

# ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

## THE UN CONVENTION AGAINST CORRUPTION AS A LEGAL BASIS FOR EXTRADITION

### QUERY

1. Does a country's failure to use UNCAC as a legal basis for extradition hinder extradition?
2. How many countries have declared that they would not use UNCAC as the legal basis for extradition when they ratified or acceded to the convention? How many others limited its use by, for example, saying they would use it only in case of reciprocity?
3. Is it helpful for a country to use UNCAC as a legal basis for extradition?

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### SUMMARY

The United Nations Convention against Corruption (UNCAC) provides minimum standards for extradition related to corruption offences and is the most useful treaty due to its broad coverage of corruption offences and the fact that 183 out of 193 UN member states are party to it. Legally binding treaties between the requesting state and the requested state are the firmest basis of a successful extradition. These treaties may be global, regional or bilateral. Where there is no extradition treaty to which both states are party, letters rogatory may still provide a basis for extradition.

While the vast majority of UNCAC's 183 state parties have affirmed that they can use the convention as a legal basis for extradition, a total of 19 countries have excluded that option. At least two of those appear to be reconsidering their position. In practice, however, only a few successful extradition procedures that invoked the convention have been reported so far. Seven countries have mentioned incoming or outgoing extradition cases in which the convention was invoked, while one country reported that the execution of an incoming extradition request was partly based on the convention, partly on a bilateral treaty.

Overall, there are few extradition cases linked to corruption offences. The limited and fragmented data available from the first cycle of UNCAC implementation reviews does not support detailed analysis of these cases, and under what circumstances and with what impact UNCAC was invoked.

## 1 BACKGROUND

The United Nations Convention against Corruption (UNCAC) is the world's premier anti-corruption treaty. 183 countries have become state parties to the convention (UN Treaty Collection 2018).

UNCAC requires state parties to criminalise a number of corruption-related offences, including bribery of public officials, embezzlement by a public official and laundering of the proceeds of crime. It also requires countries to consider criminalising offences including trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector and concealment (UNODC 2004a). The convention, in chapter IV, attempts to set a minimum standard for the surrender of fugitives accused of offences covered by UNCAC and also creates a legal basis for extradition for countries to use in the absence of other applicable extradition treaties. (UNODC 2009).

Extradition describes the formal process in the requested state for surrendering a fugitive to a requesting state for prosecution or enforcement of a sentence. The requesting state is usually required to provide credible evidence that the person sought has committed the offence for which it requests extradition (UNODC 2009).

Countries may seek or provide extradition (and mutual legal assistance) in corruption cases through different types of cooperation arrangements: they may rely on multinational treaties, bilateral treaties, national legislation or ad-hoc agreements resulting from letters rogatory (ADB/OECD 2007).

There are several advantages to treaty-based cooperation on extradition: a treaty obliges another country to cooperate under international law. Without a treaty, a government is not required to allow for or facilitate the extradition of a person on request of another country (Caruso 2006). Most treaties contain detailed provisions on the scope, procedures and parameters of cooperation in an extradition case, and may define additional forms of cooperation and mutual legal assistance that are otherwise not available (ADB/OECD 2007).

In the absence of a treaty, or in case an extradition offence is not covered by a treaty, many requested states might still permit extradition. However, such cooperation would be on a discretionary basis, based on the conditions and constraints provided for by applicable domestic constitutional and legal provisions (which also apply to treaty-based extradition requests; UNODC 2004b; UNCAC, art. 44, para. 8, 10).

Many states have traditionally based their extradition cooperation on bilateral treaties, which allow the signatories to tailor the terms and mechanisms of their cooperation to their needs. Extradition treaties have often been signed between countries sharing the same language and with close historical or economic ties. Because negotiating such agreements can be time consuming and requires substantial resources, countries thus may choose to focus on signing bilateral extradition treaties with countries in their region (UNODC 2017b).

Due to the difficulties of separately negotiating a large number of bilateral agreements, many countries have become parties to regional agreements and multilateral schemes for extradition (UNODC 2004b). Multilateral treaties offer a framework for cooperation when no bilateral agreements exist.

