestations is resolutely and totally rejected and to establish the necessary legislation and other means to ensure that terrorist offenses are effectively investigated and prosecuted;

**Ensuring** that all measures to combat terrorism are taken in accordance with the Charter of the United Nations and other applicable norms and principles of international, humanitarian and human rights law;

**Reaffirming and strengthening** the central role of the United Nations, in combating terrorism and shaping a joint and efficient system to address global threats and challenges;

**Remaining** strongly committed to the implementation of UN conventions and protocols relating to terrorism and fully supporting the work of the Counter-Terrorism Committee of the UN Security Council and other relevant UN agencies;

**Recognizing** that further efforts aimed at facilitating the earliest possible conclusion of the draft UN Comprehensive Convention Against International Terrorism and the draft UN International Convention on the Suppression of Acts of Nuclear Terrorism would be a significant contribution in that regard; ...

...**Noting** the vital importance of the safe and efficient operation of transport systems for their proper functioning and successful development of the global, regional, and national economies;

**Recognizing** the significance of international cooperation stipulated in the United Nations Convention on the Law of the Sea (UNCLOS) and other relevant international maritime regime in enhancing maritime transportation safety and security as an important contribution to international, regional and national efforts to combat terrorism and transnational crime;

**Noting** the Bali Regional Ministerial Meeting on Counter-terrorism which established two Ad Hoc Working Groups to enhance regional law enforcement cooperation and legal frameworks;

**Recalling** the ARF statements on Measures Against Terrorist Financing of 30 July 2002, on Cooperation Against Piracy and Other Threats to Maritime Security of 17 June 2003, as well as the ARF Statement on Cooperative Counter-terrorist Action on Border Security of 18 June 2003 which stresses, in particular, that progress needs to be made in fighting terrorism across the entire spectrum of modes of border-crossing transport;

**Observing** the progress achieved by the Forum participants in combating terrorism in transport; ...

ARF participating states and organization will endeavor to:

1. Enhance wherever possible their efforts and cooperation in fighting terrorism in all modes of transport – on the road, by rail, at sea, in the air, and by pipelines – in accordance with their domestic legislation, international obligations, and this Statement. In this regard, ARF participating states and organization will endeavor to jointly explore new practical measures and initiatives to combat terrorism in the transport sector.
2. Strengthen the legal cooperation framework to counter terrorism in all modes of transport by accession to relevant global anti-terrorist conventions and protocols and the conclusion of appropriate bilateral and multilateral treaties, agreements, and conventions. The ARF participating states and organization will continue, inter alia, their efforts to cooperate on criminal prosecution and extradition of persons suspected of perpetrating terrorist acts.
3. Fully and effectively implement their obligations under the International Maritime Organization (IMO) International Ship and Port Security (ISPS) Code by the agreed date of 1 July 2004.
4. Strengthen cooperation in the exchange of information, particularly on terrorist activities – planned or being committed – and persons and entities/organizations/groups involved, as well as appropriately and effectively share information for the prosecution process of perpetrators of terrorist acts, while protecting the confidentiality of individual information, in accordance with domestic laws.
5. Strengthen practical cooperation between law-enforcement bodies, and relevant security and intelligence services, as well as state transportation agencies and organizations in counter-acting terrorism in transport.

6. Explore possible ways of improving interoperable methods of identification of members of international terrorist groups active in international transport routes. The ARF participating states and organization thus, express their intention for respective national authorities to cooperate in improving the security features of travel documents and visa systems, including through the consideration of standards and best practices established in other for a, thus facilitating the identification of individuals suspected to be involved in terrorist activities, while taking into account the need to avoid the violation of the rights of individuals.
7. Hold appropriate simulation and joint exercises, with a view to enhancing institutional capacity building of coastal states, especially with regard to piracy and maritime and aerial terrorism, to ensure effective modal coordination of maritime and aviation security and safety measures.
8. Consider opportunities to plan and implement, as appropriate, coordinated special operations and criminal investigations and set up under the most appropriate jurisdiction, joint operative teams to mitigate the effects of terrorist attacks on transport facilitates and bring the perpetrators to justice.
9. Cooperate, consistent with existing relevant transportation regimes, in preventing transportation systems from being used by terrorist, either as a site to commit terrorist acts or for transporting personnel, arms, explosives and explosive devices, and weapons of mass destruction.
10. Promote cooperation between research institutions to examine terrorism against the transport network, carry out joint research, exchange expertise and recommend methodologies, technologies, and best practices for combating such treats through meetings, seminars and conferences or through exchange of legislative and other legal regulations, and scientific research results.
11. Expand cooperation and enhance participation in international for a and international organizations, in particular, by adherence to the International Maritime Organization's (IMO's) International Ship and Port Security (ISPS) Code and relevant standards of the International Civil Aviation Organization (ICAO).
12. Assist in providing appropriate training and equipment to respective transport security services.
13. Continue to develop and harmonize measures aimed at enhancing necessary security regimes for container shipping, while taking into account national legal systems and the need to avoid unnecessary increase in costs and disruption to trade.
14. Jointly examine and consider means to counter suicide terrorist attacks against transportation and transport facilities.
15. Continue to develop concerted efforts to fight piracy and other border crimes

- such as smuggling of illicit containers, under the aegis of IMO and respective national and regional frameworks, in particular, those relating to enhanced export control measures.
16. Develop and share best practices in the formulation of an intermodal transport security framework that would link air, rail, road, inland waterway and maritime transport, believing that such a framework will provide a coherent, cost-effective, and rational approach to cargo transport security.
  17. Encourage constructive interaction between the ARF and other regional and international organizations/for a in this area with counter-terrorism mandates.
  18. Cooperate to ensure that terrorists are prevented from using information technology and its applications to disrupt and sabotage the operation of transportation systems...

