



What countries can do to establish jurisdictions over offences linked to tax evasion and avoidance

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Leading questions?

What could be the role of tax officials for establishing jurisdiction under the UNCATOC and the UNCAC?

What offences under the UNCATOC and the UNCAC are closely related to tax offences?

How can UNCATOC and UNCAC support tax inspections and tax audits?

Why should we look at UNATOC and UCAC?

Look at the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering.

Focused on the cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Why should we look at UNATOC and UCAC?

Purpose of the conventions

Cooperation: the objective of the Conventions is to promote and strengthen international cooperation and mutual legal assistance on an array of transnational organized crime and corruption

Background for the adoption of the Conventions

Fifth UN Congress on the Prevention of Crime and the Treatment of Offenders (1975):

“Crime as business” →

- Heterogeneous groups of crimes
- Specific features: **economic gain**, involvement of some form of **commerce, industry or trade**; the involvement of some form of organization in the sense of a set or system of **relatively formal arrangements**; the **use or misuse of legitimate techniques of business and industry**; and the **high social status and/ or political power** of the persons involved in committing the crimes concerned.

Background for the adoption of the Conventions

Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders (1985)

“Cross border Crimes” →

- **illicit operations** carried out by **international criminal networks** represented a major challenge to national law enforcement and to international cooperation and that **national boundaries no longer constituted an effective barrier** against those criminal activities. .
- the **review or adoption of laws relating to taxation**, the abuse of bank secrecy and gaming houses in order to ensure that they were adequate to **assist in the fight against organized crime** and, in particular, the **transfer of funds or the proceeds of such crime across national boundaries**



Background for the adoption of the Conventions

Naples
Political
Declaration
and Global
Action Plan
against
Organized
Transnational
Crime (1995)

Call for strengthened and improved international cooperation at all levels and for more effective technical cooperation to assist States in their fight against organized transnational crime.

Background for the adoption of the Conventions

United Nations Declaration against Corruption and Bribery in International Commercial Transactions

Denial of tax deductibility of bribes

Develop or maintain **accounting standards** for transparency of international commercial transactions;

Encourage the development of business codes, related illicit practices in international commercial transactions;

Ensure that **bank secrecy provisions** did not impede or hinder **criminal investigations** or other legal proceedings relating to such practices.

Improve ability to detect and **interdict the movement across borders** of persons, instrumentalities and proceeds of crime

Require adequate record-keeping by financial and related institutions and the **reporting of suspicious transactions**

Important definitions

“Property” **assets of every kind**, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

“Proceeds of crime” shall mean any **property derived** from or obtained, directly or indirectly, through **the commission of an offence**;

“Freezing” or “seizure” shall mean **temporarily prohibiting** the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

“Confiscation”, which includes forfeiture where applicable, shall mean the **permanent deprivation** of property by order of a court or other competent authority;

“Predicate offence” shall mean **any offence** as a result of which **proceeds have been generated** that may become the subject of an **offence** as defined in **article 23** of this Convention;

“Controlled delivery” shall mean the technique of **allowing illicit or suspect consignments** to pass out of, through or into the territory of one or more States, with the **knowledge** and under the **supervision** of their **competent authorities**, with a view to the **investigation** of an offence and the identification of persons involved in the commission of the offence.

What offences:

UNCAC

(Art. 15, Art. 16 and Art. 21) Bribery of public officials: Promise of an undue advantage (material or not) in exchange of a particular service (act or inaction) in the exercise of their official duties.

(Art. 17 and Art. 22) Embezzlement: appropriation of public or private funds for the its own benefit or benefit of a third person.

(Art. 18) Traiding in influence: Abuse of a person position/influence to obtain a undue advantage for the instigator of the act.

(Art. 19) Abuse of functions: performance of or failure to perform an act, in violation of laws, by a public official in the 19 discharge of his or her functions to obtain a undue advantage.