Several international conventions are specifically relevant to corruption cases and contain extradition provisions covering specific offences. This includes the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which, among other measures, requires state parties to:

- criminalise offering or giving a bribe to a foreign public official
- provide prompt and effective legal assistance in criminal investigations concerning offences within the scope of the convention
- ensure that bribery of a foreign public official is an extraditable offence (OECD 1997)

Similarly, the United Nations Convention against Transnational Organized Crime requires state parties to criminalise bribery of domestic officials (and consider criminalising bribery of foreign officials)

where the offence is transnational in nature and involves an organised criminal group. It also provides a legal basis for mutual legal assistance and extradition for offences covered by the convention (UNODC 2004b).

In addition, several regional mechanisms seek to foster cooperation between signatories, including the Inter-American Convention on Extradition, the European Convention on Extradition, the Economic Community of West African States (ECOWAS) Convention on Extradition, the Scheme Relating to the Rendition of Fugitive Offenders within the Commonwealth and the Extradition Agreement of the League of Arab States (UNODC 2009). Regional treaties often take the form of fully-fledged extradition treaties or are general treaties on mutual legal assistance that also contain provisions on extradition (UNODC 2017b).

## 2 UNCAC AS A LEGAL BASIS FOR EXTRADITION

Extradition usually requires dual criminality, meaning that the act(s) a person is wanted for constitute a crime in both the requesting and the requested states. This is to ensure that people are not arrested or detained in the requested state as a result of actions that are not criminal under the laws of that country. In addition, this principle ensures reciprocity. Many extradition requests in the past have failed because the traditional approach to dual criminality stressed slight differences between the ways states defined, named and proved particular criminal offences (UNODC 2004b).

UNCAC requires that state parties make the offences established in accordance with the convention extraditable offences, provided that dual criminality is fulfilled (UNCAC art. 44, para. 1). This requirement should be automatically fulfilled between state parties concerning offences where the convention makes criminalisation mandatory.

In extradition cases concerning offences that are optional under the convention and may thus be criminalised in the requesting state but not in the requested state, the dual criminality requirement can be an obstacle regarding offences including passive

bribery of foreign officials, bribery in the private sector and illicit enrichment. To resolve this challenge, the convention allows state parties to grant extradition for corruption offences even without dual criminality – if their domestic laws allow for it (UNCAC art. 44, para. 2).

In practice, only about half a dozen state parties to the convention directly apply existing extradition treaties. Most countries regulate extradition in their domestic legal systems, often in criminal procedures codes, extradition acts or laws on international cooperation (UNODC 2017b).

State parties are required to automatically include the offences covered by the convention in all existing extradition treaties and to include them in future extradition treaties (UNCAC art. 44, para. 4). In countries that allow for extradition without a treaty basis, the offences covered by the convention have to be included in the applicable statutes governing international extradition (UNODC 2006).

The convention allows countries to use UNCAC as a legal basis for extradition if they require a treaty basis as a prerequisite for extradition. Alternatively, these state parties have to conclude additional extradition treaties to expand the number of state parties to which fugitives can be extradited (UNCAC art. 44, para. 5; UNODC 2006).

The majority of state parties receive or send extradition requests without a treaty being necessary; not having to depend on formal treaties was considered good practice by government experts during the implementation review of chapter IV (UNODC 2017b).

State parties that require a treaty as a prerequisite to extradition have notified UNODC whether or not they will use UNCAC as a basis for extradition. The provision does not apply to those states that can extradite based on a statute (art. 44, para. 6, UNODC 2006). A total of 48 countries have submitted such a notification to the UNCAC Secretariat, 17 of which stated that they are not using UNCAC as the legal basis for cooperation in such cases. These are: Bolivia, Cuba, Cook Islands, El Salvador, Ethiopia,



Kenya, Malta, Mauritius, Nepal, Pakistan, the Philippines, Saudi Arabia, Seychelles, Singapore, St. Lucia, the United States and Vietnam (UN Treaty Collection 2018).

Two countries – Ethiopia and Yemen – made a reservation concerning article 44 when they ratified the convention (UN Treaty Collection 2018). However, according to Ethiopia's first cycle review report, the country was considering withdrawing its reservation (UNODC 2015b). Another two countries that have stated that UNCAC alone could not constitute a legal basis for extradition have also said that it could be used to expand the scope of a bilateral treaty in terms of the extraditable offences covered (UNODC 2017b).

During the implementation review of chapter IV, it was specifically recommended to six countries to consider their reservations and to adopt legislation that would allow them to use UNCAC as a legal basis for extradition to make up for the small number of bilateral or multilateral treaties they had signed (UNODC 2017b).