## **H. 2009 ASEAN Political-Security Community Blueprint (2009 APSC Blueprint)**

*Adopted by the ASEAN Leaders during the 14<sup>th</sup> ASEAN Summit in Cha-am/Hua Hin, Thailand on 1 March 2009.*

### **... A.1. Cooperation in Political Development**

14. Since the adoption of the ASC Plan of Action in 2003, ASEAN has achieved progress in different measures of political development. There was increased participation by organisations, such as academic institutions, think-tanks, and civil society organisations in ASEAN meetings and activities. Such consultations and heightened interactions fostered good relations and resulted in positive outcomes for the region.
15. Efforts are underway in laying the groundwork for an institutional framework to facilitate free flow of information based on each country's national laws and regulations; preventing and combating corruption; and cooperation to strengthen the rule of law, judiciary systems and legal infrastructure, and good governance. Moreover, in order to promote and protect human rights and fundamental freedoms, the ASEAN Charter stipulates the establishment of an ASEAN human rights body...

### **A.2.5. Promote ASEAN maritime cooperation**

#### **Actions**

- i. Establish the ASEAN Maritime Forum;

- ii. Apply a comprehensive approach that focuses on safety of navigation and security concern in the region that are of common concerns to the ASEAN Community;
- iii. Stock-take maritime issues and identify maritime cooperation among ASEAN member countries; and
- iv. Promote cooperation in maritime safety and search and rescue (SAR) through activities such as information sharing, technological cooperation and exchange of visits of authorities concerned...

### **B. A Cohesive, Peaceful and Resilient Region with Shared Responsibility for Comprehensive Security**

17. In building a cohesive, peaceful and resilient Political Security Community, ASEAN subscribes to the principle of comprehensive security, which goes beyond the requirements of traditional security but also takes into account non-traditional aspects vital to regional and national resilience, such as the economic, socio-cultural, and environmental dimensions of development. ASEAN is also committed to conflict prevention/confidence building measures, preventive diplomacy, and post-conflict peace building...

### **B.4. Non-Traditional Security Issues**

25. A key purpose of ASEAN is to respond effectively and in a timely manner,

in accordance with the principles of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges

**B.4.1. Strengthen cooperation in addressing non-traditional security issues, particularly in combating transnational crimes and other transboundary challenges**

**Actions**

- i. Implement effectively eight priority areas in the Work Programme to Implement the Plan of Action to Combat Transnational Crime;
- ii. Endeavour to ratify the Treaty on Mutual Legal Assistance in Criminal Matters among ASEAN Member States and work towards elevating it to an ASEAN treaty;
- iii. Continue the work of the working group, as mandated by the ASEAN Law Ministers' Meeting, to enhance cooperation on the issue of extradition; ...
- xii. Enhance cooperation with relevant external parties in combating transnational crimes, including countering terrorism;
- xiii. Enhance cooperation and coordination among existing ASEAN sectoral bodies in dealing with transnational crimes;
- xiv. Strengthen close cooperation among ASEAN Member States, to combat IUU fishing in the region and where applicable, through the implementation of the IPOA - IUU fishing and work towards the establishment of ASEAN

Fisheries Consultative Forum (AFCF);  
...

- xvii. Forge closer cooperation in fighting against sea piracy, armed robbery against ships, hijacking and smuggling, in accordance with international laws; and
- xviii. Strengthen cooperation in the field of border management to jointly address matters of common concern, including forgeries of identification and travel documents, by enhancing the use of relevant technologies to effectively stem the flow of terrorists and criminals.

**B.4.2 Intensify counter-terrorism efforts by early ratification and full implementation of the ASEAN Convention on Counter-Terrorism**

**Actions**

- i. Work towards the entry into force of the ASEAN Convention on Counter-Terrorism (ACCT) by 2009 its ratification by all ASEAN Member States, and promote effective implementation of the Convention;
- ii. Endeavour to accede and ratify the relevant international instruments on counter terrorism;
- iii. Promote effective implementation of the ASEAN Comprehensive Plan of Action on Counter-Terrorism; and
- iv. Cooperate to support development initiatives aimed at addressing the root causes of terrorism and conditions conducive to terrorism.

### 3. UN Resolutions

#### A. 2008 United Nations Security Council Resolution 1816 (UNSCR 1816)

*Adopted by the Security Council at its 5902nd meeting on 2 June 2008 as S/Res/1816 (2008).*

The Security Council,

*Recalling* its previous resolutions and the statements of its President concerning the situation in Somalia,

*Gravely concerned* by the threat that acts of piracy and armed robbery against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, the safety of commercial maritime routes and to international navigation,

*Expressing* its concerns at the quarterly reports from the International Maritime Organization (IMO) since 2005, which provide evidence of continuing piracy and armed robbery in particular in the waters off the coast of Somalia,

*Affirming* that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery, as well as other ocean activities,

*Reaffirming* the relevant provisions of international law with respect to the repression of piracy, including the Convention, and *recalling* that they provide guiding principles for cooperation to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state, including but not limited to boarding, searching, and seizing vessels engaged in or suspected of engaging in acts of piracy, and to apprehending

persons engaged in such acts with a view to such persons being prosecuted,

*Reaffirming* its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,

*Taking into account* the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia’s territorial waters,

*Deploring* the recent incidents of attacks upon and hijacking of vessels in the territorial waters and on the high seas off the coast of Somalia including attacks upon and hijackings of vessels operated by the World Food Program and numerous commercial vessels and the serious adverse impact of these attacks on the prompt, safe and effective delivery of food aid and other humanitarian assistance to the people of Somalia, and the grave dangers they pose to vessels, crews, passengers, and cargo,

