



Tool 4.2 Extradition

Overview

This tool discusses extradition, introduces a range of resources to facilitate entering into extradition agreements and making extradition requests, and refers to some promising examples of cooperation on extradition.

Perpetrators of transnational crimes who are sought for prosecution, or who have been convicted and are sought for the enforcement of a sentence, may be in a foreign State. Extradition proceedings are then required to bring them to justice in the prosecuting State. Extradition is a formal process, leading to the surrender by the requested State of the person sought in the requesting State.

Extradition is addressed by article 16 of the Organized Crime Convention. The extradition provisions are designed to ensure that the Convention supports and complements pre-existing extradition arrangements and does not detract from them. Article 16 sets a basic minimum standard for extradition for offences covered by the Convention and encourages the adoption of a variety of mechanisms to streamline the extradition process.

Scope of the obligation to provide extradition

The extradition obligation applies among States parties to all the offences covered by the Convention and its Protocols. They include:

- The offence of participation in an organized criminal group, as defined in article 5 of the Convention
- The offence of laundering the proceeds of crime (art. 6)
- The offence of corruption (art. 8)
- The offence of obstruction of justice (art. 23)
- Serious crime, as defined in article 2 of the Convention
- The offences established under the Protocols supplementing the Convention, including trafficking in persons (art. 1, para. 3 of the Trafficking in Persons Protocol).

As the Convention requires all States parties to criminalize a certain number of offences, it establishes among the parties a common basis for meeting the crucial requirement of dual criminality (i.e. the requirement that the offence for which extradition is sought be established as a criminal offence both in the requesting and in the requested State).

It should be noted that the Convention applies to the offences listed above when they are transnational in nature and involve an organized criminal group. Article 16 on extradition however, implies that, for the purpose of extradition, it is not necessary to establish the transnationality of the actual criminal conduct where the offence involves an organized criminal group and the person whose extradition is sought is located in the territory of the

requested State. This is to facilitate extradition at a stage when transnationality may still be difficult to establish.

States shall consider offences to which article 16 applies as included in any existing extradition treaty concluded between them and they undertake to include such offences in every extradition treaty to be concluded between them (art. 16, para. 3).

Article 16, paragraph 6 requires States that do not require a treaty basis for extradition to include offences described in article 16, paragraph 1 as extraditable offences under their domestic law. The law governing the extradition must be sufficiently broad in scope to cover the offences described.

Article 16, paragraph 7 provides that grounds for refusal and other conditions for extradition (including in relation to the minimum penalty required for an offence to be considered extraditable) are governed by the applicable extradition treaty in force between requesting and requested States or by the law of the requested State. Therefore, there are no implementation requirements beyond the terms of domestic law and the treaties governing extradition.

Notification of application or non-application of article 16, paragraph 4 as the legal basis for cooperation on extradition

Article 16, paragraph 4 of the Convention provides that where a State party which makes extradition conditional on the existence of a treaty receives a request for extradition from a State party with which it has no extradition treaty, the Convention itself may be considered as the legal basis for granting such a request.

Article 16, paragraph 5 of the Convention requires States parties to inform the Secretary-General of the United Nations if they intend to take the Convention as the legal basis for cooperation. Such information is being included in the online directory of competent national authorities (see Tool 4.1).

If States do not intend to take the Convention as the legal basis for cooperation on extradition, they must seek to conclude treaties on extradition with other States parties to the Convention.



At its third session, the Conference of the Parties adopted decision 3/2 in which it noted that the Convention was being successfully used by a number of States as a basis for granting extradition requests and encouraged States parties to make full use of it (discussed above in Tool 4.1).

Ensuring prosecution and punishment where extradition is refused

If a State does not extradite the person sought on the sole ground that the person is one of its nationals it has, pursuant to **article 16, paragraph 10**, the obligation to submit the case to its competent authorities for the purpose of prosecution (the *aut dedere aut judicare*

obligation), when requested to do so by the State seeking extradition. States that have refused extradition on other grounds than that of nationality are encouraged to do so. The State party that denies extradition will then

- Submit the case to its authorities for prosecution without undue delay
- Conduct the proceedings in the same manner as in the case of a grave domestic offence
- Cooperate with the other State party, in particular on procedural and evidentiary issues, possibly by obtaining mutual legal assistance (art. 18) or the transfer of the criminal proceedings (art. 21) to ensure the efficiency of the prosecution. Legislation may be required if current law does not permit evidence obtained from foreign sources to be used in domestic proceedings.

Under **article 16, paragraph 11**, a State may surrender one of its nationals, on the condition that the person will be returned to that State to serve the sentence that is imposed abroad.

Under **article 16, paragraph 12**, where extradition is sought for the enforcement of a sentence, the requested State which refuses extradition on the ground that the convicted person is one of its nationals shall, at the application of the requesting State, consider enforcing the sentence itself.

Human rights considerations

In making legislative changes and in carrying out extradition, States should note that the intention of the Convention is to ensure the fair treatment of those whose extradition is sought and the application to them of all existing rights and guarantees applicable in the State party from whom extradition is requested.

