Combatting Transnational Organized Crime through EXTRADITION
Agenda

1/ Background - Concept - Sources
2/ Extraditable Offences
3/ Grounds for Refusal
4/ Extradition Procedure
6/ Prospects
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Why do UN Conventions combatting transnational organized crime deal with extradition? - Examples

- “Better a grave in Colombia than a jail in the USA” (Extraditables - Medellin Cartel)
- “A good businessman and a big investor” (Russian fugitive with multiple citizenship)
- “Frustrated Italian judiciary” (About “mafia type-association” crime and trial in absentia)
<table>
<thead>
<tr>
<th>Concept - Basic Elements of Extradition</th>
</tr>
</thead>
<tbody>
<tr>
<td>The physical removal of a person from one country to another country</td>
</tr>
<tr>
<td>Surrender to an international criminal court</td>
</tr>
<tr>
<td>On basis on an agreement between those two countries</td>
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<tr>
<td>• Expulsion, Deportation</td>
</tr>
<tr>
<td>• Abduction</td>
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<tr>
<td>For the purpose of assisting the requesting country in enforcing criminal law:</td>
</tr>
<tr>
<td>• Extradition for the purposes of prosecution</td>
</tr>
<tr>
<td>• Extradition for the purposes of enforcing a sentence</td>
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</table>
## Background - Concept - Sources

**Sources**

### Main Sources: Treaties
- **Extradition Treaties:** Multilateral or Bilateral Treaties, e.g. UN Model Code
- **Other Treaties,** e.g. Vienna Convention 1988, Palermo Convention 2000 (+ Protocols)

### Complementary Source
- **Domestic law of the Requested State (reciprocity)**
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## Extraditable Offences

<table>
<thead>
<tr>
<th>Extraditable Offences</th>
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<tbody>
<tr>
<td><strong>Treaties</strong></td>
</tr>
<tr>
<td>Extradition Treaties</td>
</tr>
<tr>
<td>- a list added to the Treaty</td>
</tr>
<tr>
<td>- offenses punishable under the laws of requesting and requested country (double criminality rule!) by imprisonment for a maximum period of at least [x] year(s), or by a more severe penalty.</td>
</tr>
<tr>
<td>Other Treaties</td>
</tr>
<tr>
<td>- Vienna Convention: Drug-related offences</td>
</tr>
<tr>
<td>- Palermo Convention (+ Protocols): Transnational Organised Crime</td>
</tr>
<tr>
<td><strong>Domestic law</strong></td>
</tr>
<tr>
<td>Double Criminality Rule</td>
</tr>
</tbody>
</table>
Extraditable Offences

<table>
<thead>
<tr>
<th>Palermo Convention 2000</th>
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<tbody>
<tr>
<td>• Organized Crime Offences</td>
</tr>
<tr>
<td>• Laundering of proceeds of crime</td>
</tr>
<tr>
<td>• Corruption</td>
</tr>
<tr>
<td>• Obstruction of Justice</td>
</tr>
<tr>
<td>• Each offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty</td>
</tr>
<tr>
<td>• Trafficking in Persons (Pr I)</td>
</tr>
<tr>
<td>• Smuggling of Migrants (Pr II)</td>
</tr>
<tr>
<td>• Illicit Manufacturing and Trafficking in Firearms (Pr III)</td>
</tr>
</tbody>
</table>

IF the offence is transnational in nature, and involves an organized criminal group

or

IF the offence involves an organized criminal group and the person is located in the territory of the requested State party AND IF the minimum penalty requirement for extradition provided for by the domestic law of the requested State Party or by the applicable extradition treaties is fulfilled
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Grounds for Refusal

Extradition Treaties

- Nature of the offence:
  - Political Offence Exception
  - Military Offence Exception
  - Fiscal Offence Exception

- Characteristics of the offender:
  - No Extradition of own nationals
  - Human Rights Exception
  - Asylum Clause

- Procedural grounds:
  - Ne bis in idem-Principle
  - Statutory limitations
  - Amnesty
  - Lack of jurisdiction

Other Treaties

- Referral to Extradition Treaties or Domestic Law

Domestic Law

- Constitution
- Law on Judicial Cooperation
- Criminal Procedure
- Criminal Law

Special Provisions
Grounds for Refusal

Extradition Treaties

- Vienna Convention 1988,
- Palermo Convention 2000

Domestic Law

Referral to existing sources

- Asylum clause: explicitly mentioned
- Fiscal offence exemption: excluded
- Own nationals: Refusal combined with obligation to prosecute (!)
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Extradition Procedure

<table>
<thead>
<tr>
<th>EXTRADITION</th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Active Extradition</td>
<td>Passive Extradition</td>
</tr>
<tr>
<td></td>
<td>From the point of view of the requested State</td>
<td>From the point of view of the requesting State</td>
</tr>
</tbody>
</table>