*Noting* the letters to the Secretary-General from the Secretary-General of the IMO dated 5 July 2007 and 18 September 2007 regarding the piracy problems off the coast of Somalia and the IMO Assembly resolution A.1002 (25), which strongly urged Governments to increase their efforts to prevent and repress, within the provisions of international law, acts of piracy and armed robbery against vessels irrespective of where such acts occur, and *recalling* the joint communiqué of the IMO and the World Food Programme of 10 July 2007,

*Taking note of the Secretary-General's letter of 9 November 2007 to the President of the Security Council reporting that the Transitional Federal Government of Somalia (TFG) needs and would welcome international assistance to address the problem,*

*Taking further note of the letter from the Permanent Representative of the Somali Republic to the United Nations to the President of the Security Council dated 27 February 2008, conveying the consent of the TFG to the Security Council for urgent assistance in securing the territorial and international waters off the coast of Somalia for the safe conduct of shipping and navigation,*

*Determining that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,*

*Acting under Chapter VII of the Charter of the United Nations,*

1. *Condemns and deplors all acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia;*
2. *Urges States whose naval vessels and military aircraft operate on the high seas and airspace off the coast of Somalia to be vigilant to acts of piracy and armed robbery and, in this context, encourages, in particular, States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and*
- armed robbery at sea in cooperation with the TFG;
3. *Urges all States to cooperate with each other, with the IMO and, as appropriate, with the relevant regional organizations in connection with, and share information about, acts of piracy and armed robbery in the territorial waters and on the high seas off the coast of Somalia, and to render assistance to vessels threatened by or under attack by pirates or armed robbers, in accordance with relevant international law;*
4. *Further urges States to work in cooperation with interested organizations, including the IMO, to ensure that vessels entitled to fly their flag receive appropriate guidance and training on avoidance, evasion, and defensive techniques and to avoid the area whenever possible;*
5. *Calls upon States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery off the Somali and nearby coastlines;*
6. *Affirms that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 5 above which have been exempted from those measures in accordance with the*

procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);

7. *Decides* that for a period of six months from the date of this resolution, States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:
  - (a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and
  - (b) Use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery;
8. *Requests* that cooperating states take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 7 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;
9. *Affirms* that the authorization provided in this resolution applies only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of member states under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that it shall not be considered as establishing customary international law, and affirms further that this authorization has been provided only following receipt of the letter from the Permanent Representative of the Somalia Republic to the United Nations to the President of the Security Council dated 27 February 2008 conveying the consent of the TFG;
10. *Calls upon* States to coordinate their actions with other participating States taken pursuant to paragraphs 5 and 7 above;
11. *Calls upon* all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators or piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution;
12. *Requests* States cooperating with the TFG to inform the Security Council within 3 months of the progress of actions undertaken in the exercise of

the authority provided in paragraph 7 above;

13. *Requests* the Secretary-General to report to the Security Council within 5 months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial waters and the high seas off the coast of Somalia;
14. *Requests* the Secretary-General of the IMO to brief the Council on the basis

of cases brought to his attention by the agreement of all affected coastal states, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;

15. *Expresses* its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraph 7 above for additional periods upon the request of the TFG;
16. *Decides* to remain seized of the matter.

## **B. 2008 UN Security Council Resolution 1846 (UNSCR 1846)**

*Adopted by the Security Council at its 6026th meeting, on 2 December 2008 as S/RES/1846 (2008).*

*The Security Council,*

*Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008) and 1838 (2008),*

*Continuing to be gravely concerned by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, to international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including fishing activities in conformity with international law,*

*Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia,*

*Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,*

*Taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (“TFG”) to interdict pirates or patrol and secure either the international sea lanes off the coast of Somalia or Somalia’s territorial waters,*

*Taking note of the requests from the TFG for international assistance to counter*

*piracy off its coasts, including the 1 September 2008 letter from the President of Somalia to the Secretary-General of the United Nations expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG’s willingness to consider working with other States and regional organizations to combat piracy and armed robbery at sea off the coast of Somalia, the 20 November 2008 letter conveying the request of the TFG that the provisions of resolution 1816 (2008) be renewed, and the 20 November request of the Permanent Representative of Somalia before the Security Council that the renewal be for an additional 12 months,*

*Further taking note of the letters from the TFG to the Secretary-General providing advance notification with respect to States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia and from other Member States to the Security Council to inform the Council of their actions, as requested in paragraphs 7 and 12 of resolution 1816 (2008), and encouraging those cooperating States, for which advance notification has been provided by the TFG to the Secretary-General, to continue their respective efforts,*

*Expressing again its determination to ensure the long-term security of World Food Programme (WFP) maritime deliveries to Somalia,*

*Recalling that in its resolution 1838 (2008) it commended the contribution made by*

some States since November 2007 to protect (WFP) maritime convoys, and the establishment by the European Union (EU) of a coordination unit with the task of supporting the surveillance and protection activities carried out by some member States of the European Union off the coast of Somalia, as well as other international and national initiatives taken with a view to implementing resolutions 1814 (2008) and 1816 (2008),

*Emphasizing* that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a full eradication of piracy and armed robbery at sea off the coast of Somalia,

*Welcoming* the signing of a peace and reconciliation Agreement (“the Djibouti Agreement”) between the TFG and the Alliance for the Re-Liberation of Somalia on 19 August 2008, as well as their signing of a joint ceasefire agreement on 26 October 2008, *noting* that the Djibouti Agreement calls for the United Nations to authorize and deploy an international stabilization force, and *further noting* the Secretary-General’s report on Somalia of 17 November 2008, including his recommendations in this regard,