Thirty-two countries affirmed that they use UNCAC as the legal basis for cooperation on extradition with other state parties to the convention in the absence of an extradition treaty (UN Treaty Collection 2018).<sup>1</sup> Even though only some countries reported to UNODC at the time they joined the convention, during the first cycle of implementation reviews, the majority of state parties confirmed that they are ready to use the convention as a legal basis (UNODC 2017b).

By providing and encouraging this option, the convention seeks to act as a global bridge between countries in corruption-related extradition matters, given that existing regional and bilateral treaties are limited in their geographical scope. By using the convention as a legal basis, state parties can reduce the burden of lengthy, time consuming and resource-

intensive processes of negotiating new bilateral extradition agreements (UNODC 2017b).

### Applying UNCAC in extraditions

The implementation reviews of the first review cycle have highlighted that while most state parties can use UNCAC as a legal basis for extradition, in practice few make direct use of the convention as an autonomous legal basis in this field of international cooperation (Transparency International 2013; UNODC 2017b).

Data on the number of cases in which state parties invoke UNCAC as a legal basis have only sporadically been collected and released. The lack of available details on those cases does not allow for an in-depth analysis of the parameters under which the convention was applied as a legal basis for extradition or for the impact and advantages this application had.

During the first cycle of implementation reviews, only seven states mentioned incoming or outgoing cases in which the convention had been invoked. One of those countries reported having undertaken an incoming request on the basis of both the convention and a bilateral treaty (names of countries are not provided in UNODC's e-book on the state of implementation of UNCAC). One country made several extradition requests related to corruption offences, none of which were granted owing to differences in the legal systems of the countries involved (UNODC 2017b).

Country review reports provide some limited insight on how countries apply the convention in extraditions:

#### Malta

Malta makes extradition conditional on the existence of treaties or extradition agreements. The country has signed four bilateral extradition treaties and is party to the European Convention on Extradition. Even though Malta does not accept the convention as a legal basis for extradition, the country has said it would honour a request based on the convention and, on a case by

<sup>1</sup> Albania, Azerbaijan, Belarus, Belgium, Canada, Chile, China, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Guatemala, Honduras, Ireland, Kuwait, Latvia, Lithuania, Mali, Macedonia, Mongolia, the Netherlands, Paraguay, Poland, Russia, Slovenia, South Africa, Ukraine, Uruguay and Uzbekistan; Lithuania and Honduras highlighted that their

constitutions prevent them from extraditing their own nationals; Israel highlighted that it would 'not in every case' consider the convention as the legal basis for extradition but evaluate requests on a case by case basis. Uruguay and Sweden highlighted that they did not make extradition conditional on the existence of a treaty.

case basis, enter into extradition relations with states that are not in the Commonwealth (simplified extradition procedures are in place for ten designated Commonwealth countries) or have existing extradition agreements with Malta.

The total number of incoming and outgoing extradition requests in the years between 2008 and 2012 was moderate, with no more than five requests per year in relation to all criminal matters, not only limited to corruption (excluding European arrest warrants). Malta reported it had satisfied all incoming requests except one case where the request did not satisfy its domestic legal requirements (UNODC 2014a).

### *The Philippines*

The Philippines can only grant extradition based on a treaty or convention. The country, which has signed 13 extradition treaties, has stated that it cannot recognise UNCAC as the legal basis for extradition. Only one corruption-related extradition request was received (and granted) from 2009 to 2012, while 12 non-corruption related requests were received (none were made). However, the Philippines consider amending their original declaration and move to accepting the convention as a legal basis for extradition, provided that dual criminality is satisfied (UNODC 2013a; Hipolito 2012).

### *United States*

The United States makes extradition conditional on the existence of a bilateral treaty and therefore UNCAC alone cannot be used as the basis for extradition, although it is available to expand the scope of the extraditable offence when a bilateral treaty is already in place. In 2013, the US had bilateral extradition treaties with 133 states or multilateral organisations such as the European Union. As such, the US is one of the countries with the highest number of bilateral extradition treaties. Between 2003 and 2010, the U.S. extradited or otherwise lawfully removed eleven fugitives to nine different countries for corruption-related offences, none of these requests specifically invoked UNCAC. In the same time, 26 fugitives from 17 countries were extradited to the US. In two extradition requests with two countries, the US invoked UNCAC (UNODC 2013b).