(Art. 20) Illicit enrichment: significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income

(Art. 25) Obstruction of justice: Acts to induce false testimony or to interfere in giving testimony or produce evidence, as well as interfere in the duties of enforcement officials.

UNCATOC

(Art. 5) Criminalization of participation in an organized criminal group: Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit

Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes, including contribution to the achievement of a crime.

(Art. 8) Criminalization of corruption: Promise of an undue advantage (material or not) in exchange of a particular service (act or inaction) in the exercise of their official duties.

What offences:

(UNCAC) Art. 23. and (UNATOC) Art. 6.- Laundering of proceed of crime/Money:

- **The conversion or transfer of property**

- **The concealment or disguise** of the true nature, source, location, disposition, movement or ownership of or rights with respect to property

- The **acquisition, possession or use of property**

- With knowledge that it proceeds for crime, for the purpose of **concealing or disguising** the illicit origin of the property

Participation in, association with or conspiracy to commit, attempts to commit and **aiding, abetting, facilitating and counselling** the commission of any of the offences established in accordance with this article.

Jurisdiction over offences

UNCAC (Art. 42) and UNATOC (Art. 15)

- Territorial principle
- The flag principle
- Passive and active nationality principle

Extended active nationality: Covering all persons who have “a close connection” with the State party, including not only citizens but also individuals ordinarily resident in the country and bodies incorporated under domestic law (including the domestic subsidiaries of foreign companies).

Coordination and cohesiveness: Need to coordinate their actions with other States parties when conducting an investigation, prosecution or judicial proceeding in respect of the same conduct.

Consultation mechanisms: resolve possible conflicting jurisdictional claims over the same conduct

Jurisdiction over offences: elements to consider

Combat corruption and transnational organized crime requires to fight against tax dodging by TNCs and HNI.

Support third countries repatriation of illicit funds and prosecution of perpetrators of offences. This include fight against tax havens, bank secrecy and money laundering.

Strengthening country-by-country reporting of TNCs, beneficial ownership registries to avoid anonymity.

Recognition of tax fraud and tax avoidance as mechanisms for concealing or laundering of proceeds of crime, and as offences under domestic legislation (principle of active nationality)

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Issues relating to the extradition of offenders

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Leading questions?

Is a tax offence susceptible for extradition under the UNCAC and the UNCATOC?

Should extradition be the first option? What other options can be consider?

Does an extradition treaty be sufficient to to deter the commission of tax offences? Is it useful?

What is extradition

It is formal process by which one country request another country the enforced return of a person in its territory. The person should be accused or convicted, or one or more offences included in the legislation of the requesting country. The objective is two broad: the person is requested to face trial and prosecution, or punishment.

Article 16 (UNCATOC) and Article 44 (UNCAC)

- Applies the principle of dual criminality
- Recognizes the principle of conditionality
- Include the possibility of extradite or prosecute

Strong linkages within jurisdiction and extradition → only applicable to certain offences and persons (see: principles of jurisdiction)

Not being extradite does not imply not being prosecuted or punished.

Procedural aspects

UNCAC and UNCATOC recognise extradition on the bases of domestic law, in particular considering:

Procedures for arrest, search and seizure and surrender

Identify authorities participating in extradition processes

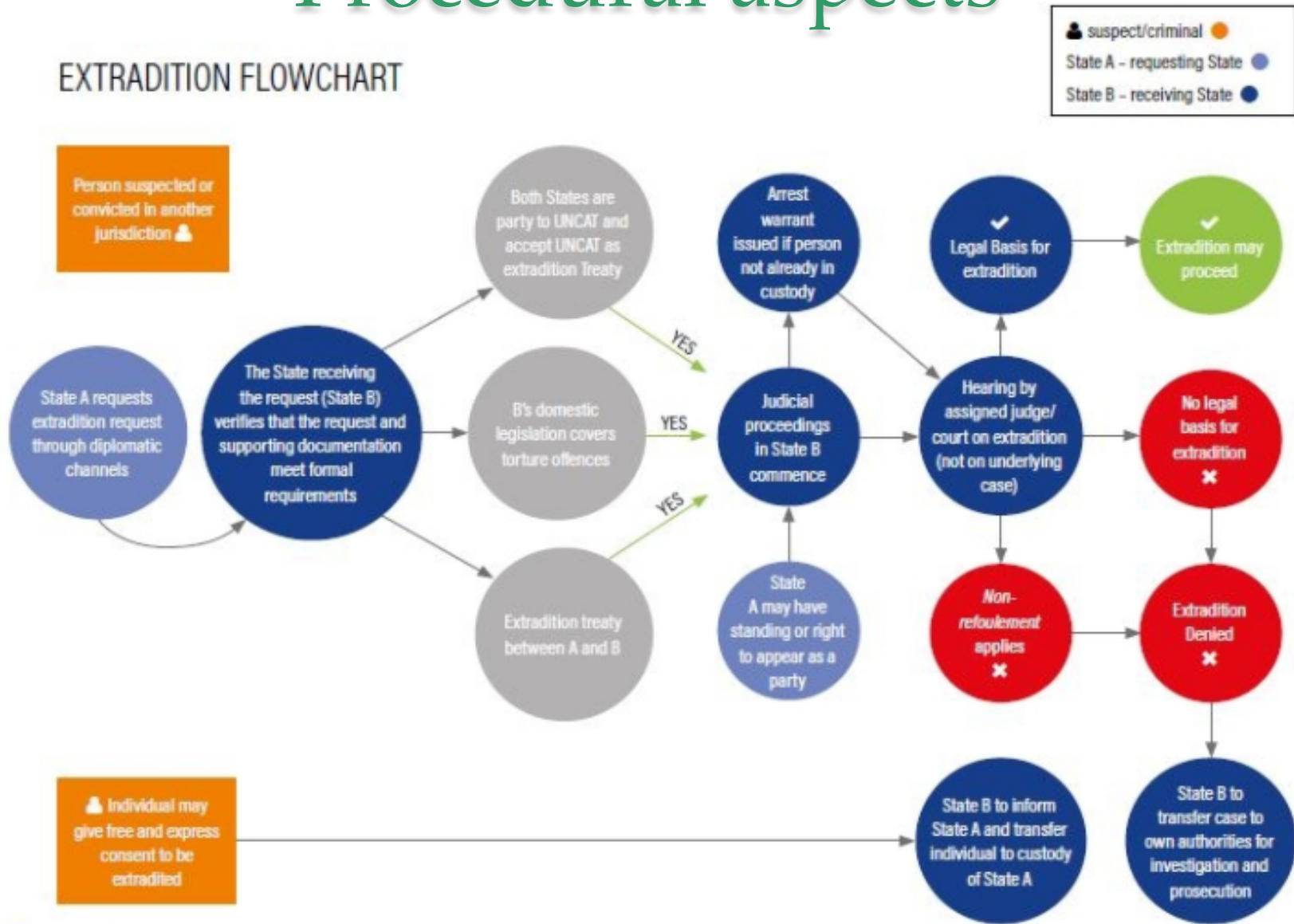
What are the grounds for refusal

There is a need for evidence

Request for arrest and custody

Procedural aspects

EXTRADITION FLOWCHART



Source: CTI's latest tool: Cooperation on Extradition

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Is an extradition treaty a good tool to deter the commission of tax offences?

Complementary readings:

United Nations Office on Drugs and Crime, Manual on Mutual Legal Assistance and Extradition in

https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf

United Nations Office on Drugs and Crime, State of implementation of the United Nations Convention against Corruption in

https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/15-03457_ebook.pdf

European Parliament report on the fight against corruption and follow-up of the CRIM resolution (2015/2110(INI)) in

https://www.europarl.europa.eu/doceo/document/A-8-2016-0284_EN.html

Communication from the Commission to the European Parliament and the Council an Action Plan to Strengthen the fight against tax fraud and tax evasion (COM/2012/0722 final) in

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012DC0722>