*Commending* the key role played by the African Union Mission to Somalia (AMISOM) in facilitating delivery of humanitarian assistance to Somalia through the port of Mogadishu and the contribution that AMISOM has made towards the goal of establishing lasting peace and stability in Somalia, and *recognizing* specifically the important contri-

butions of the Governments of Uganda and Burundi to Somalia,

*Welcoming* the organization of a ministerial meeting of the Security Council in December 2008 to examine ways to improve international coordination in the fight against piracy and armed robbery off the coast of Somalia and to ensure that the international community has the proper authorities and tools at its disposal to assist it in these efforts,

*Determining* that the incidents of piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia;
2. *Expresses* its concern over the finding contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy off the coast of Somalia;
3. *Welcomes* the efforts of the International Maritime Organization (“IMO”) to update its guidance and recommendations to the shipping industry and to Governments for preventing and suppressing piracy and armed robbery at sea and to provide this guidance

as soon as practicable to all Member States and to the international shipping community operating off the coast of Somalia;

4. *Calls upon* States, in cooperation with the shipping industry, the insurance industry and the IMO, to issue to ships entitled to fly their flag appropriate advice and guidance on avoidance, evasion, and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia;
5. *Further calls upon* States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines;
6. *Welcomes* initiatives by Canada, Denmark, France, India, the Netherlands, the Russian Federation, Spain, the United Kingdom, the United States of America, and by regional and international organizations to counter piracy off the coast of Somalia pursuant to resolutions 1814 (2008), 1816 (2008) and 1838 (2008), the decision by the North Atlantic Treaty Organization (NATO) to counter piracy off the Somalia coast, including by escorting vessels of the WFP, and in particular the decision by the EU on 10 November 2008 to launch, for a period of 12 months from December 2008, a naval operation to protect WFP maritime convoys bringing humanitarian assistance to Somalia and other vulnerable ships, and to repress acts of piracy and armed robbery at sea off the coast of Somalia;
7. *Calls upon* States and regional organizations to coordinate, including by sharing information through bilateral channels or the United Nations, their efforts to deter acts of piracy and armed robbery at sea off the coast of Somalia in cooperation with each other, the IMO, the international shipping community, flag States, and the TFG;
8. *Requests* the Secretary-General to present to it a report, no later than three months after the adoption of this resolution, on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of WFP maritime deliveries to Somalia and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia;
9. *Calls upon* States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related

equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use;

10. *Decides* that for a period of 12 months from the date of this resolution States and regional organizations cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG to the Secretary-General, may:
  - (a) Enter into the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and
  - (b) Use, within the territorial waters of Somalia, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery at sea;
11. *Affirms* that the authorizations provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law; and *affirms further* that such authorizations have been provided only following the receipt of the 20 November letter conveying the consent of the TFG;
12. *Affirms* that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) do not apply to supplies of technical assistance to Somalia solely for the purposes set out in paragraph 5 above which have been exempted from those measures in accordance with the procedure set out in paragraphs 11 (b) and 12 of resolution 1772 (2007);
13. *Requests* that cooperating States take appropriate steps to ensure that the activities they undertake pursuant to the authorization in paragraph 10 do not have the practical effect of denying or impairing the right of innocent passage to the ships of any third State;
14. *Calls upon* all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition

and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution;

15. Notes that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (“SUA Convention”) provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation; *urges* States parties to the SUA Convention to fully implement their obligations under said Convention and cooperate with the Secretary-General and the IMO to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;
16. Requests States and regional organizations cooperating with the TFG to inform the Security Council and the Secretary-General within nine months

of the progress of actions undertaken in the exercise of the authority provided in paragraph 10 above;

17. Requests the Secretary-General to report to the Security Council within 11 months of adoption of this resolution on the implementation of this resolution and on the situation with respect to piracy and armed robbery in territorial waters and the high seas off the coast of Somalia;
18. Requests the Secretary-General of the IMO to brief the Council on the basis of cases brought to his attention by the agreement of all affected coastal States, and duly taking into account the existing bilateral and regional cooperative arrangements, on the situation with respect to piracy and armed robbery;
19. Expresses its intention to review the situation and consider, as appropriate, renewing the authority provided in paragraph 10 above for additional periods upon the request of the TFG;
20. Decides to remain seized of the matter.

## C. 2008 UN Security Council Resolution 1851 (UNSCR 1851)

*Adopted by the Security Council at its 6046th meeting on 16 December 2008 as S/RES/1851 (2008).*

*The Security Council,*

*Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), and 1846 (2008),*

*Continuing to be gravely concerned by the dramatic increase in the incidents of piracy and armed robbery at sea off the coast of Somalia in the last six months, and by the threat that piracy and armed robbery at sea against vessels pose to the prompt, safe and effective delivery of humanitarian aid to Somalia, and noting that pirate attacks off the coast of Somalia have become more sophisticated and daring and have expanded in their geographic scope, notably evidenced by the hijacking of the M/V Sirius Star 500 nautical miles off the coast of Kenya and subsequent unsuccessful attempts well east of Tanzania,*

*Reaffirming its respect for the sovereignty, territorial integrity, political independence and unity of Somalia, including Somalia's rights with respect to offshore natural resources, including fisheries, in accordance with international law,*

*Further reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,*

*Again taking into account the crisis situation in Somalia, and the lack of capacity of the Transitional Federal Government (TFG) to interdict, or upon interdiction to prosecute pirates or to patrol and secure the waters off the coast of Somalia, including the international sea lanes and Somalia's territorial waters,*

