United Nations Convention Against Corruption (UNCAC): Its Effects On Extradition In Thailand
Chapter IV
International Cooperation
(Articles 43 thru 50)
III

Article 43 defines the scope of Extradition and Mutual Legal Assistance

- **Must** be applied in criminal cases
- **May** be applied in civil and administrative matters
- Dual Criminality Doctrine defined under principle of ‘underlying conduct’
IV

- Reading Article 44 – The Extradition Regimen of the UNCAC
Paragraphs 1 thru 4 – Describe The Scope Of The Offenses Covered By The UNCAC
Paragraphs 5 thru 7 – Describe How and When the Convention Applies
Paragraphs 8 thru 10 – Describe The Law and Procedure To Be Used In Extradition By Parties To UNCAC
Paragraphs 11 thru 13 –
Dealing With Nationals
IX

Paragraphs 14 thru 15 – Rights of the Subject
Paragraphs 16 thru 17 - Refusals
Paragraph 18 – Bilateral and Multilateral Agreements
Article 44 (1)

- The Convention shall be applied in cases where there is:
  - A Convention offense
  - Presence in country
  - Dual Criminality
XIII

Article 44 (2)

The Convention may be applied where there is:

- A Convention offense
- No Dual Criminality
XIV

Article 44 (3)

- Minor ‘related’ offenses may be extraditable
XV

Article 44 (4)

- Convention offenses shall, upon ratification, be included in all existing extradition treaties.

- Where the Convention is used as an extradition mechanism, the ‘political offense’ exception shall not be available.
The Convention may be used as an extradition mechanism where:

- A treaty is prerequisite to extradition
- There is no existing treaty between the State Parties
State Parties shall, upon ratification:

- Choose the Convention as an extradition mechanism or;
- Seek to conclude extradition treaties with other State Parties
XVIII

Article 44 (7)

Where a treaty is not a prerequisite for extradition, Convention offenses shall be recognized as extraditable in whatever national extradition law controls.
Extradition shall be subject to:

- Domestic State law
  - Grounds for refusal of extradition
  - Minimum penalty requirements
State Parties shall:

- Expedite extradition procedures
- Simplify rules of evidence
State Parties shall, in urgent circumstances, provide for provisional arrest.
Where extradition is refused on grounds of nationality, the Requested State shall:

- Upon request
- Submit the case to national authorities for prosecution
- *Aut Dedere; Aut Judicare*
Conditional Extradition may be employed when the State Parties agree the subject will be returned to the Requested State to serve a sentence following trial in the Requesting State.
XXIV

Article 44 (13)

Where an extradition request for service of sentence is refused on the basis of nationality, the Requested State may allow the sentence to be served in its territory.
All rights and guarantees of the national system are to be afforded to the person subject to extradition proceedings.
Refusal to extradite may be based upon a belief that extradition is based upon the person’s sex, race, religion, nationality, ethnic origin or political opinions.
XXVII

Article 44 (16)

Refusal **may not** be based on grounds that crime involves ‘fiscal matters’
Consultation is required before a refusal to extradite is communicated.
XXIX

Article 44 (18)

State Parties shall seek to enter bilateral or multilateral agreements to give effect to the Convention.
UNCAC vs Thai/US Extradition Treaty

COMPARISON

Result under UNCAC

Result under US/Thailand Extradition Treaty
Corruption offenses are added to the list of extraditable offenses and subject to the rules of the US/Thailand Extradition Treaty.
No political offense exception under UNCAC -- Article 5

Mandatory political offense exception under US/Thai Extradition Treaty -- Article 3
Refusal based on dual jurisdiction permitted -- Article 4 US/Thai Treaty

No mention of refusal based on dual jurisdiction -- UNCAC
Non Bis In Idem provisions -- US/Thai Treaty

No prior jeopardy provisions -- UNCAC
Death penalty provisions -- US/Thai Treaty

Article 6

No mention of death penalty -- UNCAC
Statute of Limitations of Requesting State is applied -- US/Thai Treaty Article 7

No prescription period applied -- UNCAC
Order of extradition is outlined - -
Article 13 US/Thai Treaty

No order of extradition provided -- UNCAC
No Rule of Speciality -- UNCAC

Detailed Rule of Speciality – US/Thai Treaty Article 14
No provision for distribution of expenses – UNCAC

Extradition expenses to be paid by Requested State -- US/Thai Treaty Article 18
US/Thai Treaty is retroactive -- Article 19

No discussion of the temporal jurisdiction -- UNCAC