

GLOBAL PROGRAMME AGAINST TRAFFICKING IN PERSONS

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UNODC

United Nations Office on Drugs and Crime

Global Programme

Against Trafficking in Persons

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Anti-Human Trafficking and Migrant Smuggling Unit

- UNODC supports Member States to implement:

The Trafficking in Persons Protocol

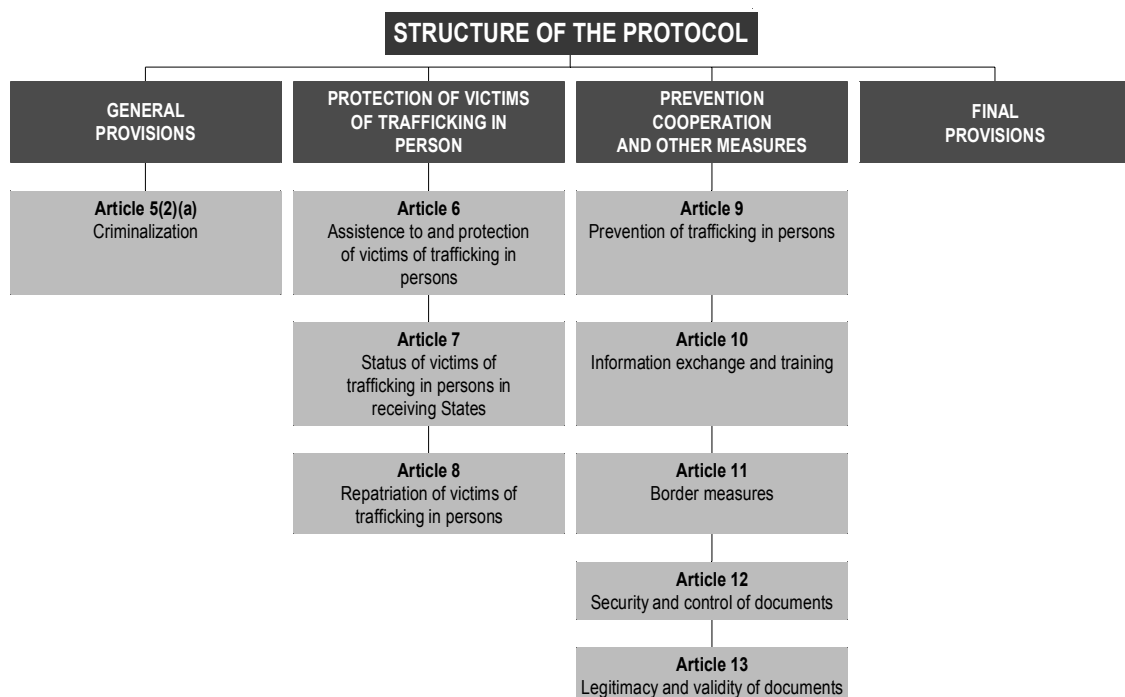
- to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

An International framework

- **United Nations Convention against Transnational Organized Crime**
 - **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**
 - Protocol against the Smuggling of Migrants by Land, Sea and Air
 - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition
- * General Assembly Resolutions 55/25, 15 November 2000 and 55/255, 31 May 2001

Purposes of the Trafficking Protocol

- to prevent and combat trafficking, *paying particular attention to women and children* (=person under 18 years of age)
- to protect and assist victims, with full respect to human rights
- to promote cooperation among State Parties



Key obligations for State Parties*

- Criminalization
(TOCC Art. 5; TIPP Art. 5; SOMP Art. 6)
- Victim protection
(TOCC Art. 25; TIPP Art. 6; SOMP Art. 16)
- Investigation
- Prosecution
- Adjudication

* Notwithstanding the fact that these countries are countries of origin, transit or destination

Global Programme against Trafficking in Persons

- Legislative assistance
- Planning and policy development
- Capacity building
- International cooperation
- Data collection and research
- Victim protection and support
- Prevention and awareness raising

Global Programme against Trafficking in Persons

Focus on strengthening countries' criminal justice responses within a response to human trafficking.

- ratification and domestic implementation of Protocol;
- development of practical tools for: criminal justice actors, including law enforcement, victim assistance providers, prosecutors, judges, policy makers and administrators;
- implementation: providing technical assistance in more than 80 countries.