Article 16, paragraph 13, provides that any person regarding whom proceedings are being carried out 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 which that person is present.

Article 16, paragraph 14, states:

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.

Recommended resources

Model Law on Extradition of the United Nations Office on Drugs and Crime

The existence of national legislation may be important as a procedural or enabling framework in order to support the implementation of extradition treaties or arrangements or, in the absence of a treaty, as a supplementary legal framework for surrendering fugitives to

the requesting State. In view of this, UNODC elaborated a Model Law on Extradition to assist interested States in drafting or amending domestic legislation in this field.



The Model Law on Extradition is available at:
www.unodc.org/pdf/model_law_extradition.pdf

Model Treaty on Extradition of the United Nations Office on Drugs and Crime

The Model Treaty on Extradition (General Assembly resolution 45/116, annex, subsequently amended in resolution 52/88, annex) was developed as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice.



The Model Treaty on Extradition and the Revised Manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters are available at:
www.unodc.org/unodc/en/legal-tools/Model.html

Recommendations on extradition of the Informal Expert Working Group on Effective Extradition Casework Practice of the United Nations Office on Drugs and Crime

The Informal Expert Working Group on Effective Extradition Casework Practice of the UNODC Legal Advisory Programme met in Vienna in 2004 to discuss the most common impediments in major legal traditions to efficient and effective extradition. The product was a report containing a comprehensive package of recommendations pertaining to:

- Extradition infrastructure: legislation, treaties, institutional structures, etc.
- Day-to-day casework practice: planning, preparation, conduct of proceedings, communication systems, language problems etc.

Also of particular use is annex C to the report, which provides a checklist for the content of extradition requests, required supporting documents and information. That checklist is provided in Tool 4.3.



The report of the Informal Expert Working Group on Effective Extradition Casework Practice can be downloaded at:
www.unodc.org/pdf/ewg_report_extraditions_2004.pdf

Relevant multilateral or regional instruments

In addition to the Organized Crime Convention, the following other multilateral instruments include specific provisions on extradition:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (United Nations, *Treaty Series*, vol. 1582, No. I-27627)
- United Nations Convention against Corruption (General Assembly resolution 58/4 of 31 October 2003, annex)
- International instruments against terrorism (for a brief overview of the international instruments against terrorism, visit www.unodc.org/unodc/en/terrorism/conventions.html)

In addition, the need for a multilateral approach has led to several interregional and regional initiatives.

African instruments

The Economic Community of West African States Convention on Extradition (1994)

www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/4ConExtradition.pdf

Southern African Development Community Protocol on Extradition

(approved in 2002, not yet in force)

www.sadc.int/english/documents/legal/protocols/extradition.php

Arab instrument

Extradition Agreement of the League of Arab States (1952)

This instrument was approved by the Council of the League of Arab States in 1952, but was signed by only a limited number of States and ratified by fewer. The Convention is a stand-alone basis for extradition, but contemplates the existence of bilateral arrangements between States parties.

Commonwealth instrument

Commonwealth Scheme for the Rendition of Fugitive Offenders (as amended in 1990)

This Commonwealth Scheme was conceived at a meeting of law ministers in London in 1966 to provide for reciprocal agreements among Commonwealth member States.

www.thecommonwealth.org/Internal/38061/documents/

European instruments

Council of Europe, European Convention on Extradition (1957) (United Nations, *Treaty Series*, vol. 359, No. 5146)

<http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm>

The two Additional Protocols to the European Convention on Extradition (1975 and 1978) (Council of Europe, *European Treaty Series*, Nos. 86 and 98, respectively)

<http://conventions.coe.int/Treaty/en/Treaties/Html/086.htm>

<http://conventions.coe.int/Treaty/en/Treaties/Html/098.htm>

Convention on Simplified Extradition Procedure between the Member States of the European Union (1995) (*Official Journal of the European Communities*, C 078, 30 March 1995)

This European Union Convention supplements the European Convention on Extradition of the Council of Europe and simplifies the extradition procedure between member States without affecting the application of the most favourable provisions of bilateral or multilateral agreements.

<http://europa.eu/scadplus/leg/en/lvb/114015a.htm>

Convention relating to Extradition between the Member States of the European Union (1996) (*Official Journal of the European Communities*, C 313, 23 October 1996)

The aim of this Convention was to facilitate extradition between European Union member States in certain cases. It supplemented other international agreements such as the 1957 European Convention on Extradition, the 1997 European Convention on the Suppression of Terrorism and the 1995 European Convention on Simplified Extradition Procedure. The 1996 Convention has been replaced in most cases by the Framework Decision on the European arrest warrant.

<http://europa.eu/scadplus/leg/en/lvb/114015b.htm>

Council framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

This framework decision simplifies and speeds up the extradition procedure, by replacing the political and administrative phase of the process with a judicial mechanism. The framework decision replaced the Convention relating to Extradition between Member States of the European Union as of July 2004. The procedure for the surrender of fugitives within the European Union, established by the 2002 Council Framework Decision on the European arrest warrant, is intended to streamline and accelerate the relevant proceedings among the member States, by, inter alia, abolishing the double criminality requirement for a list of 32 offences, including trafficking in human beings.

