



# **Model Extradition Treaty**

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## INTRODUCTION

The United States has extradition treaties in force with over a hundred foreign nations.<sup>1</sup> Unlike fields such as investment protection, the treaties signed by the U.S. on extradition are far from uniform. Their goals, structure, length, and overall content diverge notably. Some of these disparities have obvious historic explanations. Along with recently-enacted treaties, the U.S. is still a party to extradition treaties from an entirely different international law “era,”<sup>2</sup> when international judicial cooperation was a rarity and oftentimes actively discouraged. Sometimes, the divergences between U.S. extradition treaties are rooted in policy considerations. (Extradition can greatly be facilitated when the requesting and the requested state share legal traditions and political systems, but it can be complicated when pre-existing ties and shared values between the countries are virtually non-existent.) Other times, divergences in U.S. extradition treaties can be explained by the geopolitical context existing at the time when they were executed. But there is also an array of U.S. extradition treaties that exhibit notable differences that are difficult to explain.

The following Model Extradition Treaty has been prepared with the stated goal of facilitating negotiation and, to the extent possible, consistency among future U.S. extradition treaties.

Extradition is no stranger to the political debate. For instance, should a country allow for the extradition of its own nationals to another country? Should extradition be granted when the crime for which extradition is sought can carry the death penalty or a life sentence? Can military personnel be extradited for actions, decisions, or omissions during combat? These and similar questions are beyond the scope of issues the Model Extradition Treaty attempts to resolve. Simply put, the Model Extradition Treaty does not attempt to offer answers to policy issues.<sup>3</sup> Instead, in preparing the Model Extradition Treaty, the Committee concerned itself with legal issues, in particular the following:

1. What should an extradition treaty say (or not say) to be clear, enforceable, and easy to apply?
2. What clauses should a modern international treaty contain to ensure that the treaty, on the one hand, keeps with U.S. legal tradition, and on the other, reflects solid international legal practices and solutions, including those developed overseas?
3. How can the job of officers negotiating an extradition treaty be facilitated? Especially, can they be provided with a document that serves as a drafting basis and contains the essential legal provisions any contemporary extradition treaty should have?

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<sup>1</sup> A list of those treaties can be found in the Federal Criminal Code and Rules, following 18 U.S.C. § 3181. The list is not necessarily complete or accurate.

<sup>2</sup> The U.S. – El Salvador extradition treaty (7 Stat. 1516), for instance, entered into force in July 1911.

<sup>3</sup> Sometimes, of course, political issues are closely intertwined with legal considerations to the point of making both hard to distinguish. (For instance, should extradition be allowed when the prosecution is seeking capital punishment?) The model treaty has not shied away from such potentially controversial situations and offers alternatively-worded clauses that may be considered by any specific treaty drafters.

The Model Extradition Treaty hereby proposed attempts to answer these questions. To that effect, it contains three distinguishable sections.

The first section (comprising Articles 1 to 8, as well as Article 22) defines the Treaty's scope of application, including its application *ratione personae*, *ratione materiae*, and *ratione temporis*. As a general matter, when an extradition request falls outside the scope of application of the Treaty for failure to comply with any of the requirements in these nine Articles, the extradition request can be denied *a limine*—or as soon as received by the requested state—as well as at any later stage of the extradition process when the request's failure to fall within the scope of the Treaty is detected.

The second section (comprising Articles 9 to 21 and Article 23) sets out the extradition process, including the grounds upon which the requested state can deny extradition. In keeping with contemporary extradition practice, the ministries of justice—or justice departments—from the requesting and requested state have a primary role in transmitting, receiving, and reviewing the extradition request, but the ultimate decision on its merits falls on the judiciary of the requested state. When addressing the grounds upon which an extradition request can be denied, the Model Extradition Treaty draws heavily from the most modern U.S. extradition treaties, while at the same time it attempts to clarify their language.

The third section (comprising Articles 24 and 25) concerns the Treaty's entry into force.

The International Law Committee acknowledges that, even with respect to settled legal issues, there is not always a “one-size-fits-all” solution. Accordingly, there are several provisions throughout the Model Treaty in which the Committee has included footnotes or bracketed language either explaining why certain language was chosen or providing alternative language to address the issue at hand.

The International Law Committee trusts that this Model Extradition Treaty will help the development of international extradition law, as well as encourage debate on the topic.