Tools and Publications

- International Framework for Action to Implement the Trafficking in Persons Protocol
- Model Law against Trafficking in Persons
- First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking.
- A Handbook for Parliamentarians
- Toolkit to Combat Trafficking in Persons
- Anti-Human Trafficking Manual for Criminal Justice Practitioners

An overview of all tools
can be found online at:

<http://www.unodc.org/unodc/en/human-trafficking/publications.html>

Module 1

Definitions: Trafficking in Persons and Smuggling of Migrants

Module 1

Definitions of trafficking in persons and smuggling of migrants

By the end of this Module, users should be able to:

- Understand constituent elements of trafficking in persons and smuggling of migrants as defined by the relevant UN protocols
- Contrast the elements of the two phenomena
- Explain the meaning of the elements “act, “means” and purpose” in trafficking in persons cases
- Understand the issue of consent in a trafficking in persons case and how consent is vitiated
- List some of the underlying offences to trafficking in persons;
- Recall factors on deciding the jurisdiction for prosecution of trafficking in persons cases

Definition of trafficking (Art. 3.a)

Trafficking in persons shall mean:

- **[action:]** the recruitment, transportation, transfer, harbouring, or receipt of persons
- **[means:]** by means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- **[purpose:]** for the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.

Definition of trafficking/2 (Art. 3.b/c)

- Consent of the victim is irrelevant where illicit means are established
- **Consent of a child is irrelevant.**
- **Trafficking in children (any person under 18) does not have to involve any of the specified means**
 - (i.e. threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim)

What is “smuggling of migrants”?

“...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

Article 3(a), United Nations *Protocol against the Smuggling of Migrants by Land, Sea and Air*

Three Elements:

- illegal entry of another person;
- the other person is neither a national nor permanent resident of the country entered;
- agreement to receive a financial or other material benefit.

Differences between trafficking and smuggling

- **Consent**
 - The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers
- **Exploitation**
 - Smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.
- **Transnationality**
 - Smuggling is always transnational, whereas trafficking need not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.

Trafficking vs. Smuggling

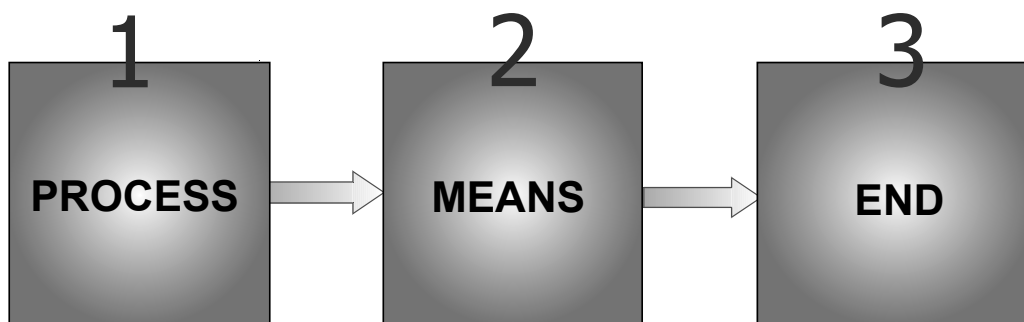
Trafficking

- Crime or violation against a person
- Contains element of coercion (cannot consent to enslavement)
- Can include smuggling, plus subsequent exploitation and/or forced labor
- Trafficked persons seen as victims by the law

Smuggling

- Unauthorized border crossing – crime or violation against a country or state
- No coercion
- Criminal income derived solely from smuggling
- Persons smuggled are not generally victims of crime

Three Elements of Trafficking



- How did the person get to where they are?
- How did the person find out about the job?

- What happened when they arrived in the destination country?
- What was it like when they started to work?

- Was the person paid? How much? How often?
- Did the person try to leave his/her job? What happened?
- Is the person afraid of his/her employer? Why?

Case Study 1: Human Trafficking or Smuggling?

- Samantha read an advertisement in the local paper about work as a domestic helper in another country.
- She did not pay a fee at time of application.
- At the airport, she was given a passport and instructions.
- A man and woman met her at the destination and took her passport. They told her they would return it when she has paid back the recruitment costs.

Cont.

- She is driven to the home where she will work.
- The man and woman and the new employer exchange money.
- The man and woman told Samantha she will be paid, but has to pay for accommodation, food and recruitment fees.
- Her debt increases as time goes on because she is paid little and the cost of food etc. is high.
- She is physically abused for every mistake.

Cont.

- Samantha works 7 days a week for 14 hours a day.

Case 1

- What further questions do you have?
- Why is this trafficking?
- Or why is it not trafficking?