*Noting the several requests from the TFG for international assistance to counter piracy off its coast, including the letter of 9 December 2008 from the President of Somalia requesting the international community to assist the TFG in taking all necessary measures to interdict those who use Somali territory and airspace to plan, facilitate or undertake acts of piracy and armed robbery at sea, and the 1 September 2008 letter from the President of Somalia to the Secretary-General of the UN expressing the appreciation of the TFG to the Security Council for its assistance and expressing the TFG's willingness to consider working with other States and regional organizations to combat piracy and armed robbery off the coast of Somalia,*

*Welcoming the launching of the EU operation Atalanta to combat piracy off the coast of Somalia and to protect vulnerable ships bound for Somalia, as well as the efforts by the North Atlantic Treaty Organization, and other States acting in a national capacity in cooperation with the TFG to suppress piracy off the coast of Somalia,*

*Also welcoming the recent initiatives of the Governments of Egypt, Kenya, and the*

Secretary-General's Special Representative for Somalia, and the United Nations Office on Drugs and Crime (UNODC) to achieve effective measures to remedy the causes, capabilities, and incidents of piracy and armed robbery off the coast of Somalia, and *emphasizing* the need for current and future counter-piracy operations to effectively coordinate their activities,

*Noting with concern* that the lack of capacity, domestic legislation, and clarity about how to dispose of pirates after their capture, has hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice, and *reiterating* that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("SUA Convention") provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation,

*Welcoming* the report of the Monitoring Group on Somalia of 20 November 2008 (S/2008/769), and *noting* the role piracy may play in financing embargo violations by armed groups,

*Determining* that the incidents of piracy and armed robbery at sea in the waters off the coast of Somalia exacerbate the situation in Somalia which continues to constitute a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Reiterates* that it condemns and deplores all acts of piracy and armed robbery against vessels in waters off the coast of Somalia;
2. *Calls* upon States, regional and international organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution, resolution 1846 (2008), and international law, by deploying naval vessels and military aircraft and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery at sea off the coast of Somalia, or for which there are reasonable grounds for suspecting such use;
3. *Invites* all States and regional organizations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ("shipriders") from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained as a result of operations conducted under this resolution for acts of piracy and armed robbery at sea off the coast of Somalia, provided that the advance consent of the TFG is obtained for the exercise of third state jurisdiction by shipriders in Somali territorial waters and that such agreements or arrangements do not prejudice the effective

implementation of the SUA Convention;

4. *Encourages* all States and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to establish an international cooperation mechanism to act as a common point of contact between and among states, regional and international organizations on all aspects of combating piracy and armed robbery at sea off Somalia's coast; and *recalls* that future recommendations on ways to ensure the long-term security of international navigation off the coast of Somalia, including the long-term security of WFP maritime deliveries to Somalia and a possible coordination and leadership role for the United Nations in this regard to rally Member States and regional organizations to counter piracy and armed robbery at sea off the coast of Somalia are to be detailed in a report by the Secretary-General no later than three months after the adoption of resolution 1846;
5. *Further encourages* all states and regional organizations fighting piracy and armed robbery at sea off the coast of Somalia to consider creating a centre in the region to coordinate information relevant to piracy and armed robbery at sea off the coast of Somalia, to increase regional capacity with assistance of UNODC to arrange effective shiprider agreements or arrangements consistent with UNCLOS and to implement the SUA Convention, the United Nations Convention against Transnational Organized Crime and other relevant instruments to which States in the region are party, in order to effectively investigate and prosecute piracy and armed robbery at sea offences;
6. In response to the letter from the TFG of 9 December 2008, *encourages* Member States to continue to cooperate with the TFG in the fight against piracy and armed robbery at sea, *notes* the primary role of the TFG in rooting out piracy and armed robbery at sea, and *decides* that for a period of twelve months from the date of adoption of resolution 1846, States and regional organizations cooperating in the fight against piracy and armed robbery at sea off the coast of Somalia for which advance notification has been provided by the TFG to the Secretary-General may undertake all necessary measures that are appropriate in Somalia, for the purpose of suppressing acts of piracy and armed robbery at sea, pursuant to the request of the TFG, provided, however, that any measures undertaken pursuant to the authority of this paragraph shall be undertaken consistent with applicable international humanitarian and human rights law;
7. *Calls on* Member States to assist the TFG, at its request and with notification to the Secretary-General, to strengthen its operational capacity to bring to justice those who are using Somali territory to plan, facilitate or undertake criminal acts of piracy and armed robbery at sea, and *stresses* that any measures undertaken pursuant to this paragraph shall be consistent with

applicable international human rights law;

8. Welcomes the communiqué issued by the International Conference on Piracy around Somalia held in Nairobi, Kenya, on 11 December 2008 and encourages Member States to work to enhance the capacity of relevant states in the region to combat piracy, including judicial capacity;
9. Notes with concern the findings contained in the 20 November 2008 report of the Monitoring Group on Somalia that escalating ransom payments are fuelling the growth of piracy in waters off the coast of Somalia, and that the lack of enforcement of the arms embargo established by resolution 733 (1992) has permitted ready access to the arms and ammunition used by the pirates and driven in part the phenomenal growth in piracy;
10. Affirms that the authorization provided in this resolution apply only with respect to the situation in Somalia and shall not affect the rights or obligations or responsibilities of Member States under international law, including any rights or obligations under UNCLOS, with respect to any other situation, and underscores in particular that this resolution shall not be considered as establishing customary international law, and affirms further that such authorizations have been provided only following the receipt of the 9 December 2008 letter conveying the consent of the TFG;
11. Affirms that the measures imposed by paragraph 5 of resolution 733 (1992) and further elaborated upon by paragraphs 1 and 2 of resolution 1425 (2002) shall not apply to weapons and military equipment destined for the sole use of Member States and regional organizations undertaking measures in accordance with paragraph 6 above;
12. Urges States in collaboration with the shipping and insurance industries, and the IMO to continue to develop avoidance, evasion, and defensive best practices and advisories to take when under attack or when sailing in waters off the coast of Somalia, and further urges States to make their citizens and vessels available for forensic investigation as appropriate at the first port of call immediately following an act or attempted act of piracy or armed robbery at sea or release from captivity;
13. Decides to remain seized of the matter.