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**MODEL EXTRADITION TREATY BETWEEN  
THE UNITED STATES OF AMERICA AND**

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The United States of America and \_\_\_\_\_ (hereinafter, the “Parties”),<sup>1</sup>

Recognizing the close relationship which exists between them,

Desiring to facilitate cooperation between the United States of America and \_\_\_\_\_,

Desiring to strengthen legal cooperation in the fight against crime as a means of protecting their respective [democratic] societies and common values,

Mindful of the guarantees under their respective legal systems for the rights of individuals and the rule of law,

[Desiring to conclude an Agreement relating to the extradition of offenders],<sup>2</sup>

Have agreed as follows:

**Article 1  
Obligation to Extradite**

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the State seeking extradition (hereinafter, the “Requesting State”) have charged with or found guilty of an extraditable offense.<sup>3</sup>

**Article 2  
Extraditable Offenses<sup>4</sup>**

1. An offense shall be an extraditable offense if it is punishable under the laws of both Parties by deprivation of liberty for a maximum period of more than [one year]<sup>5</sup> or by a more severe penalty.<sup>6</sup>

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<sup>1</sup> “Parties” may be restyled throughout as “Contracting Parties” if circumstances require.

<sup>2</sup> These recitals are drafted in a format that emerged from UN documents (each clause beginning with a present participle and written in a formal style) but that now enjoys wide acceptance beyond UN agreements, see e.g., the multilateral agreement on extradition between the US and the EU.

<sup>3</sup> The following clause may be added at the end of Article 1: “*within the jurisdiction of one of the parties.*”

<sup>4</sup> In designating extraditable offenses by reference to the applicable penalties rather than by enumerating a list of offenses, this section has followed the approach used in the US-EU extradition treaty (signed in 2003). Using the magnitude of the applicable penalty as a proxy for the severity of the crime is a practical and flexible way to distinguish extraditable offenses from non-extraditable ones. It both avoids accidental omissions and automatically incorporates new offenses (or, what is more likely, new denominations for offenses).

<sup>5</sup> Where the Model Treaty references periods of time, such as this one-year period of deprivation of liberty, the duration of the period is merely indicative. While the Model Treaty strives to reflect

2. An offense shall also be an extraditable offense if it consists of:
  - a. an attempt to commit any offense described in paragraph 1;
  - b. a conspiracy as defined under the laws in the United States of America, or an illicit association as defined under the laws of [OTHER PARTY], to commit any offense described in paragraph 1; or
  - c. participation in the commission of any offense described in paragraph 1.
3. For the purposes of this Article, an offense shall be an extraditable offense:
  - a. whether or not the laws of the Parties place the acts or omissions constituting the offense within the same category of offenses or denominate the offense by the same terminology; or
  - b. whether or not the offense is one for which the federal laws of the United States of America require the showing of such elements as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such elements being merely for the purpose of establishing jurisdiction in the federal courts of the United States of America.<sup>7</sup>
4. In accordance with the provisions of this Treaty, the State that receives the extradition request (hereinafter, the “Requested State”) shall grant extradition for offenses committed in whole or in part within the Requesting State’s territory, which, for the purposes of this Article, includes all places subject to that State’s criminal jurisdiction. Extradition shall also be granted for offenses committed outside the territory of the Requesting State if:
  - a. the act or acts that constitute the offense have effects in the territory of the Requesting State; or
  - b. the laws in the Requested State provide for punishment of an offense committed outside its territory in similar circumstances.<sup>8</sup>

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current international trends and practices, the Parties may find it opportune to extend or shorten the periods set forth herein. As a reminder, all time periods set forth in this Model Treaty are enclosed in brackets.

<sup>6</sup> An optional second paragraph may be added to Article 2(1) regarding a request for the execution of a sentence: “*When the request for extradition refers to a person found guilty of such a crime who is sought for the service of a sentence, extradition shall be granted only if the remainder of the sentence to be served is at least [six months]*”; or “*If extradition is requested for the execution of a sentence, the sentence originally imposed must have been the deprivation of liberty for a period of at least [one year] or a more severe penalty.*”

<sup>7</sup> An Article 2(3)(c) may be added: “*whether or not it relates to taxation or revenue or is one of a purely fiscal character.*”

<sup>8</sup> A sentence may be added to Article 2(4)(b): “*If the laws of the Requested State do not so provide, the Requested State may, in its discretion, grant extradition nevertheless.*” Article 2(4)

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by deprivation of liberty for one year or less, provided that all other requirements for extradition are met.<sup>9</sup>

### **Article 3 Nationality**

1. Neither Contracting Party shall be bound to extradite its own nationals, but the Requested State may extradite such persons at its discretion, unless prohibited by domestic legislation.<sup>10</sup>
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution.<sup>11</sup>

### **Article 4 Political and Military Offenses**

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.
2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:<sup>12</sup>
  - a. a crime against humanity as defined in international law;
  - b. a war crime as defined in international law;
  - c. an attack or willful crime against the physical integrity of the Head of State of one of the Parties, or of a member of the Head of State's family;

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alternatively may read: “Extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.”