Case 2

- Peter runs a factory that weaves silk for dresses
- Peter needs workers who can do the fine work for very low wage
- Peter asks Robert to find young boys to do the work.
- Robert goes to the country and finds Dino, a young boy.
- Robert tells Dino's mother that Dino will be paid, have food and a bed.
- Robert pays Dino's mother a small sum for the boy.

Cont.

- Dino works at the factory with some older boys.
- He is given a weak stew most of the time.
- He sleeps on straw under the machines.
- He is paid a coin every week.

Case 2: Is it human trafficking ?

- What are the elements?
- What questions do you have?

Case 3

- Manuel sees an advertisement for travel to another country for work in agriculture, factories, and the food industry.
- Manuel contacts the agency and learns there is a large fee. He learns that they will travel by truck to airplane and that immigration documents will be provided.
- Manuel saved money from working and borrowed the rest from his family and paid the agency.

Cont.

- Manuel and ten others traveled by truck to a seaport.
- They waited there without food for two days and then were smuggled aboard a ship.
- The group traveled by truck and ships for 12 months.
- One day the truck doors were opened and the group was told to get out and that they were on their own.
- No documents were provided to them.

Case 3: Is it human trafficking or smuggling?

Case 4

- Joy is from South-East Asia and recently lost her factory job.
- Joy is divorced and has two children to support.
- Joy hears of a job in a another Asian country in a hotel as a cleaning woman.
- She drives across the border with her friend's brother and is put into a van with other women and men.
- The group travels for six days in vans, boats and vans crossing several borders.

Cont.

- The women are sometimes locked in apartments and are always under guard.
- The women are now afraid.
- The women are forced to strip in front of a group of men.
- Joy is sold to a bar owner who tells her she must work as a prostitute to pay off travel debts.
- The owner threatens her by telling her she will be arrested, beaten or sold to more dangerous men.

Cont.

- Joy works every day for 12 hours and eats only once.
- She is fined for every infraction and has to pay for her own clothing and food.
- Is this human trafficking?
- Why or why not?

Module 2

Indicators of Trafficking in Persons and Smuggling of Migrants

Why is Identification so Difficult?

- Fear
- Isolation
- Hidden crime
- Blending in
- Distrust

Identifying Survivors

- Under control of traffickers/pimps/gangs
- Trained to tell lies and false stories
- Distrust of law enforcement
- Reluctant to engage with social service providers
- Change of location frequently
- Difficult to tell age
- False I.D.s

Direct Reporting

- To law enforcement
- To NGOs
- To others
- To “good samaritans”
- To Clinics, hospitals

Routine police activity

- Traffic stops/accidents
- Border crossings
- Crime investigations
- Investigation of sites of potential exploitation
- Community policing
- Advertisements
- Embassies/consulates
- Missing children cases

Who Else Might Discover a Trafficked Person?

- Community organizations
- Good Samaritans
- Consulates or embassies
- Other trafficked persons
- Witnesses
- Faith based organizations
- Clinics/hospitals
- Private attorneys
- Judges
- Customers/clients
- Mental health service providers
- Domestic violence advocates

Possible Indicators

- Workers living on/near site in employer controlled housing
- Restricted and controlled communication and transportation
- No documents (held by someone else)
- Overly fearful
- Assumed identity/false documents
- Physically afraid, but attached to trafficker

Indicators cont.

- Inconsistencies in story
- Lack of knowledge of a given community or location
- Excess cash
- Hotel room keys
- Injuries/signs of physical abuse or torture
- Chronic runaway/homeless youth

Indicators (cont.)

- Presence of an overly controlling and abusive "boyfriend/husband"
- Rehearsed story
- Layers of abuse
- Age
- Gender

Indicators of Child Trafficking

- No access to parents or guardians
- Behavior not typical for age
- No friends
- No access to education
- No time for play
- Skimpy clothing
- Scared, unhappy
- Know sex related words in local language

Indicators

- Are not proof!
- Are the starting point for investigations
 - proactive investigations
 - reactive investigations

Proactive activity

- Targeted raids
- Going in with other agencies such as labor or health and safety inspectors
- Identification of routes and planning operations at transport facilities
- Surveillance and other proactive investigation techniques
- Planned border operations

Sexual exploitation

People who have been trafficked for the purpose of sexual exploitation may:

- Be of any age, although the age may vary according to the location and the market
- Move from one brothel to the next or work in various locations
- Be escorted whenever they go to and return from work and other outside activities
- Have tattoos or other marks indicating "ownership" by their exploiters
- Work long hours or have few if any days off
- Sleep where they work
- Live or travel in a group, sometimes with other women who do not speak the same language
- Have very few items of clothing
- Have clothes that are mostly the kind typically worn for doing sex work
- Only know how to say sex-related words in the local language or in the language of the client group
- Have no cash of their own
- Be unable to show an identity document