## D. 2010 UN Security Council Resolution 1918 (UNSCR 1918)

*Adopted by the Security Council at its 6301st meeting on 27 April 2010 as S/RES/1918 (2010).*

*The Security Council,*

*Recalling its previous resolutions concerning the situation in Somalia, especially resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008), 1851 (2008) and 1897 (2009),*

*Continuing to be gravely concerned by the threat that piracy and armed robbery at sea against vessels pose to the situation in Somalia and other States in the region, as well as to international navigation and the safety of commercial maritime routes,*

*Reaffirming that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 (“the Convention”), in particular its articles 100, 101 and 105, sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities,*

*Reaffirming also that the authorizations renewed in resolution 1897 (2009) apply only with respect to the situation in Somalia and shall not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and *underscoring in particular* that resolution 1897 shall not be considered as establishing customary international law,*

*Stressing the need to address the problems caused by the limited capacity of the judicial*

*system of Somalia and other States in the region to effectively prosecute suspected pirates,*

*Noting with appreciation the assistance being provided by the United Nations Office on Drugs and Crime (UNODC) and other international organizations and donors, in coordination with the Contact Group on Piracy off the Coast of Somalia (“CGPCS”), to enhance the capacity of the judicial and the corrections systems in Somalia, Kenya, Seychelles and other States in the region to prosecute suspected, and imprison convicted, pirates consistent with applicable international human rights law,*

*Commending the role of the EU operation Atalanta, North Atlantic Treaty Organization operations Allied Protector and Ocean Shield, Combined Maritime Forces’ Combined Task Force 151, and other States acting in a national capacity in cooperation with the Transitional Federal Government (the TFG) and each other, in suppressing piracy and armed robbery at sea off the coast of Somalia, including by bringing persons suspected of piracy to justice,*

*Commending the efforts of the Republic of Kenya to date to prosecute suspected pirates in its national courts and imprison convicted persons, and *encouraging* Kenya to continue these efforts, while acknowledging the difficulties Kenya encounters in this regard,*

*Also commending the efforts to date of other States to prosecute suspected pirates in their national courts,*

*Acknowledging* the decision of the Seychelles to engage in the prosecution of suspected pirates, and *welcoming in particular* their decision on 6 February 2010 to consider hosting a regional prosecution centre,

*Commending* the decision by the CGPCS to create the International Trust Fund supporting initiatives of the Contact Group on Piracy off the Coast of Somalia administered by the UNODC to defray the expenses associated with prosecution of suspected pirates and to support other counter-piracy initiatives, *welcoming* the contributions of participating States and *encouraging* other potential donors to contribute to the fund,

*Welcoming* the adoption of the CGPCS regional capability needs assessment report and *urging* States and international organizations to provide fullest possible support to enable early implementation of its recommendations,

*Commending* those States that have amended their domestic law in order to criminalize piracy and facilitate the prosecution of suspected pirates in their national courts, consistent with applicable international law, including human rights law, and *stressing* the need for States to continue their efforts in this regard,

*Noting with concern at the same time* that the domestic law of a number of States lacks provisions criminalizing piracy and/or procedural provisions for effective criminal prosecution of suspected pirates,

*Acknowledging* the ongoing efforts within the CGPCS to explore possible mechanisms to more effectively prosecute persons suspected of piracy and armed robbery at sea off the coast of Somalia,

*Emphasizing* that peace and stability within Somalia, the strengthening of State institutions, economic and social development and respect for human rights and the rule of law are necessary to create the conditions for a durable eradication of piracy and armed robbery at sea off the coast of Somalia, and further emphasizing that Somalia's long-term security rests with the effective development by the TFG of the National Security Force and Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy,

*Being concerned* over cases when persons suspected of piracy are released without facing justice and *determined* to create conditions to ensure that pirates are held accountable,

1. *Affirms* that the failure to prosecute persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia undermines anti-piracy efforts of the international community;
2. *Calls on* all States, including States in the region, to criminalize piracy under their domestic law and favourably consider the prosecution of suspected, and imprisonment of convicted, pirates apprehended off the coast of Somalia, consistent with applicable international human rights law;
3. *Welcomes* in this context the progress being made to implement the IMO Djibouti Code of Conduct, and *calls upon* its participants to implement it fully as soon as possible;
4. *Requests* the Secretary-General to present to the Security Council within 3 months a report on possible options

to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia, including, in particular, options for creating special domestic chambers possibly with international components, a regional tribunal or an international tribunal and corresponding imprisonment

arrangements, taking into account the work of the CGPCS, the existing practice in establishing international and mixed tribunals, and the time and the resources necessary to achieve and sustain substantive results;

5. *Decides* to remain seized of the matter.