### *Canada*

Canada provides extradition under 51 bilateral and four multilateral agreements. In limited circumstances, extradition is also possible through a specific agreement under its Extradition Act. Where Canada does not have an existing agreement with a requesting state party, it also accepts UNCAC as the legal basis for extradition and has received and undertaken a number of extradition requests submitted under the authority of the convention. No data on the number of such cases was provided in the implementation review report (UNODC. 2015a).

### *Sweden*

Similarly, Sweden considers the convention as a legal basis for extradition but does not make extradition conditional on the existence of a treaty. In the three years from 2010 to 2012, Sweden agreed to the extradition of 26 fugitives to non-EU and non-Nordic countries and denied extradition in 22 cases. It did use UNCAC, but only in a 'very limited number of cases' (UNODC 2014c).

During the first review cycle, a number of reasons for the limited application of UNCAC were identified:

- Among practitioners, there appeared to be a lack of knowledge about the possibility of using the convention as a legal basis for extradition.
- National governmental and judicial authorities had yet to conduct adequate analysis on whether the convention could and/or should be used as a legal basis.
- Countries that receive most or all their extradition requests from countries in their region that are sufficiently covered by existing bilateral or multilateral agreements may have little or no practical need to use the convention as legal basis.
- If bilateral or regional treaties exist, countries tend to prefer to apply those over multinational agreements because they are more likely to be developed in line with the specified domestic legal requirements and more closely reflect the countries' respective legal procedures. Bilateral agreements may also provide more comprehensive and detailed regulation on the

extradition process than the convention (UNODC 2017b).

### 3 KEY PRINCIPLES IN EXTRADITION COOPERATION

#### Reciprocity

In case of absence of a treaty, the most states appear to cooperate on extraditions (and mutual legal assistance) only on the condition of reciprocity, requiring an assurance from the requesting state that it would provide the same type of cooperation to the requested state in a similar case in the future. Countries applying this approach include China, India, Japan, Korea and Thailand (ADB/OECD 2007). One example of cooperation based on reciprocity that is not treaty-based but rather anchored in national legislation is the Commonwealth Scheme of some 50 countries, which have had a collective agreement for extradition since 1966 (UNODC 2004b).

In their notifications on the applicability of article 44 of the convention as a legal basis in the absence of a treaty, five countries highlighted reciprocity as a principle of their international cooperation in extradition: four of them stated they would use UNCAC as a legal basis for extradition, only Vietnam stated it was not doing so.

#### Extraditable offences

A minority of countries still appears to rely exclusively on lists of extraditable offences, which, in some cases, do not include all of those to be criminalised mandatorily under the convention. Most countries have instead adopted national laws and extradition treaties that define extraditable offences based on a minimum penalty requirement.

Most countries have set the minimum threshold at one year of deprivation of liberty (thresholds are often considerably lower with regard to extradition for the purpose of enforcing a foreign sentence). The approach of minimum penalty requirements allows for more flexibility in extradition as bilateral treaties using this concept automatically cover a newly created offence (UNODC 2017b).

This approach may cause problems when offences established under the convention are punishable in the requested state with a lesser penalty than the one used as a threshold for extradition. In such cases, extradition may not be possible. However, if the main offence satisfies the minimum threshold for extradition, many states make accessory offences also extraditable (UNODC 2017b). Responding to the findings of the first review cycle, several states have revised their sanctions for corruption offences to facilitate extraditions (UNODC 2017a).

#### Required evidence

Many bilateral extradition treaties as well as national legislation require the requesting state to produce evidence of the alleged crime and define how much evidence has to be provided to receive cooperation from the requested state.

Two different evidentiary tests are commonly applied to protect the rights and interests of the wanted individual. Some countries and some bilateral extradition agreements require the same amount of evidence that would justify putting a person on trial for the same conduct in the requested state ('prima facie'). Other countries and bilateral treaties impose a probable cause evidence test, meaning that sufficient information has to be submitted to provide reasonable grounds to suspect that the person committed the offence.

Evidentiary tests are frequently cited as a cause for delayed extradition procedures – requesting states often have difficulty producing sufficient admissible evidence, especially in cases where the countries involved have different legal traditions (ADB/OECD 2007). While most bilateral treaties contain requirements on the level of evidence, UNCAC does not address this issue.

