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**Outline of proposed elements for amendment/updating of the  
2012 UNODC Manual on Mutual Legal Assistance and Extradition**

**Background**

In its resolution 10/4 (para. 15(d)), the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (COP-UNTOC) requested UNODC, within its mandate, to continue to provide technical assistance and capacity-building to Member States, upon request, to support their capacity to prevent and combat transnational organized crime, including through **the updating**, as necessary, of publications, such as (...) **the UNODC Manual on Mutual Legal Assistance and Extradition (2012)**, also with a view, as appropriate, to including updated material on the use of special investigative techniques and the gathering of electronic evidence.

This note aims at outlining possible suggestions and elements for revision of the 2012 UNODC Manual on Mutual Legal Assistance and Extradition, as mandated by resolution 10/4 of the COP-UNTOC.

The starting point for the elaboration of the present outline is that the Manual was developed in 2012 in accordance with resolution 5/8 of the COP-UNTOC, entitled "Implementation of the provisions on international cooperation of the United Nations Convention against Transnational Organized Crime". In that resolution, the Conference had directed the Secretariat to develop a practical guide to facilitate the drafting, transmission and execution of requests for extradition and mutual legal assistance pursuant to articles 16 and 18 of the Convention in cases in which the Convention was used as a basis.

In light of the above, the outline suggests issues for updating the Manual, as highlighted in **subsequent** resolutions of the COP-UNTOC and discussed in meetings of its Working Group of International Cooperation after 2014. The outline also takes into account developments experienced in recent years in the field of international cooperation in criminal matters.

The proposed items for updating are highlighted below through track changes in the table of contents of the original version of the Manual, which will be demonstrated on screen during the relevant session of the expert group meeting, for further discussion and editing. Additional annotations to justify the need for the proposed updates are also included in the outline.

## Table of Contents of 2012 Manual

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- D. How to use the Manual.

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### III. The legal basis for mutual legal assistance and extradition: general principles.

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### IV. The Organized Crime Convention as the basis for international cooperation.

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[5bis. Human rights considerations in extradition proceedings: a revised component of the Manual, updating Section E. \(3\)-\(5\) above and Section F below.](#)

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## Annotations

1. An update regarding conclusions from the implementation of the EU Framework Decision on the European Arrest Warrant in recent years will be useful. Moreover, the Manual will benefit from a presentation of a tool designed to streamline the process of mutual legal assistance among the EU Member States, based on the concept of “mutual recognition”, namely the **European Investigation Order in criminal matters** (Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding).
2. An **update of Section V** will offer an overview of discussions and policy-making guidance on how to upgrade the ability of central authorities to perform their multiple tasks. This may include a need to reflect more emphatically in the Manual a comparative overview of models of central authorities used in different jurisdictions. The revision of the Manual also offers the opportunity to include references to such measures for central authorities as, for example, the development of systems for tracking the status of requests (resolution 7/8, para. 5 and resolution 8/1 para. 9 of COP-UNTOC); the task of central authorities to exercise quality control of requests, including with respect to translation and supporting documentation (resolution 7/8, para. 9 and resolution 8/1 para. 9 of COP-UNTOC); possibilities for central authorities to collect and disseminate statistical information on mutual legal assistance requests, including the nature of the assistance requested or provided and the legal basis for such cooperation (resolution 7/8, para. 6 of COP-UNTOC); the provision of clear guidance on respective procedures and requirements for submission of mutual legal assistance requests (resolution 7/8, para. 7 of COP-UNTOC); staffing, equipping and empowering central authorities to play an effective coordinating role among various government agencies within a State party and with other States parties in order to ensure effective implementation of the Organized Convention regarding international cooperation in criminal matters, and to help facilitate the timely execution of requests for assistance or cooperation (resolution 8/1, para. 7 of COP-UNTOC). Further, it will be useful to study how the digital development had an impact on the work of central and other competent authorities in the field of mutual legal assistance and extradition.
3. **Regional judicial cooperation networks** can play a significant role in pursuing transnational or regional approaches to criminal investigations (see also resolution 8/1, Annex II, para. (e), resolution 9/3, Annex I, para. (i) of the COP-UNTOC). Such regional networks enhance personal contacts, build mutual trust between practitioners and are conducive to forming a better understanding of their respective legal, procedural and operational requirements. This added value can further be reflected in the updated version of the Manual. In this context, the work of the West African Network of Central Authorities and Prosecutors against Organized Crime, the Judicial Cooperation Network for Central Asia and Southern Caucasus or the South-East Asia Justice Network, among others, can be highlighted.
4. **Communication platforms as a tool for better collaboration.** The Manual will benefit from an overview of initiatives undertaken at the regional and international levels (including UNODC efforts) to facilitate secure communication between central authorities for more enhanced cooperation. It should be noted that the COP-UNTOC has encouraged States parties to make the fullest and most effective use of available technology to facilitate cooperation between central authorities, and to develop virtual networks between and among central authorities and explore the feasibility of secure electronic communications (resolution 8/1, para. 6); and has requested States parties to consider, with the assistance of the Secretariat and subject to the availability of extra budgetary resources, the possibility of developing a global network, through a virtual environment, for the purpose of establishing and enhancing direct contact between central authorities (resolution 8/1, Annex I, para. (I)).
5. **The UNODC Directory of Competent National Authorities (CNA Directory).** It will be beneficial to have concrete references to this important tool that UNODC has developed, in