Forced Labour

People who have been trafficked for labour exploitation may:

- Live in groups in the same place where they work and leave those premises infrequently, if at all
- Live in degraded, unsuitable places, such as in agricultural or industrial buildings
- Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing
- Be given only leftovers to eat
- Have no access to their earnings
- Have no labour contract
- Work excessively long hours
- Depend on their employer for a number of services, including work, transportation and accommodation
- Have no choice of accommodation
- Never leave the work premises without their employer
- Be subject to security measures designed to keep them on the work premises
- Be subjected to insults, abuse, threats or violence
- Lack basic training and professional licences

Domestic Servitude

People who have been trafficked for the purpose of domestic servitude may:

- Live with a family
- Not eat with the rest of the family
- Have no private space
- Sleep in a shared or inappropriate space
- Be reported missing by their employer even though they are still living in their employer's house
- Never or rarely leave the house for social reasons
- Never leave the house without their employer
- Be given only leftovers to eat
- Be subjected to insults, abuse, threats or violence.

Begging and Petty Crime

People who have been trafficked for the purpose of begging or committing petty crimes may:

- Be children, elderly persons or disabled migrants who tend to beg in public places and on public transport
- Be children carrying and/or selling illicit drugs
- Have physical impairments that appear to be the result of mutilation
- Be children of the same nationality or ethnicity who move in large groups with only a few adults
- Be unaccompanied minors who have been “found” by an adult of the same nationality or ethnicity
- Move in groups while travelling on public transport: for example, they may walk up and down the length of trains
- Participate in the activities of organized criminal gangs
- Be part of large groups of children who have the same adult guardian
- Be punished if they do not collect or steal enough
- Live with members of their gang
- Travel with members of their gang to the country of destination
- Live, as gang members, with adults who are not their parents
- Move daily in large groups and over considerable distances

Module 6

International Cooperation



Legal Basis	
<ul style="list-style-type: none"> • Extradition/MLA treaties: <ul style="list-style-type: none"> – Bilateral – Multilateral (regional) 	<ul style="list-style-type: none"> • Crime/Terrorism conventions <ul style="list-style-type: none"> – UNTOC – UNCAC – 1988 Drug Convention – Terrorism conventions
<p>Complementary source: domestic law of Requested State</p> <ul style="list-style-type: none"> • Basis of reciprocity • Allowed under domestic legislation 	

UNTOC

- Very comprehensive regime for international cooperation:
 - Extradition (Article 16)
 - Mutual legal assistance (Article 18)
 - Transfer of sentenced persons (Article 17)
 - International cooperation for purposes of confiscation (Article 13)
 - Smuggling of migrants by sea (Migrants Protocol, Articles 7-9)
- All of these provisions apply to the Protocols once ratified

Extradition

- The surrender by one State of a person present in its territory to another State that seeks this person either:
 - for the purpose of prosecution or
 - for the purpose of enforcing a sentence
- → Ultimately, it's an act of the executive, not of the judicial authority



Extraditable Offences

- Extradition Treaties:
 - A list added to the Treaty specifies which offences are covered; or
 - Conduct punishable under the laws of requesting and requested country by imprisonment for a maximum period of at least x years or by a more severe penalty
- International crime conventions such as UNTOC:
 - Offences under treaties are extraditable if accept as treaty base
 - Deemed as extraditable in existing treaties/included in future treaties
- Dual criminality: often required in domestic extradition laws
- Conduct-based test: Facts must constitute an offence in both States, no matter how those offences are qualified
- Importance of ratifying international instruments: offences harmonized among countries

