



UNITED NATIONS  
*Office on Drugs and Crime*

“National Workshop on International Cooperation in Criminal  
Matters relating to Terrorist Cases”

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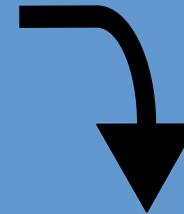


# Evolution of Confiscation/ Asset Recovery

## First Step

### UN Legal Framework for Confiscation

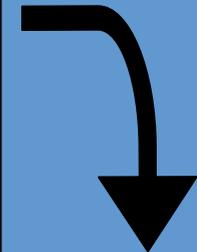
UN single Convention on narcotic drugs (1961)  
UN Convention on psychotropic substances (1971)



## Second Step

### Extension of International Cooperation Mechanisms

UN Convention against illicit traffic in narcotic drugs and  
psychotropic substances (1988)  
UN Convention against Transnational Organized Crime (2003)



## Third Step

### Conceptualization of Asset Recovery and Return of Assets

UN Convention against Corruption (2005)



## First Step

### Legal Framework for Confiscation and Seizure

UN Single Convention on Narcotic Drugs (1961)

UN Convention on Psychotropic Substances (1971)

**Seizure and confiscation of any drugs, substances and equipment  
*used in or intended for the commission of any of the offenses* (article 37,1961)  
*As well as psychotropic substances and other substances*  
(article 22 para.3,1971)**



## Second Step

### Extension of Confiscation and International Cooperation Mechanisms

UN convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

UN convention against Transnational Organized Crime (2003)

**Extension of confiscation to** proceeds derived from criminal offenses as well as to other property the value of which corresponds to that of criminal proceeds as any drugs and substances and instrumentalities used in relation to the offences. (article 5 para.1 1988)

Conclusion of bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation (article 5 para.4g 1988),

*In TOC, regarding confiscation and Disposal of confiscated proceeds of crime or property*

- **Mutual cooperation** on confiscation, including requests to the competent authorities for investigation and seizure of proceeds of the crime. (article 13 para.1, 2)
- Party may return the confiscated proceeds or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds to their legitimate owners. ( article 14)



## Third Step

### Asset Recovery / Return of Asset

### UN Convention against Corruption (2005)

#### Chapter indicates wide range of Asset Recovery/ Return of Asset

- Return of Asset to country of origin as “a fundamental principle”, and States are required to afford one another the widest measure of cooperation and assistance. (Article 51)
- Procedures and conditions for asset recovery, including facilitating civil and administrative actions with various options in each case. (Article 53)
- Action on the basis of foreign confiscation orders. (Article 54, 55)
- Widest measure of mutual legal assistance in investigations, prosecutions, judicial proceedings, freezing of proceeds of crime and asset recovery. (Article 55, 56)
- Measures that would permit the spontaneous or proactive disclosure of information. (Article 56 )



▶ Disposal and Return of Assets (article 57)

States Parties are required to

- 1) dispose of confiscated property including by return to prior legitimate owner.(para.1)
- 2) return confiscated proceeds to the requesting State party, specifying in greater detail the disposal of confiscated corruption-related assets, which allows for compensation for damage to requesting States parties or other victims of corruption offences and recognize claims of other prior legitimate owners, as well as coverage of expenses of the confiscating State party and ad hoc agreements on asset disposal between concerned States parties. (para.2,3)
- 3) consider the conclusion of agreements or arrangements for the final disposition of assets on case-by-case basis offences and recognize claims of other prior legitimate owners. Paragraphs 4 and 5 of article 57 provide for the coverage of expenses of the confiscating State party and ad hoc agreements on asset disposal between concerned States parties. (para.4,5)



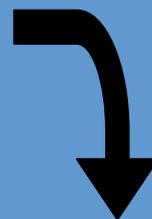
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## Evolution of Extradition in UN Conventions



First Step  
Framework of Extradition

UN single Convention on narcotics drugs (1961)  
UN Convention on psychotropic substances (1971)



