

ECOSOC Resolution 2005/14

Model bilateral agreement on the sharing of confiscated proceeds of crime or property covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

The Economic and Social Council,

Recalling its resolution 2004/24 of 21 July 2004,

Recalling also the United Nations Convention against Transnational Organized Crime¹ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,²

Recalling further the meeting of the intergovernmental expert group to prepare a draft model bilateral agreement on disposal of confiscated proceeds of crime covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, held in Vienna from 26 to 28 January 2005³ with extrabudgetary resources provided for that purpose by the Government of the United States of America,

Convinced that a model bilateral agreement on sharing confiscated proceeds of crime or property could be a useful tool to facilitate greater international cooperation in that area, being one of the principal objectives of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,

Noting the importance of the reference in article 3 of the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property to article 14, paragraph 2, of the United Nations Convention against Transnational Organized Crime, in which it is stated that States parties shall, to the extent permitted by domestic law, 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,

1. *Expresses its appreciation* to the intergovernmental expert group to prepare a draft model bilateral agreement on disposal of confiscated proceeds of crime covered by the United Nations Convention against Transnational Organized Crime¹ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and

¹ General Assembly resolution 55/25, annex I.

² United Nations, *Treaty Series*, vol. 1582, No. 27627.

³ E/CN.15/2005/7.

Psychotropic Substances of 1988² for having prepared the draft model bilateral agreement on the sharing of confiscated proceeds of crime or property;

2. *Adopts* the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property, annexed to the present resolution, as a useful model that could be of assistance to States interested in negotiating and concluding bilateral agreements to facilitate the sharing of proceeds of crime;

3. *Stresses* that the Model Bilateral Agreement will not prejudice the principles set forth in the United Nations Convention against Corruption⁴ or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention;

4. *Invites* Member States, in concluding agreements with other States in the area of sharing proceeds of crime pursuant to article 14 of the United Nations Convention against Transnational Organized Crime and article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 or in revising, where necessary or useful, existing bilateral agreements in that area, to take into account the Model Bilateral Agreement;

5. *Requests* the Secretary-General to bring to the attention of Member States the present resolution, together with the Model Bilateral Agreement;

6. *Encourages* Member States to inform the Secretary-General voluntarily of efforts undertaken in the area of sharing confiscated proceeds of crime or property, in particular the establishment of agreements in that area;

7. *Requests* the United Nations Office on Drugs and Crime to convey to the Commission on Crime Prevention and Criminal Justice information regarding efforts undertaken by Member States in the area of sharing confiscated proceeds of crime or property;

8. *Also requests* the United Nations Office on Drugs and Crime to provide to Member States, at their request, technical assistance and advice, within available extrabudgetary resources, not excluding the use of existing resources from the regular budget of the United Nations Office on Drugs and Crime,⁵ to give effect to the arrangements to be made pursuant to agreements to be negotiated on the basis of the Model Bilateral Agreement.

*36th plenary meeting
22 July 2005*

⁴ General Assembly resolution 58/4, annex.

⁵ This new language does not provide a basis for an increase in the regular budget or requests for supplemental increases.

Annex

Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property⁶

Agreement between the Government of

and

the Government of _____
regarding the sharing of confiscated
proceeds of crime or property

The Government of _____ and the Government of _____
(hereinafter referred to as “the Parties”),

Recalling the United Nations Convention against Transnational Organized Crime,⁷ in particular its article 12, paragraph 1, and articles 13 and 14,

Recalling also the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,⁸ in particular article 5, paragraphs 1, 4 and 5,

Recognizing that this Agreement should not prejudice the principles set forth in the United Nations Convention against Corruption⁹ or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention,

Reaffirming that nothing in the provisions of this Agreement should prejudice in any way the provisions and the principles on international cooperation set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organized Crime, and that this Agreement is intended to enhance the effectiveness of international cooperation envisioned in those Conventions,

Considering [reference to a treaty on mutual legal assistance if one exists between the Parties],

Desiring to create an appropriate framework for sharing confiscated proceeds of crime or property,

Have agreed as follows:

Article 1 **Definitions**

For the purposes of this Agreement:

⁶ The present model agreement may be useful for the implementation of other relevant instruments developed in multilateral forums to which the parties to the agreement may also be parties, such as the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex) and the 40 recommendations of the Financial Action Task Force against Money Laundering.

⁷ General Assembly resolution 55/25, annex I.

⁸ United Nations, *Treaty Series*, vol. 1582, No. 27627.

⁹ General Assembly resolution 58/4, annex.

(a) The terms “proceeds of crime”, “confiscation” and “property” shall be understood as defined in article 2 of the United Nations Convention against Transnational Organized Crime and article 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

(b) “Cooperation” shall mean any assistance described in articles 13, 16, 18-20, 26 and 27 of the United Nations Convention against Transnational Organized Crime or article 5, paragraph 4, and articles 6, 7, 9-11 and 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as cooperation between entities foreseen in article 7 of the United Nations Convention against Transnational Organized Crime, which has been given by one Party and which has contributed to, or facilitated, confiscation of proceeds of crime or property.

Article 2

Scope of application

This Agreement is intended solely for the purposes of mutual assistance between the Parties.