accordance with relevant mandates of the COP-UNTOC to facilitate, through the availability of information on contact details of key authorities and officers, communication for more expeditious and efficient cooperation. In this regard, the Manual may refer to the structured presentation in the Directory, as mandated by resolution 8/1 of the COP-UNTOC, of central authorities designated to deal with MLA requests and other competent authorities involved in other forms of international cooperation in criminal matters.

6. **Human rights considerations in extradition proceedings.** A revised component of the Manual, updating Section E. (3)-(5) and Section F, will offer the opportunity for a more coherent and streamlined presentation of related aspects. It may also be a practical way for the Secretariat to use wisely existing resources to implement the mandate contained in resolution 9/3, Annex III para. (h) of the COP-UNTOC: “prepare a discussion paper that would map an overview of practical considerations and challenges that authorities encounter, as well as lessons they have learned and good practices they have identified, in reconciling the need for observing and protecting the human rights of the person sought with the effectiveness of extradition proceedings, and in addressing efficiently the interplay between, on one hand, refugee and asylum proceedings and, on the other, extradition proceedings”.
7. **Extradition hearing / Appeal proceedings.** The Manual may benefit from a separate chapter on the extradition hearing at the requested State, the role and competences of the competent judicial authority and the available legal remedies. It should be noted that two competing priorities underlie the judicial review and appeals process in extradition practice, which impact differently on the speed and predictability of extradition. On the one hand, the authorities in the requested State should ensure that extradition proceedings take place in strict accordance with the law and in line with procedural requirements of that State’s domestic legislation. On the other hand, the extradition process should be effective and efficient and should serve the administration of justice and the interests of law enforcement, taking account of the need to protect the rights of the person sought. Thus, the balance to be struck in extradition cases is to ensure that an extradition request submitted by a requesting State is dealt with in a timely and efficient manner, while also ensuring that access to justice rights are properly addressed. The Manual may offer suggestions as to how to achieve judicial economy and accelerate the extradition process without prejudicing the effectiveness of judicial review.
8. **Executive decision on whether to surrender or not the person sought.** The Manual may benefit from a more detailed description of the two-tier extradition process in the requested State, involving both judicial and executive competences to judge about the surrender of the person sought. The executive stage, in particular, can offer the opportunity to assess, in certain circumstances, diplomatic assurances provided by the requesting State, which may offer solutions where human rights considerations are in conflict with the decision to grant the extradition request.
9. **Simplified extradition process:** Trends and developments in extradition law and practice have focused on, inter alia, simplifying requirements with respect to the examination and assessment of the extradition request and the process followed for the surrender of the person sought. This is a topic that could be more prominently reflected in the Manual. Simplification of the extradition process appears to be taking place in two areas. The first area pertains to the simplification of the substantive and procedural conditions for extradition, which appears to occur through the relaxing of the following elements: (a) The strict application of certain grounds for refusal of extradition requests, including nationality of the offender and the political offence exception to extradition; (b) Extradition conditions such as dual criminality and the rule of specialty; (c) Specific evidentiary requirements applicable in the extradition process. The second area focuses on “fast-track” extradition procedures through the consistent practice of providing for a streamlined process of extradition (simplified extradition) as an available option subject to certain requirements and on the understanding that the person sought consents to such a simplified process. At the policy level,

the COP-UNTOC has encouraged States parties to continue their efforts to expedite extradition procedures and simplify evidentiary requirements relating thereto pursuant to article 16, paragraph 8, of the Convention and, in general, to trigger, where necessary, internal reviews for possible reform of their extradition regimes with a view to simplifying extradition procedures where the person sought consents to his or her surrender to the requesting State and trying to minimize opportunities for delays in the extradition process (resolution 9/3, Annex III para. (a)).