Extraditable offences under UNTOC

UNTOC Offences

**Participation in an
Organized Criminal
Group**

**Laundering of
Proceeds of Crime**

Corruption

Obstruction of Justice

**Other “serious crimes”
punishable by a
maximum deprivation
of liberty of at least
four years**

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

TiP Protocol Offences

Trafficking in persons

Migrant Protocol Offences

**Smuggling of migrants
Fraudulent identity docs
Enabling illegal stay**

Firearms Protocol Offences

**Illicit trafficking
Illicit manufacture
Falsifying markings**

Standard provisions re . extraditable offences

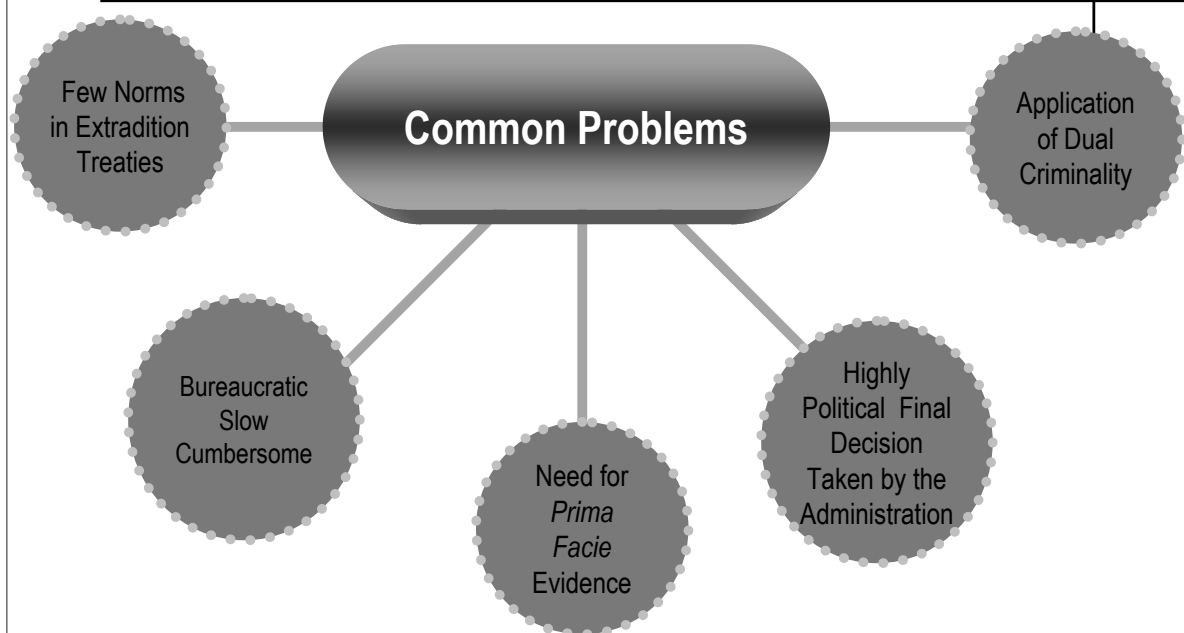
Offences deemed extraditable in existing treaties
and to be included in future treaties

Convention basis for extradition at discretion of
Requested State if treaty required

If not applying Convention as basis, seek to
conclude treaties where appropriate

If no treaty required, recognize offences as
extraditable as between states parties

