



UNITED NATIONS *Office on Drugs and Crime*



Workshop on strengthening
international legal cooperation among
OSCE Member States to combat
transnational organized crime (Vienna,
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Extradition provisions of United
Nations multilateral instruments - The
broad scope and the added value of
article 16 of the UNTOC



Treaty-making practice in extradition law (Art. 3)

- Bilateral treaties and agreements
- Ad hoc regional conventions on extradition
- United Nations multilateral treaties containing specific provisions on extradition
 - U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988): article 6
 - U.N. Convention against Transnational Organized Crime (2000): article 16
 - U.N. Convention against Corruption (2003): article 44



Statement of purpose of the UNTOC (Art. 1)

“to **promote cooperation** to prevent and combat transnational organized crime more effectively”



Scope of application of the Convention (Art. 3)

- Convention applies to the “prevention, investigation and prosecution” of
 - **offences established by the Convention** (Art. 5, 6, 8 and 23)
 - Other **serious crimes** defined in Art.2 (b) (offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty)
 - **Protocol offences** (Protocols, Art.1)
- Only when:
 - offences are **transnational in nature**
 - an **organized criminal group** is involved



“Transnational in nature” (Art. 3.2)

Offence is *transnational in nature* if:

- Committed in more than one State;
- Substantial part of preparation, planning, direction or control takes place in another State;
- Involves an organized criminal group engaging in criminal activities in more than one State; or
- Has substantial effects in another State.



Extradition (Art.16)

Paragraph 4

States parties that make extradition conditional on the existence of a treaty:

- can use the Convention as a legal basis for cooperation on extradition in respect of offences covered by its scope of application.

Paragraph 5

States parties that make extradition conditional on the existence of a treaty:

- Notification requirement upon deposit of instrument of ratification, acceptance, approval or accession → obligation to inform the Secretary-General whether the Convention will be used as legal basis to regulate extradition issues.
- If not using the Convention as legal basis for extradition → conclusion of bilateral or regional treaties on extradition with other States parties to implement the provisions of art. 16.



Extradition (Art.16)

Paragraph 3

- Offences covered by the Convention deemed to be **extraditable offences** in existing and future extradition treaties between States parties

Paragraph 6

- Treaty non-prerequisite States parties → obligation to recognize offences covered by the Convention as extraditable offences between themselves

Paragraph 3

- **Accessory extradition:** treatment of other separate serious crimes included in the extradition request but not covered by the Convention as extraditable offences



Extradition (Art.16)

Paragraph 7

Extradition subject to the conditions provided by the domestic legislation of the requested State party or the conditions of applicable extradition treaties

Such conditions include:

- Minimum penalty requirement for extradition
- Grounds for refusal of an extradition request
- Procedural requirements of the extradition proceedings



Scope of application of article 16

Paragraph 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”



Extraditable Offences under article 16 of the UNTOC

The double criminality requirement is fulfilled AND

- Participation in an organized criminal group
- Laundering of proceeds of crime
- Corruption
- Obstruction of justice
- Each offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty (**serious crime**)
- Offences foreseen in the Protocols



the offence is **transnational in nature**,
and involves an **organized criminal group** (a structured group of 3 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, in order to obtain, directly
or indirectly, a financial or other material
benefit)

OR

the offence involves an **organized criminal group** and the person is **located in the territory of the requested State party**



Extradition (Art.16)

Double criminality requirement

- Automatically satisfied in relation to offences established in accordance with art. 6, 8 and 23 of the Convention (money-laundering, corruption and obstruction of justice), as well as the Protocols offences.
- Participation in an organized criminal group (art. 5 of the Convention) and other serious crimes (as defined in art. 2(b) of the Convention): need to assess whether double criminality is fulfilled, as States parties are not required to criminalize the same conduct.



Comparing art. 1 and art. 16.1 of the UNTOC

Broader scope of application of art. 16.1

- Transnationality of the offence not a necessary element for cooperation on extradition provided that the person sought is located in the territory of the requested State party
- **Rationale and objective:** to overcome refusals of extradition on the sole ground that the requesting State party did not provide evidence that the offence for which extradition is requested is transnational in nature
- **Practical effect:** cooperation on extradition in cases where offences were committed within national boundaries (internal trafficking in persons)



Issues for further discussion

- Is the UNTOC used as a legal basis for cooperation on extradition in your countries?
- Does the extended scope of application of art. 16 require special provisions in national legislation to implement the UNTOC?
- Has the extended scope of application of art. 16 been recognized by practitioners in your countries?
- Are there cases where the extended scope of application of art. 16 has been successfully used?