<sup>9</sup> An Article 2(6) may be added: “In matters concerning tax, customs duty, and foreign exchange offenses, extradition shall be granted pursuant to the terms set forth in paragraphs 1 and 2 of this Article.”

<sup>10</sup> A sentence may be added to Article 3(1): “The nationality of the person sought shall be the nationality of that person at the time the offense was committed.”

<sup>11</sup> In the alternative, Article 3 may read: “Extradition shall not be refused on the ground of the nationality of the person sought”; or “A Party shall not refuse extradition based solely on the nationality of the person sought with respect to [certain specified offenses such as terrorism, trafficking in persons, illicit trafficking in drugs and/or weapons, money laundering etc.]. With respect to offenses not specified herein, the Requested State may extradite its nationals at its discretion. The Parties may expand the offenses designated in this Article by mutual agreement and notification made through the diplomatic channel.”

<sup>12</sup> Additional crimes may be included under this paragraph, such as murder, kidnapping, and the illegal use of explosives.

- d. an offense for which both Parties have the obligation, pursuant to a multilateral international agreement<sup>13</sup> or customary international law, to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;
  - e. an attempt to commit any offense described in subparagraphs (a) through (d) above;
  - f. a conspiracy or illicit association to commit an offense described in subparagraphs (a) through (d) above; or
  - g. participation in the commission of any offense described in subparagraphs (a) through (d) above.
3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the Requested State determines that the request was politically motivated.<sup>14</sup>
4. The Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law.

#### **Article 5** **Prior Prosecution**

1. Extradition shall not be granted when the person sought has been convicted or acquitted<sup>15</sup> in the Requested State for the offense for which extradition is requested, or is otherwise immune from prosecution for the offense for which extradition is requested by reason of the law in the Requested State relating to prior prosecution.<sup>16</sup>
2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided<sup>17</sup>:

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<sup>13</sup> The subject-matter of the multilateral agreements may be specified, e.g., [*on genocide, acts of terrorism, illicit traffic in narcotic drugs and psychotropic substances, etc.*].

<sup>14</sup> This concept alternatively may be phrased in this manner: “*Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the Requested State determines that there are 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 membership of a particular social group, social status, gender, race, religion, nationality, or political opinion.*”

<sup>15</sup> The following clause may be added here: “*or the case dismissed by court order with final and binding effect.*”

<sup>16</sup> One or both of the following sentences may be added: (1) “*Where the granting of clemency or amnesty, with the potential effect of removing criminal responsibility for the offense for which extradition is requested, may have a bearing on a pending request for extradition, the Parties shall consult pursuant to Article 21 (Consultations) to determine the effect, if any, that the grant of clemency or amnesty may have on a decision whether to extradite;*”; and (2) “*In applying this Article, an acquittal or discharge for lack of jurisdiction shall not constitute an obstacle to extradition.*”

<sup>17</sup> The following clause may be inserted at the beginning of Article 5(2): “*If both Parties have jurisdiction over the acts for which extradition has been requested,*”.

- a. not to prosecute the person sought for the acts or omissions for which extradition is requested; or
- b. to discontinue any criminal proceedings which have been instituted against the person sought for those acts or omissions, provided that such discontinuance does not have the effect of acquittal.<sup>18</sup>

### **Article 6 Death Penalty**

1. When the offense for which extradition is requested is punishable by death under the laws in the Requesting State, and the laws in the Requested State do not permit the death penalty for that offense, surrender of the person sought may be refused unless the Requesting State provides assurances that the death penalty shall not be imposed, or, if imposed, shall not be carried out.
2. Except in instances in which the death penalty applies, extradition shall not be refused, or conditions imposed, on the basis that the penalty for the offense is greater in the Requesting State than in the Requested State.