## **E. 2010 UN General Assembly Resolution 65/37 (UNGAR 65/37), extracts only**

*Adopted by the UN General Assembly at its 65<sup>th</sup> session on 7 December 2010 as A/RES/65/37 (from A/65/L.20, Agenda item 74 (a) Oceans and the law of the sea).*

*The General Assembly,*

*Recalling its annual resolutions on the law of the sea and on oceans and the law of the sea, including resolution 64/71 of 4 December 2009, and other relevant resolutions concerning the United Nations Convention on the Law of the Sea (“the Convention”)<sup>2</sup>, ...*

*Emphasizing the pre-eminent contribution provided by the Convention to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and to the promotion of the economic and social advancement of all peoples of the world, in accordance with the purposes and principles of the United Nations as set forth in the Charter of the United Nations, as well as to the sustainable development of the oceans and seas, ...*

*Noting with concern the continuing problem of transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances, the smuggling of migrants and trafficking in persons, and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, and noting the deplor-*

*able loss of life and adverse impact on international trade, energy security and the global economy resulting from such activities,*

*Recognizing that fibre optic submarine cables transmit most of the world’s data and communications and hence are vitally important to the global economy and the national security of all States, conscious that these cables are susceptible to intentional and accidental damage from shipping and other activities, and noting that these matters have been brought to the attention of States at various workshops and seminars, and conscious of the need for States to adopt national laws and regulations to protect submarine cables and render their willful damage or damage by culpable negligence punishable offences, ...*

### **VIII. Maritime safety and security and flag State implementation**

*72. Encourages States to ratify or accede to international agreements addressing the safety and security of navigation, as well as maritime labour, and to adopt the necessary measures consistent with the Convention and other relevant international instruments aimed at implementing and enforcing the rules contained in those agreements, and emphasizes the need for capacity-building for and assistance to developing States;*

*73. Recognizes that the legal regimes governing maritime safety and maritime*

security may have common and mutually reinforcing objectives that may be interrelated and could benefit from synergies, and encourages States to take this into account in their implementation;

74. *Emphasizes* the need for further efforts to promote a culture of safety and security in the shipping industry and to address the shortage of adequately trained personnel, and urges the establishment of more centres to provide the required education and training;
75. *Emphasizes also* that safety and security measures should be implemented with minimal negative effects on seafarers and fishers, especially in relation to their working conditions;...
81. *Recalls* that all actions taken to combat threats to maritime security must be in accordance with international law, including the principles embodied in the Charter and the Convention;
82. *Recognizes* the crucial role of international cooperation at the global, regional, subregional and bilateral levels in combating, in accordance with international law, threats to maritime security, including piracy, armed robbery at sea, terrorist acts against shipping, offshore installations and other maritime interests, through bilateral and multilateral instruments and mechanisms aimed at monitoring, preventing and responding to such threats, the enhanced sharing of information among States relevant to the detection, prevention and suppression of such threats, and the prosecution of

offenders with due regard to national legislation, and the need for sustained capacity-building to support such objectives;

83. *Notes* that piracy affects the entire range of vessels engaged in maritime activities;
84. *Emphasizes* the importance of promptly reporting incidents to enable accurate information on the scope of the problem of piracy and armed robbery against ships and, in the case of armed robbery against ships, by affected vessels to the coastal State, underlines the importance of effective information-sharing with States potentially affected by incidents of piracy and armed robbery against ships, and takes note of the important role of the International Maritime Organization;
85. *Urges* all States, in cooperation with the International Maritime Organization, to actively combat piracy and armed robbery at sea by adopting measures, including those relating to assistance with capacity-building through training of seafarers, port staff and enforcement personnel in the prevention, reporting and investigation of incidents, bringing the alleged perpetrators to justice, in accordance with international law, and by adopting national legislation, as well as providing enforcement vessels and equipment and guarding against fraudulent ship registration;
86. *Encourages* States to ensure effective implementation of international law applicable to combating piracy, as

reflected in the Convention, and calls upon States to take appropriate steps under their national law to facilitate the apprehension and prosecution of those who are alleged to have committed acts of piracy, also taking into account other relevant instruments that are consistent with the Convention;

87. *Invites* all States, the International Maritime Organization and the International Labour Organization to consider possible solutions for the seafarers and fishers who are victims of pirates;
88. *Takes note* of the ongoing cooperation between the International Maritime Organization, the United Nations Office on Drugs and Crime and the Division with respect to the compilation of national legislation on piracy, and notes that copies of national legislation received by the Secretariat have been placed on the website of the Division;
89. *Encourages* continued national, bilateral and trilateral initiatives as well as regional cooperative mechanisms to address piracy and armed robbery at sea in the Asian region, and calls upon other States to give immediate attention to adopting, concluding and implementing cooperation agreements at the regional level on combating piracy and armed robbery against ships;
90. *Reiterates its serious concern* regarding continued incidents of piracy and armed robbery at sea off the coast of Somalia, expresses alarm in particular at the hijacking of vessels, supports the recent efforts to address this problem at the global and regional levels, notes

the adoption by the Security Council of resolutions 1816 (2008) of 2 June 2008, 1838 (2008) of 7 October 2008, 1846 (2008) of 2 December 2008, 1851 (2008) of 16 December 2008, 1897 (2009) of 30 November 2009 and 1918 (2010) of 27 April 2010, as well as the presidential statement of the Security Council of 25 August 2010,<sup>3</sup> and also notes that the authorization in resolution 1816 (2008) and the provisions in resolutions 1838 (2008), 1846 (2008), 1851 (2008) and 1897 (2009) apply only to the situation in Somalia and do not affect the rights, obligations or responsibilities of Member States under international law, including any rights or obligations under the Convention, with respect to any other situation, and underscores, in particular, the fact that they are not to be considered as establishing customary international law;

