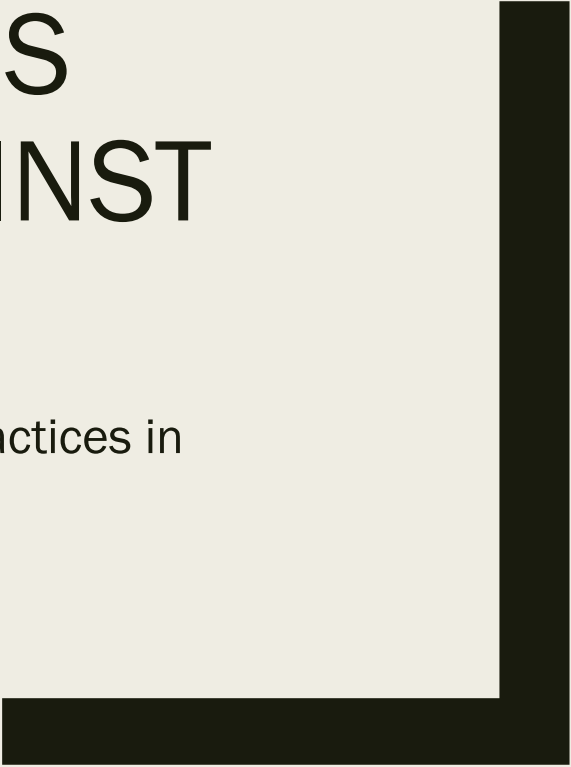


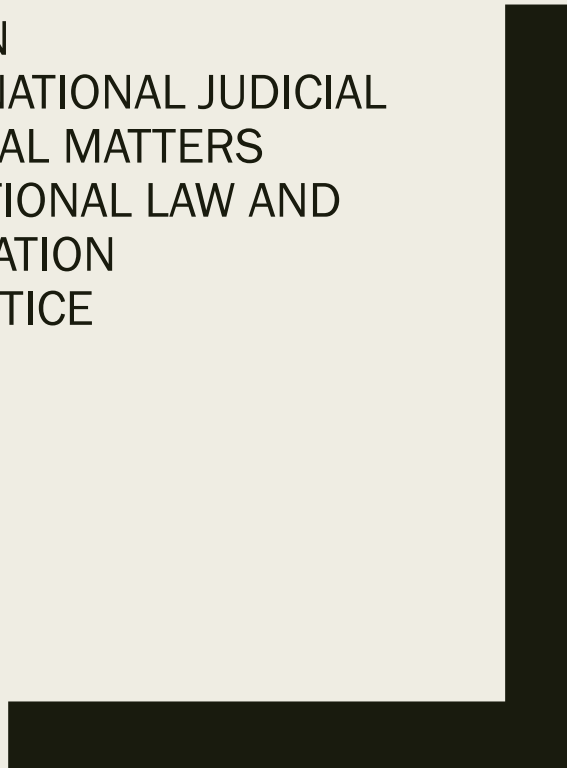


UNITED NATIONS CONVENTION AGAINST CORRUPTION

Practical aspects, challenges and best practices in
the field of extradition



DANA ROMAN
HEAD OF DIVISION FOR INTERNATIONAL JUDICIAL
COOPERATION IN CRIMINAL MATTERS
DIRECTORATE FOR INTERNATIONAL LAW AND
JUDICIAL COOPERATION
MINISTRY OF JUSTICE
ROMANIA



- The purpose of the convention is, inter alia, to promote, facilitate and support international cooperation in the prevention of and fight against corruption;
- States Parties cooperate in criminal matters in accordance with articles 44 to 50 of the Convention;
- Judicial cooperation that can be awarded is extensive: extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal procedure, law enforcement cooperation, joint investigation, special investigative techniques
- Assistance in the field of asset recovery – articles 54 to 57



International judicial cooperation under UNCAC

Conditions for requesting extradition

It can be requested for the offences established under the Convention, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party

The person whose extradition is sought must be present in the territory of the requested state

As a consequence of this latter condition, two questions arise:

1. Does the convention apply when the requesting state, after the person is extradited, applies for a derogation from the application of the principle of specialty?
2. Does the convention apply in case of a request to authorize the re-extradition to a third state?