#### Retroactivity

UNCAC also does not contain provisions detailing whether it applies retroactively and covers extradition cases where the offence occurred prior to the convention entering into force in the requested state (UNODC 2004a; UNODC 2006). With respect to other conventions, national courts have allowed extradition treaties to be applied retroactively, as an extradition

proceeding is not a criminal proceeding (UNODC 2012).

### Prosecution of own nationals

About half of the state parties to the convention do not allow for the extradition of their own nationals. If a country refuses to extradite one of its citizens on the grounds of nationality, UNCAC requires that the requested country, upon request of the government seeking extradition, submits the case without undue delay to its competent authorities for the purpose of prosecution, and to treat the case similar to any serious domestic case ('aut dedere aut judicare').

The convention, however, does not require that countries automatically initiate prosecution. If the case proceeds, the state parties are to cooperate with each other to ensure efficiency of the prosecution, including by providing the necessary evidence (art. 44, para 11). In practice, some countries automatically forward the case for prosecution even without a specific request from a foreign country to do so; others only engage their prosecutorial authorities upon request of the foreign country and/or the victim. A few countries reported not having implemented a legal mechanism for aut dedere aut judicare (UNODC 2017b).

The prosecution of such a case is likely to be resource intensive and time consuming, partly because evidence has to be submitted through mutual legal assistance channels (UNODC 2006). The policy is often ignored and criticised for being inefficient – witnesses and evidence are located elsewhere – and for fostering outcomes and sentences that do not meet the expectations of the offended state (Caruso 2006).

One option provided by the convention, which appears to be rarely used in practice, is the temporary surrender of a fugitive. While the requested country denies extradition, it temporarily hands over the person for the purpose of conducting the trial in the requesting state, on the condition that the person is returned to serve any sentence in his/her home country afterwards.

If a state party, on the grounds of nationality, denies an extradition request for a fugitive who is supposed

to serve a sentence in the requesting country, the convention calls on the requested state party to consider enforcing the sentence itself. There is, however, no obligation to do so or to include a necessary provision in the legal framework. Few countries appear to consider such enforcement in practice, and during the first cycle of the UNCAC implementation review, no such cases were highlighted (UNODC 2017b).

### Fair treatment

State parties are required to ensure fair treatment of fugitives during the extradition process and to have procedures to safeguard the exercise of the legal rights and guarantees provided for by that state's law with respect to such proceedings (art. 44, para. 14, UNODC 2006). The vast majority of state parties extend all due process rights and guarantees enshrined in their constitutions and laws to alleged offenders whose extradition is requested (UNODC 2017b).

### Grounds for refusal

Most countries have an exhaustive list of mandatory and discretionary reasons to deny extradition requests set forth in treaties and their legislation. All state parties include the commission of a political offence in this list. Even though 'political offence' is usually not defined but applied on a case by case basis, in some countries it appears to be among the most common reasons for denying incoming requests for extradition (UNODC 2017b).

The political offence exception was intended to ensure that the legal assistance of the requested state is not assisting the requested state in the prosecution of a person for his or her political beliefs. There is a growing trend to limit the scope of the political offence exception, which is supported by UNCAC (Caruso 2006, UNODC 2003). During the implementation review of chapter IV of the convention, countries were encouraged to ensure that corruption offences were not considered a political offence that may prevent an extradition, especially when the case concerned a person who had been entrusted with prominent public functions (UNODC 2017b).



When state parties use UNCAC as the basis for extradition, the convention requires them not to consider corruption offences as a political offence – if their laws so permit (UNODC 2006). If they use another legal basis, a country may be able to deny extradition on the grounds that a request is of a politically motivated nature. Most state parties affirmed that under no circumstances offences covered by UNCAC would be treated as a political offence (UNODC 2006).

UNCAC requires that a request for extradition may not be refused on the sole ground that the offence the person is sought for is also considered to involve similar fiscal matters such as tax offences. Traditionally, fiscal offences have often been omitted or excluded from some extradition agreements (UNODC 2004b).

The so-called rule of specialty (also referred to as speciality) requires that a person who is extradited will not be tried, sentenced, detained or re-extradited to a third state for offences other than the one(s) for which extradition was granted (UNODC 2003, ADB/OECD 2007). This principle is to ensure that both the requested state and the person whose extradition is sought are aware of the allegations made by the requested state (UNODC 2012). If the requesting state does not provide a guarantee that it will respect specialty, the requested state may refuse to extradite (UNODC 2003, UNODC 2017b).