Extradition Process: Common Problems



Standard provisions

Urges states to expedite and simplify

If domestic law permits offences, not political offence

Domestic law/treaty applies but

Guarantee of fair process/protections

Provisional arrest recognized

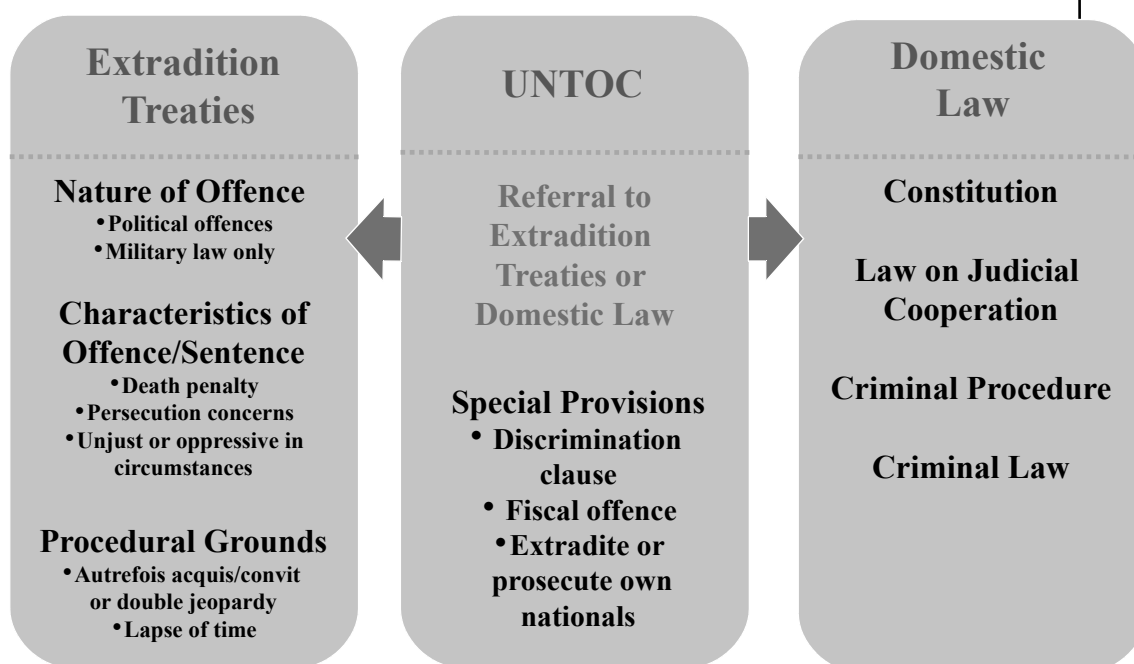
Extradition request – Content

- Follow the requirements of the requested State's legislation
- Main elements:
 - Contact details of the authority submitting the request
 - Legal basis
 - Description, identity, location and nationality of the person sought
 - Statement of the facts
 - Legal qualification of the acts
 - Summary of incriminating evidence
 - Arrest warrant or judgment
 - Guarantee of respect to the rule of specialty
 - Signature of issuing authority, date, official stamp
 - Annexes: Arrest warrant or judgement; Legal texts; Essential evidence
- Formal requirements: language and mode of transmission

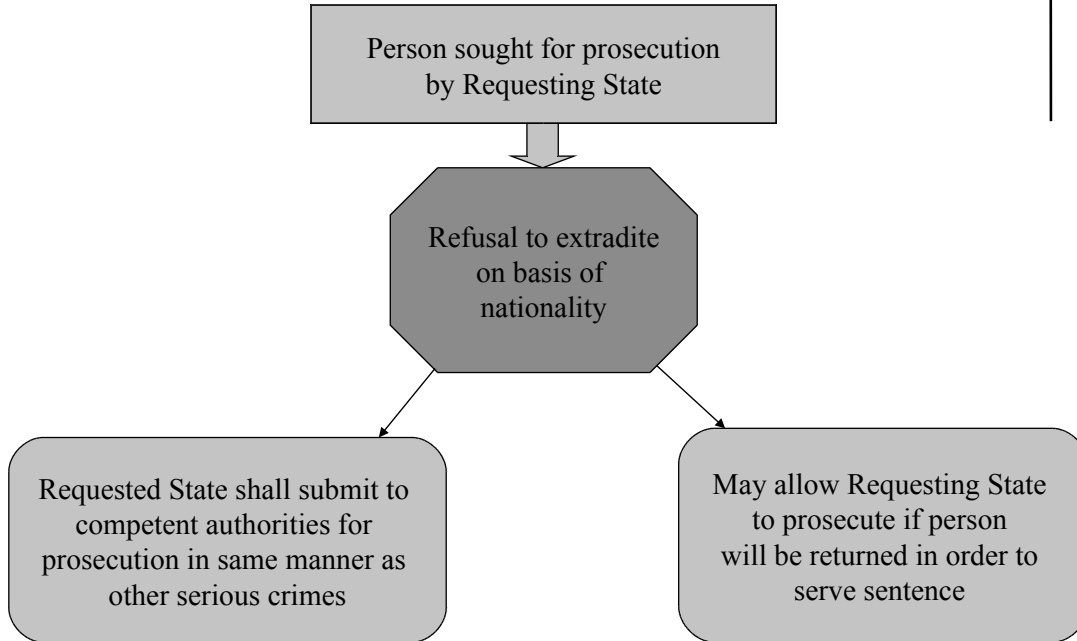
Provisional arrest

- If urgent, the judicial authority of the requested State may issue an order for provisional detention of a person sought pending receipt of the formal extradition request
 - Strict time limits for extradition request
- Transmission of request for provisional detention ideally through:
 - Interpol
 - Directly to the competent authority