### **Article 7 Humanitarian Considerations**

This Treaty does not prevent the Requested State from denying extradition in special circumstances, when the Requested State has reason to believe that surrender of the person sought will be incompatible with humanitarian considerations, having particular regard to the age, health or other personal conditions of the person sought.

Similarly, the Requested State shall deny extradition when it knows or has reason to know that the person sought is likely to be tortured, killed, or subjected to other inhumane or unlawful practices in the Requesting State.

### **Article 8 Lapse of Time**

Extradition shall not be denied on the ground that the prosecution or the penalty would be barred under the statute of limitations in the Requested State.

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<sup>18</sup> An Article 5(2)(c) may be added: “to investigate the person sought for the same acts or omissions.”



**Article 9**  
**Deferred and Temporary Surrender<sup>19</sup>**

1. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State until such prosecution has been concluded or any such sentence has been served.
2. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, that State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Parties.<sup>20</sup>

**Article 10**  
**Convictions in Absentia**

If the person sought has been found guilty in absentia in the Requesting State, the Requested State may refuse extradition or may make extradition conditional upon the receipt of sufficient assurance from the Requesting State that the person sought was afforded an adequate opportunity to present a defense or that there are adequate remedies or additional proceedings available to the person after surrender.

**Article 11**  
**Extradition Procedures and Required Documentation**

1. Requests for extradition and supporting documents shall be transmitted through the diplomatic channel,<sup>21</sup> which shall include transmission as provided for in paragraph 5 of this Article.
2. Each request shall be supported by:
  - a. documents, statements, or other types of information which describe the identity, nationality, and probable location of the person sought;

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<sup>19</sup> Some existing treaties permit the Requested country to retain ultimate control over its citizens, including allowing those countries to determine an individual's ultimate sentence and conditions of punishment. This mechanism can offer an accused important protection from perceived onerous sentences imposed by a Requesting County, including, for example, under the United States Sentencing Guidelines. Due consideration should be given whether to retain, or negotiate, broader temporary surrender rights. Proposed language can include, "Temporary surrender of the person sought to the Requesting State solely for the purpose of prosecution. The person so surrendered shall be kept in custody while in the Requesting State and returned at the conclusion of the proceedings against that person in accordance with conditions to be determined by mutual agreement of the Contracting Parties."

<sup>20</sup> The following sentence may be added at the end of Article 9(2): "*The time spent in custody in the territory of the Requesting State pending prosecution in that State may be deducted from the time remaining to be served in the Requested State.*"

<sup>21</sup> The following may be added: "*or, exceptionally, in the absence of diplomatic agents, it may be made by a consular officer.*"

- b. information describing the facts of the offense and the procedural history of the case;
  - c. the text of the law describing the essential elements of the offense for which extradition is requested;
  - d. the text of the law describing the punishment for the offense;
  - e. the text or a statement of the provisions of law describing any time limit on the prosecution or the service of the sentence; and
  - f. the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.
3. A request for extradition of a person who is sought for prosecution shall also be supported by:
- a. a copy of the warrant or order of arrest issued by a judge or other competent authority;
  - b. a copy of the charging document or, if that does not exist, a report issued by the prosecuting authority setting forth the charges against the person sought; and
  - c. such information as would justify the committal for trial of the person sought if the offense had been committed in the Requested State.
4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall also be supported by:
- a. a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person sought has been found guilty;
  - b. information establishing that the person sought is the person to whom the finding of guilt refers; and
    - (i) if the person sought has been sentenced, a copy of the sentence imposed and a statement establishing to what extent the sentence has been carried out; or
    - (ii) if the person sought has not been sentenced, a statement affirming that the Requesting State intends to impose sentence and a copy of the warrant for the arrest of the person; and
  - c. if the person sought was found guilty in absentia, the documents required by paragraph 3.
5. If the person whose extradition is sought is held under provisional arrest by the Requested State, the Requesting State may satisfy its obligation to transmit its

request for extradition and supporting documents through the diplomatic channel pursuant to paragraph 1 of this Article, by submitting the request and documents to the Embassy of the Requested State located in the Requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the Requested State for purposes of applying the time limit that must be met under Article 17 (Provisional Arrest) of this Treaty to enable the person's continued detention.

