Argentina’s Implementation of UNTOC: Establishing dual criminality for extradition and mutual legal assistance purposes

UNODC – Viena 2023
Central authority in Argentina

- Extradition
- Mutual Legal Assistance Request
- International asset recovery
- Legal Advice for judges and prosecutors
- Records and accountability
- Central authority MLA under bilateral, regional and multilateral treaties
- Participation in International forums
- Authority in charge of international cooperation
- Treaty negotiation
  Mutual Legal Assistance
  Extradition
  Transfer of Sentenced Persons

MFA
International Legal Assistance Department
Ministries Law (22.520)

“Intervining in the processing of letters rogatory, extradition requests and matters relating to international legal assistance”

Executive Branch Area with primary competence in international legal cooperation.

International Cooperation Criminal Matters (Law 24.767)

International Treaties and Agreements:

UNTOC
UNCAC
Budapest Convention
OECD
Regionals: OAS, Mercosur
Bilateral

April 2023
Role in MLA

- Outgoing requests
- Incoming requests

ARG facts:

- Federal Country
- Inquisitorial system
- Executive Branch

Role in Extradition

*Combined system judicial/executive*

- Active extradition
- Passive extradition: Preliminar assessment and final decision
MLA – Extradition route

ACTIVE

JUDGE PROSECUTOR ARG

MFA CA ARG

PASSIVE

REQUESTING COUNTRY CA

REQUESTING COUNTRY ARG

MFA CA ARG

AR EMBASSY IN REQUESTED COUNTRY

COMPETENT AUTH. REQUESTED CO.

FEDERAL JUDGE PROSECUTOR ARG
1. Coordination

- Local coordination
- Domestic partners and foreign counterparts
- ARG best practice - federal capacity building program

- International coordination - Latin America Central Authorities network
- Formal and informal cooperation
- Informal cooperation between CA before and during MLA
Pro active
Empathetic approach, see things from the other person's point of view
What does our partner need?
Commitment with all investigations
Planification

UNTOC group
Face to face
Office of International Legal Assistance
WWW.COOPERACION-PENAL.GOB.AR
Application of UNTOC and dual criminality for extradition and mutual legal assistance purposes

SCOPE: Art. 3
- Participation in an organized criminal group (art. 5)
- Laundering of proceeds of crime (art. 6)
- Corruption (art. 8)
- Obstruction of Justice (art. 23)
- Serious crime

JURISDICTION: Art. 15 – Multiple jurisdictions intervening.

Importance for aut dedere aut judicare, especiality rule, coordinating actions (ne bis in idem), transfer of criminal proceedings, etc.
ARTÍCULO 18.9 UNTOC

Allows a State Party to deny an MLAR because of the absence of dual criminality.

Gives the prerogative to States Parties to provide assistance even though the absence of dual criminality.

It should focus on the underlying conduct and not on the technical terms used in the definition of the offence.

"Where dual criminality is a requirement, it shall be deemed to be fulfilled if the conduct constituting the offence in respect of which assistance is sought is an offence under the law of both States Parties, regardless of whether the laws of the requested State Party include the offence in the same category or refer to it in the same terminology as the requesting State Party."
**DUAL CRIMINALITY**

**EXTRADITION**

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**ARTÍCULO 16.1 UNTOC**

Extradition shall be possible under UNTOC provided that the offence for which extradition is sought is punishable under the domestic law of both, the requesting State and the requested State Party.

Dual criminality is a must taking into account extradition is considered the most coercive measure in international cooperation.

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**IMPORTANCE OF CRIMINALIZATION**

**IMPORTANCE OF CORRECT DETERMINATION OF CRIME FOR SPECIALITY RULE**

Does not require the transnational element.
UNTDOC as Basis for Cooperation in Argentina

UNTDOC as a legal basis for extradition in relation with other countries in case the other country, whether requesting or requested, is also party to the Convention and the conditions for extradition are fulfilled.

In a recent case regarding trafficking in persons where no bilateral treaty existed, UNTDOC and one of its additional protocols were used as the legal bases for an extradition request. While Argentine law provides that extradition may be carried out through reciprocity in the absence of a treaty, UNTDOC is an attractive choice.
Argentine International Cooperation in Criminal Matters Law 24.767

Art. 68 “Assistance shall be provided even if the act giving rise to it does not constitute a crime in Argentina. However, such an act shall be required to constitute an offence in Argentina if the assistance required consists of a measure of seizure of property, domicile search, tracking of persons, interception of correspondence or interception of telephone communications”. (mutual legal assistance)

Art. 6 "The fact subject matter of the process must constitute a crime in both, the Argentine law and in that of the requesting State.” (extradition).

Argentine Supreme Court Criteria

"... The accreditation of dual criminality does not require normative identity between the criminal types but what is relevant is that the country's regulations provide for and punish in substance the same criminal offense ... To this end, the description of the act made by the requesting country must be compared with the Argentine criminal system, in order to determine whether it is subsumable in some legal type threatened with a penalty."
Role in MLA in the last 5 years

- **Outgoing requests:** 7 MLAs denied because of lacking dual criminality.

- **Incoming requests:** No MLA denied because of lacking dual criminality.

Role in Extradition in the last 5 years

- **Outgoing requests:** NO Extradition denied because of lacking dual criminality.

- **Incoming requests:** 4 Extraditions partially denied because of lacking dual criminality.
Dual Criminality

Argentine Law and Jurisprudence

1. Dual Criminality is a MUST for extradition.
2. For MLA not needed unless:
3. List of measures for which dual criminality is a MUST.
4. Jurisprudence: comparison of the description of the facts with the Argentine criminal law, regardless of the denomination of the crime, category differences and technical elements.

Other Treaties Standards

1. United Nations Convention against Corruption UNCAC – Article 46.9
   * Coercive Vs. Non coercive measures approach.
Particular offense under argentine law:

ABIGEATO (Argentine Criminal Code Art. 167 TER, PARA. 2; QUATER and QUINQUE).
Crime against property that occurs when a person illegitimately seizes one or more head of cattle greater or minor, totally or partially alien.
Aggravated forms: the use of force or violence; theft of five or more head of cattle and motorized transport; for falsification of trademarks and signals, for the use of false documents, for plurality of authors, for the characteristics of the author, etc.

Crime of taking without the will of the owner, one or more animals of alien herds (such as cows, horses, sheep, goats or pigs), which are in rural establishments or traveling, from loading to delivery, which is aggravated by using force or violence, or by stealing more than five animals, by falsifying marks or using false documents, etc.

3 to 10 years in prison.
Thank you

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