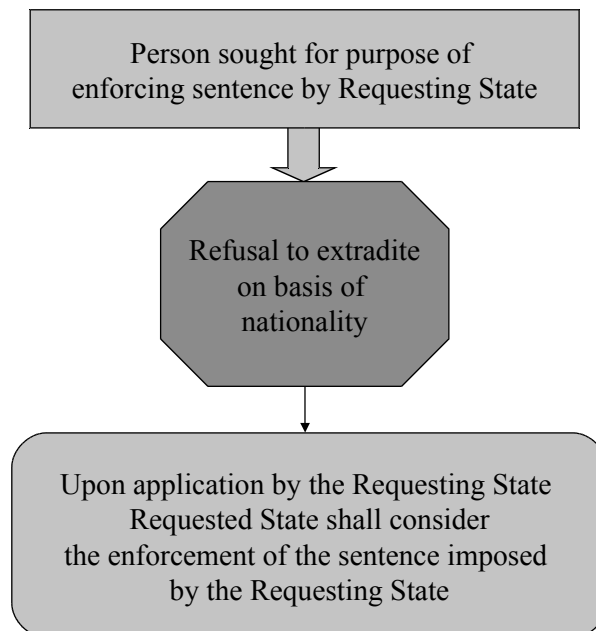
Grounds for Refusal



Extradite or prosecute



Extradite or prosecute



Other grounds for refusal

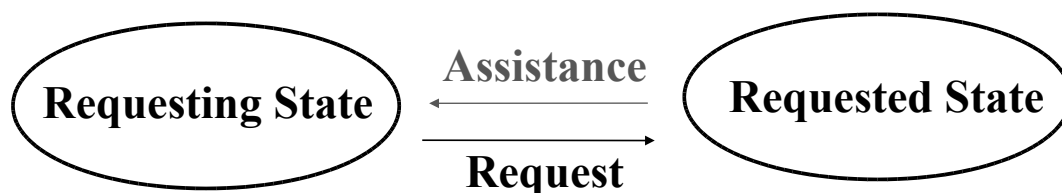
- Discrimination clause:
 - Can refuse if substantial grounds for believing request made for purpose of prosecuting on basis of sex/race/religion/nationality/ethnic origin/political opinion or would be prejudiced
- Fiscal matters:
 - Cannot refuse extradition on this ground
- Political offence exception:
 - Terrorism treaties require that extradition not be refused for these crimes
- Consultation: State must consult before refusing

Extradition Best Practice – Implementation

- Modern flexible domestic law which provides for inter alia:
- deeming/recognition of offences
- use of Convention as a basis for extradition
- simplified process/evidence for requests
- full panoply of procedures, including provisional arrest
- limited grounds of refusal

Mutual Legal Assistance

- Mechanisms by which States receive and provide assistance to gather evidence for investigations and criminal prosecutions
- → Vital tool within the criminal justice system: through request, one State authorizes another State to take measures, often coercive



UNTOC – Legal Basis

- Legal bases for MLA are the same as those already identified
- UNTOC - Article 18:
 - Mini-treaty!
 - If the parties are not bound by a treaty, then UNTOC procedures apply
 - If there is a treaty, they can still agree to apply UNTOC procedures

UNTOC – MLA

- Parties shall afford one another the widest measure of mutual legal assistance
- Applies to all offences in Convention and Protocols, if ratified:
 - Where there are reasonable grounds to suspect offence is transnational in nature and involves an organized criminal group

Types of Mutual Legal Assistance

**Service of
judicial
documents**

**Execution
of searches,
seizures, freezing**

**Examining
objects & sites**

**Provide
information &
evidentiary items**

**Provide
documents
and records**

**Identify & trace
proceeds & property
for evidence**

**Taking evidence
or statements from
persons**

**Facilitating
voluntary
appearances**

**Temporary
transfer of persons
in custody**

+ ANY OTHER ASSISTANCE UNLESS PROHIBITED

Central Authority

Designate a central authority competent to receive and execute requests or transmit them for execution



Role: ensure speedy execution/transmission of requests

Best Practices for Central Authorities:

- Up-to-date contact info disseminated
- Around-the-clock availability
- Same authority under different treaties
- Quality control, follow/up
- Guidelines for domestic/international use

Making a Request

Form of requests

- Written record
- Language acceptable to requested State
- Urgent cases: orally with later confirmation
- *Best practice: use of modern technology*

Content of requests

- Checklist in Art. 18(15)
- Checklist for confiscation requests: Art. 13(3)
- Additional info may be requested by requested Party
- *Best practice: prior consultation before making a request*

UNODC software: MLA Request Writer Tool

Executing a Request

- **Speedy execution of requests**
- ✓ **Respect deadlines given by State**
- ✓ **Consult on progress**

- **Limitation on use of information or evidence**
- ✓ *Best practice: reduce use limitations*
- **Confidentiality of requests**

- **Costs of execution on requested State**
- ✓ **Consultation on substantial extraordinary costs**
- ✓ *Best practice: Assistance from requesting Party in case of lack of resources*