### **Article 12** **Decision and Surrender**

1. The Requested State shall promptly communicate to the Requesting State the decision on the request for extradition.
2. If the Requested State rejects the extradition request in whole or in part, it shall give to the Requesting State the reasons for that rejection.
3. If the Requested State grants extradition, surrender of the person sought shall take place within such time as may be prescribed by the laws of the Requested State. The competent authorities of the Parties shall agree on the time and place of the surrender of the person sought.
4. If an order for the extradition of the person sought has been issued by the Requested State and the person is not removed from the territory of the Requested State within such time as may be prescribed by its laws or, if the laws of the Requested State do not prescribe such time, within 60 days after notification of the extradition order to the Requesting State, the person sought shall be set at liberty, and the Requested State may subsequently refuse extradition for the same offense.

### **Article 13** **Admissibility of Documents**

Documents that bear the certificate or seal of the ministry of justice, or ministry or department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization.

### **Article 14** **Surrender of Articles, Instruments, Objects, and Documents<sup>22</sup>**

1. All articles, instruments, objects of value, documents and other evidence relating to the offense may be seized and surrendered to the Requesting State. Such property may be surrendered even when extradition cannot be effected. The rights of third parties in such property shall be duly respected by the Parties.
2. The Requested State may condition the surrender of the property upon satisfactory assurance from the Requesting State that the property will be returned to the

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<sup>22</sup> Where a mutual legal assistance treaty (MLAT) is in effect between the Parties, Article 14 may not be essential to the treaty and can be omitted if doing so is convenient.

Requested State as soon as practicable and may defer its surrender if the property is needed as evidence in the Requested State.

### **Article 15 Translation**

All documents submitted by the Requesting State shall be in the language of the Requested State or accompanied by a sworn translation into the language of the Requested State.<sup>23</sup>

### **Article 16 Sensitive Information in a Request**

Where the Requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted.

### **Article 17 Provisional Arrest**

1. In case of urgency, a Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the ministries of justice of the Parties, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request.
2. The application for provisional arrest shall contain:
  - a. a description of the person sought;
  - b. the location of the person sought, if known;
  - c. a brief statement of the facts of the case, including, if possible, the time and location of the offense;
  - d. a description of the laws violated;
  - e. a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought;
  - f. a statement of justification for the provisional arrest request; and

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<sup>23</sup> Alternatively, Article 15 may read: “All documents submitted by the Requesting State shall be either in the language of the Requesting State or in the language of the Requested State but the Requested State shall have the right to require the Requesting State to provide a translation.”

- g. a statement that a request for extradition of the person sought will follow.
3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.
4. A person who is provisionally arrested may be discharged from custody upon the expiration of [75 days] from the date of provisional arrest pursuant to this Treaty if the Requested State has not received the formal request for extradition and the supporting documents required in Article 11 (Extradition Procedures and Required Documentation).
5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

### **Article 18** **Supplementary Information**

1. If, at any stage of the extradition proceedings, the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfill the requirements for extradition, that State may request the necessary supplementary information and may fix a reasonable time limit for the receipt thereof.
2. If the supplementary information furnished is not sufficient or is not received within the time specified, and if, as a consequence, the person sought is discharged, such discharge shall not preclude the Requesting State from making a new request for the extradition of the person sought.
3. Where the person sought is discharged from custody, the Requested State shall notify the Requesting State as soon as practicable.<sup>24</sup>
4. Such supplementary information may be requested and furnished directly between the ministries of justice of the Parties.

### **Article 19** **Requests for Extradition or Surrender Made by Several States**

1. If the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the Requested State shall determine to which State, if any, it will surrender the person sought.
2. In making its decision, the Requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:

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<sup>24</sup> Paragraphs 2 and 3 may be omitted.

- a. whether the requests were made pursuant to a treaty;
- b. the places where each of the offenses was committed;
- c. the respective interests of each requesting State;
- d. the seriousness of the offenses;
- e. the nationality of the victim;
- f. the possibility of any subsequent extradition between itself and each requesting State; and
- g. the chronological order in which the requests were received from the requesting States.<sup>25</sup>

## **Article 20** **Simplified Extradition Procedures**<sup>26</sup>

If the person sought provides informed and voluntary consent to be surrendered to the Requesting State, the Requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible, without further proceedings. The consent of the person sought may include a waiver of the protections provided by Article 22 hereof (Rule of Specialty).<sup>27</sup>

## **Article 21** **Consultations**

The Parties shall, as appropriate, consult each other to enable the most effective application of this Treaty, including the resolution of any dispute regarding the interpretation or application of this Treaty.<sup>28</sup>