If we accept a negative answer, the requesting state, in the absence of an international legal basis, will, in most cases, resort to international courtesy, with an assurance of reciprocity (a quite cumbersome procedure, that often takes place through diplomatic channels).

Article 44 paragraph (8) of the Convention: “Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party”.

The law of the requested state might not foresee such institutions.

Risk of legal uncertainty and a differentiated application.

- The Convention should, in principle, serve as a basis for extradition. Therefore, it is a very useful instrument, considering the large number of ratifications (most of the UN states)
- The Convention, however, allows state parties to make extradition conditional on the existence of a bilateral treaty

This latter condition risks to make the Convention practically ineffective as a ground for extradition

Fighting corruption can be seriously impeded if extradition is impossible.

The Convention, however, imposes upon states parties an obligation to seek to conclude bilateral arrangements in order to implement the provisions on extradition.

Bilateral treaties or arrangements

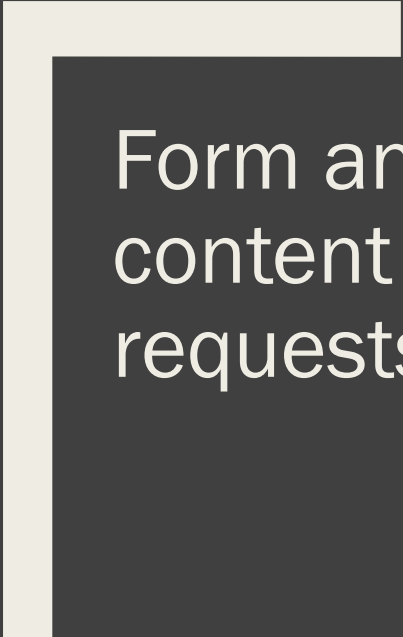
The Convention, aiming to be a modern legal instrument, requires states to:

- Expedite extradition proceedings
- Minimize the evidentiary requirements

Challenges: excessive formalities are still required (such as the application of the apostille, *prima facie* evidence)

Possible solutions:

- changes in national legislations;
- creation of forms/models for requests;
- bilateral/multilateral arrangements and best practices



Form and content of requests

- In principle, it takes place via central authorities.
- Challenges: diplomatic transmission is the rule, it is compulsory to present stamped originals, delays, lack of sufficient contact information.

In a time of globalization and intensive use of modern technology, communication should be swift, effective and reliable.

Possible solutions:

- reviewing and constantly updating information on competent authorities and information on contact points
- allowing the use of expedited means of communication
- accepting requests and documents in widely used languages
- execution of requests not conditional on the presentation of original documents
- allowing for direct contact between judicial authorities in urgent cases (followed by official transmission)



Communication



PROPOSALS

General proposals

- Identifying the practical challenges less reflected in the Review Mechanism (e.g. by a questionnaire sent to the States Parties) and discussing the answers in the Working Group on International Cooperation
- Drafting model requests
- States could fill in a standard fiche (or a checklist), indicating the competent authorities, the requirements the extradition request should meet, the language regime, any other special requirements, in order to assist another state party when addressing an extradition request
- Regularly updating information
- Cooperation with various networks of experts - interconnection
- Online one-stop shop: atlas for competent authorities, notifications and declaration of States Parties, legislation, practice, relevant information.
- Designating contact points



Conclusions

- The UNCAC convention is a valuable tool, allowing extradition between states that would otherwise be unable to cooperate
- Negotiation of bilateral instruments is a difficult and lengthy process, so we should make the most of this legal instrument
- Combatting corruption is a complex process, which needs coordinated measures on several levels and extradition is essential in avoiding impunity



QUESTIONS?



THANK
YOU!