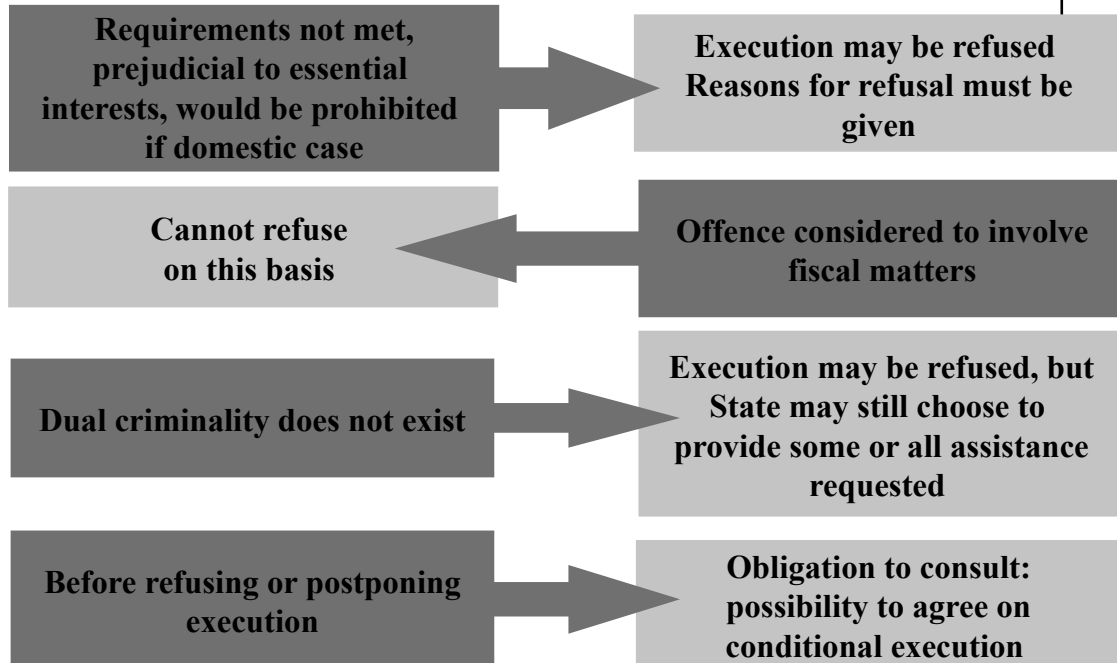
Supporting the other State in prosecuting

- Request to be executed in accordance with domestic law of the requested State

BUT

- Need to respect specific procedures described in the request unless prohibited or impossible, so as not to pose obstacles to the prosecution

Grounds for refusal



MLA Best Practice – Implementation

- Modern flexible mutual assistance legislation permitting:
- use of Convention as a basis for mutual legal assistance in the absence of a treaty
- broad range of assistance measures
- rendering of assistance in the absence of dual criminality
- limited grounds of refusal

International cooperation for purposes of confiscation

- Art. 13 UNTOC: Sets out regime for international cooperation regarding confiscation
 - One State enforces a confiscation order from another State or
 - One State obtains a confiscation order based on request by other State
 - Can also seek assistance of other State in tracing, freezing or seizing assets in view of their eventual confiscation

Can seize and confiscate:

- Proceeds of crime derived from offences covered by Convention
- Property, equipment or instruments used to commit offences covered by Convention

Smuggling of migrants by sea

- States may call for assistance where vessels flying their flag or with no nationality are suspected of smuggling migrants (Art. 8.1)
 - If no nationality, can board and search
- States may request permission to board and search vessels of other States, where vessels suspected of smuggling (Art. 8.2)
 - Must inform flag State results of search and can take appropriate measures with authorization of flag State if evidence of smuggling found
 - States must designate national
 - authority for dealing with requests

Communicate with your counterparts

- International cooperation is greatly facilitated by communication!
- Informal, direct and spontaneous contacts (e.g. tele/video-conferences)
- Simplify and speed up procedures
- UNODC can facilitate
- inter-State cooperation

UNODC Assistance

- UNODC has developed a variety of tools to facilitate international cooperation:
 - Online directory of competent national authorities
 - Case Law Database
 - MLA Request Writer Tool
 - Legal database
- Training on international cooperation
- Facilitating regional networks
- Expert Working Group on International Cooperation a permanent part of Conference of the Parties



Contact

- For more information about UNODC's Anti-Human Trafficking and Migrant Smuggling Unit, contact:
- The Anti-Human Trafficking and Migrant Smuggling Unit
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