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<sup>25</sup> Alternatively, Article 19 may read: “*When the extradition of a person has been requested by more than one State, action thereon will be taken as follows:*”

1. *If the requests deal with the same criminal act, preference will be given to the request of the State in whose territory the act was performed.*
2. *If the requests deal with different criminal acts, preference will be given to the request of the State in whose territory the most serious crime or offense, in the opinion of the Requested State, has been committed.*
3. *If the requests deal with different criminal acts, but which the Requested State regards as of equal gravity, the preference will be determined by the priority of the requests.”*

<sup>26</sup> Article 20 may also be titled “*Waiver of or Consent to Extradition Proceedings or Summary Extradition.*”

<sup>27</sup> Alternatively, Article 20 may read: “*If the person sought irrevocably agrees in writing to surrender to the Requesting Party after having been advised by a judge or competent magistrate of the right to formal proceedings and the protections afforded under this Treaty, the Requested Party may surrender the person without formal proceedings.*”

<sup>28</sup> Article 21 permits the Parties to consult in any way they see fit. Additional specification, while not necessary, may be added in cases where such specification is especially relevant. For example, the beginning of this Article may be reformulated as: “*The Parties shall, as appropriate, consult each other, directly or through the facilities of Interpol. . .*”

**Article 22**  
**Rule of Specialty**

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:
  - a. any offense for which extradition was granted, or any differently denominated offense based on the same facts as the offense for which extradition was granted, provided such offense is extraditable under this Treaty or is a lesser included offense;
  - b. any offense committed after the extradition of the person; or
  - c. any offense for which the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:
    - (i) the Requested State may require the submission of the documentation called for in Article 11 (Extradition Procedure and Required Documents); and
    - (ii) the person extradited may be detained by the Requesting State for [90 days], or for such longer period of time as the Requested State may authorize, while the request for consent is being processed.<sup>29</sup>
2. When the description of the offense charged is altered in the course of proceedings, the extradited person shall be prosecuted or sentenced only insofar as the offense, under its new description, is shown by its constituent elements to be an extraditable offense and is based on the same facts contained in the extradition request, and is punishable by the same maximum penalty as, or a lesser maximum penalty than, the offense for which extradition was granted. In applying this provision, the Parties shall consult pursuant to Article 21 (Consultations).
3. A person extradited under this Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition unless the Requested State consents.
4. No provision of this Article shall prevent the detention, trial, or punishment of an extradited person or the onward extradition or surrender of that person, if:
  - a. that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
  - b. that person does not leave the territory of the Requesting State within [30 days] of the day on which that person is free to leave.

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<sup>29</sup> Article 22(1)(c)(ii) may be prefaced with the following clause: "*unless the Requested State objects in writing.*"

**Article 23**  
**Expenses**

The Requesting State shall pay all the expenses related to the translation of extradition documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.

**Article 24**  
**Application**

1. This Treaty shall apply to offenses committed before as well as after the date it enters into force.<sup>30</sup>
2. This Treaty shall not apply to requests for extradition made before its entry into force.<sup>31</sup>

**Article 25**  
**Ratification, Entry into Force, and Term**

1. This Treaty shall be subject to ratification; the exchange of instruments of ratification shall take place in [Washington] as soon as possible.
2. This Treaty shall enter into force on the date of exchange of the instruments of ratification.<sup>32</sup>
3. Either Party may terminate this Treaty by giving notice to the other Party. The termination shall take effect [six months] after the receipt of such notice. Extradition requests submitted before the date of termination shall not be affected.

IN WITNESS HEREOF, the undersigned, being duly authorized, have signed this treaty.

DONE at [Washington], in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the English and \_\_\_\_\_ languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF  
\_\_\_\_\_:

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<sup>30</sup> Article 24(1) alternatively may read: “*This Treaty shall apply only to offenses committed after the date of its entry into force.*”

<sup>31</sup> The following sentence may be added at the end of Article 24(2): “*Nevertheless, Article 2 (Extraditable Offenses), Article 9(2) (Deferred and Temporary Surrender), and Article 22 (Rule of Specialty) shall apply to requests pending in a Requested State at the time this Treaty enters into force.*”

<sup>32</sup> If an extradition treaty is already in existence between the Parties, ambiguity can be avoided by adding a clause that explicitly abrogates the prior agreement or explicitly preserves some or all of the prior agreement’s provisions.