91. *Notes with appreciation* the report of the Secretary-General of 26 July 2010,<sup>4</sup> prepared pursuant to the request of the Security Council in resolution 1918 (2010);
92. *Notes* the continued efforts within the Contact Group on Piracy off the Coast of Somalia, following the adoption of Security Council resolution 1851 (2008), and commends contributions of all States in the efforts to fight piracy off the coast of Somalia;
93. *Recognizes* the primary role of the Transitional Federal Government of

<sup>3</sup> S/PRST/2010/16

<sup>4</sup> S/2010/394

Somalia in combating piracy and armed robbery against ships, acknowledges the importance of a comprehensive and sustainable settlement of the situation in Somalia, and emphasizes the need to address the root causes of piracy and to assist Somalia and States in the region in strengthening institutional capacity to fight piracy and armed robbery against ships off the coast of Somalia, and to bring to justice those involved in such acts;

94. Notes the approval by the International Maritime Organization of revised recommendations to Governments for preventing and suppressing piracy and armed robbery against ships,<sup>5</sup> revised guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships<sup>6</sup> and the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships;<sup>7</sup>
95. Invites the Assembly of the International Maritime Organization to consider adopting a resolution on commitments to best management practices to avoid, deter or delay acts of piracy;
96. Recalls the adoption on 29 January 2009 of the Code of Conduct concerning the Repression of Piracy and Armed Robbery against Ships in the Western Indian Ocean and the Gulf of Aden (Djibouti Code of Conduct)<sup>8</sup>

5 IMO, document MSC.1/Circ.1333, annex.

6 IMO, document MSC.1/Circ.1334, annex.

7 IMO, Assembly resolution A.1025 (26)

8 IMO, document C.102/14, annex, attachment I.

under the auspices of the International Maritime Organization, the establishment of the International Maritime Organization Djibouti Code Trust Fund, a multi-donor trust fund initiated by Japan, and the ongoing activities for the implementation of the Code of Conduct;

97. Urges States to ensure the full implementation of resolution A.1026 (26) of the International Maritime Organization on acts of piracy and armed robbery against ships in waters off the coast of Somalia;
98. Calls upon States that have not yet done so to become parties to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf,<sup>9</sup> notes the entry into force on 28 July 2010 of the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and of the 2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, invites States to consider becoming parties to those Protocols,<sup>10</sup> and urges States Parties to take appropriate measures to ensure the effective implementation of those instruments through the adoption of legislation, where appropriate;

9 1678 UNTS 29004

10 IMO, documents LEG/CONF.15/21 and 22

99. *Calls upon* States to effectively implement the International Ship and Port Facility Security Code and the amendments to the International Convention for the Safety of Life at Sea,<sup>11</sup> and to work with the International Maritime Organization to promote safe and secure shipping while ensuring freedom of navigation;
100. *Urges* all States, in cooperation with the International Maritime Organization, to improve the protection of offshore installations by adopting measures related to the prevention, reporting and investigation of acts of violence against installations, in accordance with international law, and by implementing such measures through national legislation to ensure proper and adequate enforcement;
101. *Emphasizes* the progress in regional cooperation, including the efforts of littoral States, on the enhancement of safety, security and environmental protection in the Straits of Malacca and Singapore, and the effective functioning of the Cooperative Mechanism on safety of navigation and environmental protection to promote dialogue and facilitate close cooperation between the littoral States, user States, shipping industry and other stakeholders in line with article 43 of the Convention, notes with appreciation the convening of the third Cooperation Forum and third Project Coordination Committee meeting, held in Yogyakarta, Indonesia, from 6 to 8 October 2010, and the fifth Aids to Navigation Fund Committee meeting, held in Malaysia on 11 and 12 October 2010, the three events being key pillars of the Cooperative Mechanism, notes with appreciation the important role of the Information Sharing Centre of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, based in Singapore, and calls upon States to give immediate attention to adopting, concluding and implementing cooperation agreements at the regional level;
102. *Recognizes* that some transnational organized criminal activities threaten legitimate uses of the oceans and endanger the lives of people at sea;
103. *Notes* that transnational organized criminal activities are diverse and may be interrelated in some cases and that criminal organizations are adaptive and take advantage of the vulnerabilities of States, in particular coastal and small island developing States in transit areas, and calls upon States and relevant intergovernmental organizations to increase cooperation and coordination at all levels to detect and suppress the smuggling of migrants and trafficking in persons, in accordance with international law;
104. *Recognizes* the importance of enhancing international cooperation at all levels to fight transnational organized criminal activities, including illicit traffic in narcotic drugs and psychotropic sub-

<sup>11</sup> IMO, documents SOLAS/CONF.5/32 and 34, as well as resolution MSC.202(81) introducing the long-range identification and tracking of ships system.

stances, within the scope of the United Nations instruments against illicit drug trafficking, as well as the smuggling of migrants and trafficking in persons and criminal activities at sea falling within the scope of the United Nations Convention against Transnational Organized Crime,<sup>12</sup>

105. *Calls upon* States that have not yet done so to become parties to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,<sup>13</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,<sup>14</sup> and

to take appropriate measures to ensure their effective implementation;

106. *Calls upon* States to ensure freedom of navigation, the safety of navigation and the rights of transit passage, archipelagic sea lanes passage and innocent passage in accordance with international law, in particular the Convention;
107. *Welcomes* the work of the International Maritime Organization relating to the protection of shipping lanes of strategic importance and significance, and in particular in enhancing safety, security and environmental protection in straits used for international navigation, and calls upon the International Maritime Organization, States bordering straits and user States to continue their cooperation to keep such straits safe, secure and environmentally protected and open to international navigation at all times, consistent with international law, in particular the Convention; ...

12 2225 UNTS 39574

13 2241 UNTS 39574

14 2237 UNTS 39574