Article 3

Circumstances in which confiscated proceeds of crime or property [may] [shall] be shared

Where a Party is in possession of confiscated proceeds of crime or property and has cooperated with, or received cooperation from, the other Party, it [may] [shall] share such proceeds of crime or property with the other Party, in accordance with this Agreement, without prejudice to the principles enumerated in article 14, paragraphs 1, 2 and 3 (a), of the United Nations Convention against Transnational Organized Crime and article 5, paragraph 5 (b) (i), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.¹⁰

Article 4

Requests for sharing confiscated proceeds of crime or property

1. A request for sharing confiscated proceeds of crime or property shall be made within a time limit to be agreed between the Parties, shall set out the circumstances of the cooperation to which it relates and shall include sufficient details to identify the case, the confiscated proceeds of crime or property and the agency or agencies involved or such other information as may be agreed between the Parties.

Option 1

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall consider, in consultation with the other Party, whether to

¹⁰ It may be necessary to insert a specific provision in the agreement regarding the return of works of art or archeological objects that have been purchased or exported illegally from their country of origin.

share such proceeds of crime or property, as set out in article 3 of this Agreement.]

Option 2

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall share with the other Party such proceeds of crime or property, as set out in article 3 of this Agreement.]

Article 5

Sharing of confiscated proceeds of crime or property

Option 1

[1. Where a Party proposes to share confiscated proceeds of crime or property with the other Party, it shall:

(a) Determine, at its discretion and in accordance with its domestic law and policies, the proportion of the confiscated proceeds of crime or property to be shared, which, in its view, corresponds to the extent of the cooperation afforded by the other Party; and

(b) Transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Party holding the confiscated proceeds of crime or property may include any interest and appreciation that has accrued on the confiscated proceeds of crime or property and may deduct reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

Option 2

[1. In sharing confiscated proceeds of crime or property in accordance with this Agreement:

(a) The proportion of the confiscated proceeds of crime or property to be shared shall be determined by the Parties on a *quantum meruit* basis or on any other reasonable basis agreed upon by the Parties;

(b) The Party holding the confiscated proceeds of crime or property shall transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Parties shall agree on any issues related to interest and appreciation that has accrued on the confiscated proceeds of crime or property and the deduction of reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

3. The Parties agree that it may not be appropriate to share where the value of the confiscated proceeds of crime or property is *de minimis*, subject to previous consultations between them.

Article 6

Payment of shared proceeds of crime or property

1. Unless the Parties agree otherwise, any sum transferred pursuant to article 5, paragraph 1 (b), of this Agreement shall be paid:

(a) In the currency of the Party where the proceeds of crime or property are located; and

(b) By means of an electronic transfer of funds or by cheque.

2. Payment of any such sum shall be made:

(a) In any case in which the Government of _____ is receiving payment, to [*identify the pertinent office or designated account as specified in the request*];

(b) In any case in which the Government of _____ is receiving payment, to [*identify the pertinent office or designated account as specified in the request*]; or

(c) To such other recipient or recipients as the Party receiving payment may from time to time specify by notification for the purposes of this article.

Article 7

Terms of transfer

1. In making the transfer, the Parties recognize that all right or title to and interest in the transferred proceeds of crime or property have already been adjudicated and that no further judicial proceedings are necessary to complete the confiscation. The Party transferring the proceeds of crime or property assumes no liability or responsibility for the proceeds of crime or property once they have been transferred and relinquishes all right or title to and interest in the transferred proceeds of crime or property.¹¹

2. Unless otherwise agreed, where a Party transfers confiscated proceeds of crime or property pursuant to article 5, paragraph 1 (b), of this Agreement, the other Party shall use the proceeds of crime or property for any lawful purpose at its discretion.

Article 8

Channels of communication

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through [*the central authorities designated pursuant to article [...] of the treaty on mutual legal assistance referred to in the preamble to the agreement*] or by the following:

(a) For the Government of _____, by the Office of _____;

(b) For the Government of _____, by the Office of _____; or

¹¹ Where the domestic law of a State requires it to sell confiscated proceeds of crime or property and only permits it to share funds, this provision may be unnecessary.

(c) By such other nominees as the Parties, for their own part, may from time to time specify by notification for the purposes of this article.

Article 9
Territorial application

This Agreement shall apply [*if applicable, designate any territories to which the agreement should be extended for each Government*].

Article 10
Amendments

This Agreement may be amended when both Parties have agreed in writing to such amendment.

Article 11
Consultations

The Parties shall consult promptly, at the request of either Party, concerning the interpretation, application or implementation of this Agreement, either generally or in relation to a particular case.

Article 12
Entry into force

This Agreement shall enter into force upon signature by both Parties or upon notification by the Parties that the necessary internal procedures have been completed.¹²

Article 13
Termination of the Agreement

Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective [...] months after receipt of the notice. The provisions shall, however, continue to apply in relation to confiscated proceeds of crime or property to be shared under this Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at [*location*], this _____ day of _____, _____.

For the Government of _____:
_____:

For the Government of _____:
_____:

[*Signature*] _____

[*Signature*] _____

¹² This may be upon signature, ratification, publication in a legal gazette or by other means.