Second Step

Mutual Legal Assistance and Extradition Process

UN Convention against illicit traffic in narcotic drugs  
and psychotropic substances (1988)



Third Step

Safeguards for a due process

UN Convention against Transnational Organized Crime (2003)



Fourth Step

Cooperation and Obligation of States

UN Convention against Corruption (2005 )



## First step

### First framework of extradition

#### UN Conventions of 1961 and 1971

UN single Convention on Narcotic Drugs (1961) ( art.36, para.2b)

UN Convention on psychotropic substances (1971) (art.22, para.2b)

#### Parties which make extradition conditional on the existence of a treaty

- The offences shall be included as extraditable crimes in all extradition treaty.
- It is possible to consider the UN Conventions as legal basis for extradition .

#### Parties which do not make extradition conditional on the existence of a treaty

- shall recognize the offences as extraditable offences between themselves.

- The Parties shall have the right to refuse **to effect the** arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.



## Second step

### Mutual Legal Assistance

#### UN Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988

Facilitation of extradition process, States parties shall:

- ✓ expedite extradition procedures and to simplify evidentiary requirements (art.6, para.7)
- ✓ conclude bilateral and multilateral extradition agreements (art.6, para.11)

Mutual Legal Assistance:

- ✓ The requested State may place a fugitive into custody or take other appropriate measures to ensure his or her presence for purposes of extradition (art.6, para.8)
- ✓ Application of the principle of “extradition or prosecution”: MLA for the purpose of the prosecution of a fugitive, where extradition is refused on the ground that the offence has been committed in its territory or by one of its nationals. (art.6, para.9)
- ✓ MLA for the purpose of the enforcement of a foreign sentence, where extradition is refused on the ground of nationality (art.6, para.10)
- No obligation to extradite where there are substantial grounds for believing a fugitive will be discriminated against (art.6, para.6)



## Third step

### Safeguards for a due process

#### UN Convention against Transnational Organized Crime (2003)

##### Strengthening Mutual Legal Assistance in order to safeguard a due process:

- ✓ The State party which refuses extradition shall, *“submit the case without undue delay”* to its authorities. (art.16, para.10)
- ✓ *“The authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence”*. (art.16, para.10)
- ✓ *“The States parties shall cooperate with each other, in particular on procedural and evidentiary aspects”*. (art.16, para.10)

##### Safeguards for persons undergoing the extradition process:

- ✓ States parties must ensure fair treatment for persons facing extradition proceedings (art.16, para.13)

##### Restriction **of grounds** of extradition :

- ✓ Prohibition on denial of extradition for fiscal offences (art.16, para.15)
- ✓ Consultation prior to refusing (art.16, para.16)



## Fourth step (1)

### Cooperation and Obligation UN Convention against Corruption (2005)

➔ The extradition provisions that the Convention supports are designed to ensure and complements previous Conventions and pre-existing extradition arrangements and does not depart from them.

2 new points:

- ✓ States parties may temporarily surrender the fugitive for the sole purpose of conducting the trial. (art.44,para. 12)
- ✓ States parties may grant extradition for corruption offences even without dual criminality (art.44, para.2)



## Fourth step (2)

### MANDATORY REQUIREMENTS UNDER UNCAC

1. Extraditable offences in extradition treaties
2. Conditions to extradition (extradition treaty or law of the requested State)
3. Prosecution where a fugitive is not extradited on the grounds of nationality
4. Guarantees for persons undergoing the extradition process
5. Prohibition on denial of extradition for fiscal offences
6. Consultation prior to refusing
7. Conclusion of new agreements and arrangements

### OPTIONAL REQUIREMENTS

1. Extradition on the basis of the Convention
2. Expediting extradition procedures
3. Detention pending extradition proceeding
4. Temporarily surrender the fugitive for the purpose of conducting the trial
5. Enforcement of a foreign sentence where extradition is refused on the ground of nationality
6. No obligation to extradite where there are substantial grounds for believing a fugitive will be discriminated against



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THANK YOU VERY MUCH