<http://europa.eu/scadplus/leg/en/lvb/133167.htm>

Benelux Convention on Extradition and Judicial Assistance in Penal Matters (1962)

The Benelux Convention was adopted by Belgium, Luxembourg and the Netherlands in June 1962. This Convention reflects many aspects of the European Convention provisions, but many of its substantive articles are specific to the close relations between the signatories.

Nordic States Scheme (1962)

Adopted by Denmark, Finland, Iceland, Norway and Sweden, this extradition treaty reflects the strong connections between those States.

Inter-American instruments

Inter-American Convention on Extradition

The Inter-American Convention on Extradition, which entered into force in 1992, was the result of a long history of inter-American extradition conventions dating back to 1879. The Convention is open to accession by any American State, and to Permanent Observers to the Organization of American States following approval by the General Assembly of the Organization of American States.

www.oas.org/juridico/English/treaties/b-47.html

Promising practice

European arrest warrant replaces extradition between European Union member States

The member States of the European Union were required to introduce legislation to bring the European arrest warrant into effect by 1 January 2004. On 13 June 2002, the Council of Ministers of the European Union adopted a framework decision on the European arrest warrant and the surrender procedures between member States of the European Union.

A European arrest warrant, which has replaced extradition procedures throughout the European Union, may be issued by a national court if the person whose return is sought is accused of an offence for which the penalty is at least a year in prison or if he or she has been sentenced to a prison term of at least four months. Its purpose is to replace lengthy extradition procedures with a new and efficient way of bringing back suspected criminals who have absconded abroad and people convicted of a serious crime who have fled the country, in order to transfer them forcibly from one member State to another for the purpose of criminal prosecution or the execution of a custodial sentence or detention order. The European arrest warrant enables such people to be returned within a reasonable time for their trial to be completed or for them to be put in prison to serve their sentence.

The European arrest warrant is based on the principle of mutual recognition of judicial decisions. This means that a decision by the judicial authority of a member State to require the arrest and return of a person should be recognized and executed as quickly and as easily as possible in the other European Union member States.

Advantages of the European arrest warrant over extradition procedures

Faster procedures. The State in which the person is arrested has to return him/her to the State where the European arrest warrant was issued within a maximum period of 90 days of the arrest. If the person gives consent to the surrender, the decision shall be taken within 10 days.

Simpler procedures. The dual criminality principle is abolished for 32 serious categories of offences, including trafficking in human beings. European arrest warrants issued in respect of crimes where dual criminality is abolished have to be executed by the arresting State irrespective of whether or not its definition of the offence is the same as that in the State which has issued the warrant, providing that the offence is serious enough and punishable by at least three years' imprisonment in the latter State.

No political involvement. In extradition procedures, the final decision on whether to surrender the person or not is a political decision. The European arrest warrant procedure abolished the political stage of extradition. This means that the execution warrant is simply a judicial process under the supervision of the national judicial authority which is, inter alia, responsible for ensuring the respect of fundamental rights.

Surrender of nationals. The European arrest warrant is based on the principle that European Union citizens shall be responsible for their acts before national courts across the European Union. This means that European Union member States can no longer refuse to surrender their own nationals. On the other hand, it will be possible for a member State, while surrendering such persons, to ask that they be returned to its territory to serve their sentence in order to facilitate their future reintegration.

Guarantees. The European arrest warrant ensures a good balance between efficiency and strict guarantees that the arrested person's fundamental rights are respected. In implementing the Framework Decision on the European arrest warrant, member States and national courts have to ensure that the provisions of the European Convention on Human Rights are respected.

Life sentence. Where someone arrested under a European arrest warrant may be sentenced to life imprisonment, the State executing the arrest warrant may insist, as a condition of executing it, that if sentenced to life imprisonment, the accused person will have a right to have his or her personal situation periodically reconsidered. (There is no mention of the death penalty, given that it has been abolished in the European Union.)

Relations with third countries. The European arrest warrant only applies within the territory of the European Union. Relations with third countries are still governed by extradition rules. If a person has been surrendered to another European Union country in accordance with the European arrest warrant and is afterward demanded by a third country, the member State which authorized the surrender in the first place shall be consulted.

Grounds for refusal

The surrender of a person can be refused on several grounds (see arts. 3 and 4 of the Framework Decision), among which are:

- The *ne bis in idem* or double jeopardy principle, which means that the person will not be returned to the country that issued the arrest warrant if he or she has already been tried for the same offence
- Amnesty: where the offence is covered by an amnesty in the national legislation of the executing State
- Statutory limitation: where the offence is statute barred according to the law of the executing State (which means that the time limit has been passed and that it is too late under that country's law to prosecute the person)
- The age of the person: where the person is a minor and has not reached the age of criminal responsibility under the national laws of the executing State

It is also possible for a member State to execute directly the sentence decided in another member State instead of surrendering the person to that member State.



This information is extracted from the European Commission Justice and Home Affairs website at:

http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm