

# Model Treaty on the Transfer of Proceedings in Criminal Matters

*Adopted by General Assembly resolution 45/118 of 14 December 1990*

The ----- and the -----

*Desirous* of further strengthening international cooperation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

*Believing* that such cooperation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

*Bearing in mind* that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

*Aware* that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

*Convinced*, therefore, that the transfer of proceedings in criminal matters should be promoted,

*Have agreed* as follows:

## *Article 1*

### *Scope of application*

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.
2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

## *Article 2*

### *Channels of communications*

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

## *Article 3*

### *Required documents*

1. The request to take proceedings shall contain or be accompanied by the following information:
  - (a) The authority presenting the request;
  - (b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
  - (c) A statement on the results of investigations which substantiate the suspicion of an offence;
  - (d) The legal provisions of the Requesting State on the basis of which the act is considered to be an offence;

(e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the Requested State or into another language acceptable to that State.

#### *Article 4*

##### *Certification and authentication*

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.\*

#### *Article 5*

##### *Decision on the request*

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

#### *Article 6*

##### *Dual criminality*

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

#### *Article 7*

##### *Grounds for refusal*

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if:\*\*

- (a) The suspected person is not a national of or ordinarily resident in the requested State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the requested State as being of a political nature.

#### *Article 8*

##### *The position of the suspected person*

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.
2. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

#### *Article 9*

##### *The rights of the victim*

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

#### *Article 10*

##### *Effects of the transfer of proceedings on the requesting State (ne bis in idem)*

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

#### *Article 11*

##### *Effects of the transfer of proceedings on the requested State*

1. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.
2. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.
3. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

#### *Article 12*

##### *Provisional measures*

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

#### *Article 13*

##### *The plurality of criminal proceedings*

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

#### *Article 14*

##### *Costs*

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

#### *Article 15*

##### *Final provisions*

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.
2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.
3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

DONE at ----- on ----- in the ----- and ----- languages [both/all] texts being equally authentic.

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\* The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

\*\* When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.