10. **The UNODC Mutual Legal Assistance Request Writer Tool: an update.** After the release of the Manual, the tool continued to be used extensively. It was redeveloped substantively to include additional types of means of international cooperation. It will now undergo a technical upgrade to be in compliance with the highest UN standards of security and safety. The updated version of the Manual can reflect these developments.
11. **Communication channels for transmission of requests.** It will be essential for the Manual to highlight prominently the flexibility offered by the Organized Crime Convention in relation to the use of communication channels for the transmission of MLA requests: traditional approach of use of diplomatic channels; direct transmission between central authorities (resolution 9/3, Annex II para. (e) of the COP-UNTOC); through Interpol in urgent circumstances and upon agreement of the cooperation States parties. Furthermore, practices supporting direct communication between judicial authorities will also be mentioned.
12. **Electronic transmission of requests.** In recent years and, in particular, due to the conditions created by the COVID-19 pandemic, there has been greater support for the idea that international cooperation requests can be sent through the use of electronic means. The COP-UNTOC has acknowledged that the conditions created by the pandemic have led to an increase in the electronic transmission of international cooperation requests and that those conditions have demonstrated that such requests can be sent and answered in a safe, timely, agile and valid manner using electronic means. The COP-UNTOC has also encouraged States to further strengthen their ability to use electronic means for the transmission of mutual legal assistance requests and for seeking, in response to such request, clarifications and acceptance of relevant materials in electronic form, in accordance with the fundamental principles of their domestic law, including with a view to improving their capabilities in the post-COVID-19 era (resolution 11/1, para. (w));
13. **Mutual legal assistance involving electronic evidence: legal and practical considerations.** In light of COP-UNTOC resolution 10/4, the updated version of the Manual could be complemented with the most recent developments that have, during the past decade, emerged from major reform efforts at the multilateral, regional and domestic levels. At the multilateral level, considerations could be given to key elements arising from the ongoing negotiations for a United Nations Convention on Countering the Use of Information and Communication Technologies for Criminal Purposes, as well as elements from the Second Additional Protocol to the Cybercrime Convention on enhanced co-operation and disclosure of electronic evidence (CETS No. 224), which has recently been opened to signature. Similarly, the update in 2022 of the UNODC Model Law on Mutual Assistance in Criminal Matters (2007), as amended with provisions on electronic evidence and use of special investigative techniques, offers a valuable source to this end ([Model Law Mutual Legal Assistance 2022.pdf \(unodc.org\)](#)). UNODC has been actively supporting intergovernmental processes in which international cooperation involving electronic evidence has emerged as a policy and legal priority and as a specific aspect of the impact of technology in the field of international cooperation in criminal matters. Examples of such processes include the work of the open-ended intergovernmental expert group on cybercrime; the work of the Ad Hoc Committee on the elaboration of a new international convention on countering the use of ICTs for criminal purposes; two thematic discussions of the CCPCJ in 2018 and 2022; and pertinent work of the Working Group on



International Cooperation of the COP-UNTOC on mainstreaming the topic of electronic evidence into the work of UNODC in the field of international cooperation (Resolution 8/1, Annex I, paras. (a), (b) and (d) of the COP-UNTOC; resolution 9/3, Annex I, para. (m) of the COP-UNTOC).

14. **Cooperation with communications service providers.** The role of communications service providers in criminal justice and international cooperation in criminal matters remains a critical yet not entirely explored topic. Communications service providers are the private entities in possession of users' electronic data and, as such, the recipients of an increased volume of requests from law enforcement authorities seeking to preserve or access electronic data of probative value for a criminal investigation.

Although an increased number of communications service providers have issued guidelines for law enforcement and judicial authorities aimed at clarifying the requirements and processes for the submission of requests for disclosure of electronic evidence, authorities should bear in mind that service providers have different procedures and some have no procedure at all.

As a result, the capacity of central and other competent authorities involved in international cooperation to cooperate with communications service providers located overseas in accordance with applicable laws and their own requirements remains a challenge, in particular in cross-border investigations where different legal frameworks may overlap or offer different approaches.

These are considerations that the revised version of the Manual may need to take on board, while also acknowledging relevant policy-making mandates: in its resolution 9/3, Annex I, para. (j), the COP-UNTOC stated the importance of training activities for both criminal justice and law enforcement authorities and private service providers on the gathering and sharing of electronic evidence and on international cooperation relating to such evidence; further, in its resolution 10/4, the COP-UNTOC also invited States parties, in accordance with their domestic law, to adopt measures to strengthen cooperation between their judicial and law enforcement authorities and the private sector, including communication service providers and the financial sector, in preventing and combating existing and emerging manifestations of transnational organized crime.

15. **Supplement: the Mechanism for the Review of Implementation of the Organized Crime Convention and its cluster on international cooperation.** In its resolution 9/1, the COP-UNTOC established a review mechanism for the implementation of UNTOC and its Protocols and adopted the procedures and rules for the functioning of the mechanism. In its resolution 10/1, the COP-UNTOC decided to launch the first review phase of the review process in accordance with the thematic clusters and multi-year workplan for the functioning of the mechanism, and with the guidelines for conducting the country reviews. The international cooperation cluster (cluster 4) is one of the pillars of the review mechanism and is expected to generate in future accumulated knowledge on the implementation of the international cooperation provisions of the Organized Crime Convention. Bearing this in mind, it would be useful if the revised Manual could reflect this important development through references to the process, the provisions under review, and the expectations arising from the functioning of the mechanism with a focus on the field of international cooperation.