**Common Problems:**

- Few norms in Extradition Treaties
- Bureaucratic, slow, cumbersome
- Need for *prima facie* - evidence
- Highly political - final decision taken by the administration
Extradition Procedure

Court Requesting State
Ministry of Justice Requesting State
Diplomatic Way
Ministry of Justice Requested State

Court Requesting State
Ministry of Justice Requesting State
Diplomatic Way
Ministry of Justice Requested State: Final decision

Court Requested State:
Decision on Recevability
## Extradition Procedure

### Improving the procedure

<table>
<thead>
<tr>
<th>Vienna Convention, Palermo Convention</th>
<th>Suggestions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Parties shall endeavour</td>
<td>• Creation of central authorities</td>
</tr>
<tr>
<td>• to expedite extradition procedures and</td>
<td>• Increase Direct contacts between judicial authorities</td>
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<td></td>
<td>• Increase networking (e.g. European Judicial Network, Eurojust)</td>
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<td></td>
<td>• Use Simplified procedures for people who consent</td>
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<td></td>
<td>• Make the judiciary stage more, the administration stage less important</td>
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<tr>
<td></td>
<td>• Apply the rule of Non-Inquiry</td>
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<tr>
<td>• to simplify evidentiary requirements</td>
<td></td>
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Extradition Procedure

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<th>Vienna Convention, Palermo Convention</th>
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<tr>
<td>• The requested State Party may take the person concerned provisionally into custody or take other appropriate measures to ensure his presence at extradition proceedings - subject to the provisions of its domestic law and its extradition treaties - if the circumstances so warrant and are urgent - and, at the request of the requesting Party</td>
<td>• Importance of Interpol’s Red Notices • Use of Advanced Computer Systems (e.g. Schengen Information System)</td>
</tr>
</tbody>
</table>
# Extradition Procedure

## Improving the procedure

<table>
<thead>
<tr>
<th>Vienna Convention, Palermo Convention</th>
<th>Importance:</th>
</tr>
</thead>
</table>
| • Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.  
• State Parties shall seek to conclude bilateral and multilateral agreements and arrangements to carry out or to enhance the effectiveness of extradition (Palermo Convention) | • Requesting State Party has the opportunity to present additional information  
• Requesting State Party knows better how to prevent refusals in the future |
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**“Judicare” instead of “Dedere”**

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<tr>
<th>Refusal to extradite own nationals:</th>
<th>Extradition refused on another basis:</th>
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<tr>
<td>• submit the case without undue delay to its competent authorities for the purpose of prosecution (<em>Palermo Convention</em>) - unless otherwise agreed with the requesting Party (<em>Vienna Convention</em>)</td>
<td>• shall, if it has established jurisdiction, submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction (<em>Vienna Convention</em>); the requesting country has the right to adopt the measures that may be necessary to establish its jurisdiction (<em>Palermo Convention</em>);</td>
</tr>
<tr>
<td>• requesting State Party can be discharged of the obligation to prosecute, if extradition of own nationals is permitted upon the condition that person will be returned to that State Party to serve the sentence imposed by the requesting State (<em>Palermo Convention</em>);</td>
<td></td>
</tr>
</tbody>
</table>

Technical problems (e.g lack of evidence);
Political problems (presupposes that there is no obstruction of justice nor corruption in the prosecuting country)

Transfer of proceedings;
the above mentioned so called “Dutch Model” has a lot of advantages
“Execute” instead of “Dedere”

**Executing by the requesting State**

**Refusal to extradite own nationals:**

If extradition, sought for the purposes of enforcing a sentence, is refused because the person to be extradited is a national of the requested country,

- the requested Party shall consider the enforcement of the sentence imposed under the law of the requesting Party, or the remainder thereof, if its law so permits and in conformity with the requirements of such law upon application of the requesting Party (Vienna Convention, Palermo Convention);

- State Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of sentenced persons (Vienna Convention, Palermo Convention);

**Transfer of sentenced persons as alternative to extradition, if person concerned consents**
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Prospects:

- **Surrender on basis of an international arrest warrant?**
  - Cfr new developments within the European Union, often said to be the laboratory for new developments worldwide
  - Cfr Surrender to an international Criminal Court
    - ICTY (*Milosovic Case*) - ICTR
    - ICC

- **Further harmonization of substantive and procedural laws?**
  - Necessary “pendant” to facilitate cooperation

- **Compliance with human rights and fundamental freedoms must be guaranteed**
Combatting Transnational Organized Crime through EXTRADITION

- Promoting co-operation among countries: A necessity to win the fight against transnational organized crime!