Other common reasons for denying extradition include:

- that the accused would face legal action twice for the same act ('non bis in idem' principle)
- the offence having fallen under the statute of limitations
- pending domestic criminal proceedings or sentences
- in some exceptional cases, extradition may be refused if the sought person would suffer exceptional hardship due to age or illness (UNODC 2017b)

In four countries that are party to UNCAC, offenders found guilty in corruption cases can face the death penalty (UNODC 2017b). Countries may refuse extradition if the requesting state party may impose or carry out the death penalty should the person be convicted (UNODC 2017b; UNODC 2003; Caruso 2003). They may also choose, if legally possible, to prosecute the case in their own jurisdiction or to seek the return of the suspect upon conviction.

Concerns over the respect for human rights, in particular the potential use of torture by the requesting state, are an important consideration in the extradition process. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (with 162 state parties) requires that no state extradites a person to a country 'where there are substantial grounds for believing that he would be in danger of being subjected to torture', taking into account all relevant considerations including the existence of a consistent pattern of gross, flagrant or mass violations of human rights (OHCHR 1984).

While some countries may agree to extradite if they receive assurances from the requesting state that it will not use torture or other inhuman and degrading treatment against the sought person, such diplomatic assurances are not legally binding and thus cannot result in sanctions if they are violated. Furthermore, the person who is extradited has no recourse if the assurances are violated. Such an assurance may also be an implicit acknowledgement that a country systematically uses torture and degrading treatment (UNODC 2012).

If a country receiving an extradition request has substantial reasons to believe that this request has been made for the purpose of prosecuting or punishing a person due to his or her sex, race, religion, nationality, ethnic origin or political opinions or that in case the person is extradited, any of these reasons would prejudice the person's position, the convention creates no obligation to comply with the request (art. 44, para. 8; UNODC 2006). The majority of countries envisage such a non-discrimination clause as either a mandatory or as a discretionary ground to refuse extradition.



Before refusing extradition, the requested state party has to consult with the requesting country, where appropriate. This consultation enables the requesting state party to provide additional information and evidence, which may result in a different decision (art. 44, para. 17). Furthermore, state parties are required to seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition (art. 44, para. 18; UNODC 2006).

UNCAC provides state parties with the possibility (but not the obligation) to take a fugitive into custody or to take other appropriate measures to ensure the presence of the person sought to be extradited and to have an appropriate legal basis for such measures (art. 44, para. 10).

### Effective procedures

To expedite extradition processes, state parties are encouraged to simplify evidentiary requirements and other procedures, such as the channels for transmission or requests (art. 44, para. 9).

There appear to be substantial differences regarding the time countries take to conclude extradition proceedings, ranging from 1 to 2 months to 12 to 18 months. Common reasons for the delays include translation requirements, the duration of appeal proceedings, parallel asylum applications, and back-and-forth-communication between the requesting and the requested countries due to a lack of clarity in the extradition request (UNODC 2017b).

The first cycle of UNCAC implementation review, which included chapter IV of the convention, found that many countries had little or no experience in handling extradition requests, either in general or in relation to corruption offences.

## 4 CONCLUSION

Using the convention as a legal basis for extradition has been recommended to several state parties during the first cycle of reviews. If UNCAC is used as a legal basis in extradition procedures, this may facilitate

cooperation with state parties where no bilateral treaty exists but a treaty base is required.

Invoking UNCAC and using it together with existing bilateral extradition agreements can also help to ensure that all offences established under the convention are extraditable. The convention can thus also be used to facilitate extradition. It offers some features, including the requirement not to consider corruption offences as a political offence, the temporary surrender of a fugitive and the enforcement of a requesting state's sentence, which may not be available when another basis for cooperation is used or when no bilateral treaty is available.

Because there is no obligation for a requested state to cooperate on an extradition request in absence of a treaty, using the convention is likely to result in better international cooperation and more successfully undertaken extradition procedures – even though at this point, only a few countries appear to be actively applying the convention for this purpose. The convention can help to extend cooperation to countries that have no bilateral treaty, without requiring them to engage in a costly and lengthy negotiation for a new bilateral treaty.

Most countries require reciprocity in their international extradition cooperation. There is no indication that the use of this principle by itself hinders extradition.

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