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Legal and Gaps Analysis Extradition and Transfer of Sentenced Persons / Conflicts of Jurisdiction and Transfer of Proceedings



CrimEx

EuroMed Justice Group of Experts in Criminal Matters

**ALGERIA, EGYPT, ISRAEL, JORDAN, LEBANON,
MOROCCO, PALESTINE, TUNISIA**

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Contents

| | |
|---|-----------|
| Relevant International Treaties | 8 |
| 1. Introduction | 11 |
| 2. Methodology | 12 |
| 3. General Introduction on Extradition | 13 |
| 3.1. Legal Basis for Extradition..... | 15 |
| 3.2. Setting the Parameters of Extradition | 16 |
| 3.3. Non-extradition of Nationals | 17 |
| 3.4. Simplified and Summary Extradition | 17 |
| 4. General Aspects on Criminal Jurisdiction | 19 |
| 4.1. Subject Matter Jurisdiction | 19 |
| 4.2. Territorial Jurisdiction | 20 |
| 4.3. Extraterritorial Jurisdiction | 20 |
| 4.4. Active Personality Principle | 21 |
| 4.5. Passive Personality Principle..... | 21 |
| 4.6. Protective Principle | 22 |
| 4.7. Universal Jurisdiction | 22 |
| 4.8. Conflict of Jurisdiction and Concurrent Requests for Extradition | 23 |
| 5. General Theory on the Transfer of Sentenced Persons | 26 |
| 5.1. Framework for Transfer of Sentenced Persons | 26 |
| 5.2. Human Rights Issues | 27 |
| 5.3. Significance | 28 |
| 5.4. Extradition vis-à-vis Transfer of Sentenced Persons | 28 |
| 5.5. Specialized Legal Instruments | 28 |
| 5.6. The 1985 European Convention on the Transfer of Sentenced Persons (opened for non-European States)..... | 29 |
| 5.7. Bilateral Agreement | 29 |
| 5.8. Requirements that must be fulfilled prior to the transfer of a sentenced person..... | 30 |
| 5.8.1. Final Judgement | 30 |
| 5.8.2. Term Remaining to be Served | 30 |
| 5.8.3. Dual Criminality | 30 |
| 5.8.4. Ties to Administering State | 31 |
| 5.8.5. Consent of States | 31 |
| 5.8.6. Consent of Sentenced Persons | 31 |
| 5.8.7. Human Rights | 32 |
| 5.8.8. Exercising Discretion | 32 |
| 6. Transfer of Criminal Proceedings | 33 |

| | |
|--|-----------|
| 7. Comparisons of SPCs on Issues of Extradition, Transfer of Sentenced Persons and Transfer of Proceedings | 35 |
| 7.1. Legal Bases for Extradition | 35 |
| 7.1.1. Analysis | 36 |
| 7.1.2. Recommendations | 37 |
| 7.2. Domestic Laws Governing Extradition | 37 |
| 7.2.1. Analysis | 38 |
| 7.2.2. Recommendations | 38 |
| 7.3. Extradition of Nationals | 39 |
| 7.3.1. Analysis..... | 40 |
| 7.3.2. Recommendations | 43 |
| 7.4. Transfer of Proceedings | 44 |
| 7.4.1. Recommendations | 46 |
| 7.5. Transfer of Sentenced Persons..... | 47 |
| 7.5.1. Extradition for Execution of Penalty – Minimum Sentence Issued by Requesting State | 48 |
| 7.5.2. Analysis..... | 48 |
| 7.6. Extraditable Offences..... | 49 |
| 7.6.1. Analysis of Dual Criminality Requirement..... | 50 |
| 7.6.2. Domestic Provisions Incorporating Treaty Provisions in Terms of Extraditable Offences | 51 |
| 7.7. Specific Evidentiary Requirements..... | 51 |
| 7.7.1. Analysis..... | 52 |
| 7.8. National Central Authority Responsible for Processing Extradition Requests..... | 52 |
| 7.9. Tracking and Monitoring System for Outgoing and Incoming Extradition Requests..... | 53 |
| 7.10. Time Limits..... | 53 |
| 7.11. Options for Appeal | 54 |
| 7.12. Simplified Extradition Proceedings when a Person Gives Consent to Surrender | 54 |
| 7.13. Can Requests be Sent to Bodies Specialized in Human Rights Issues in Order to Freeze an Extradition Request..... | 55 |
| 7.14. Temporary Surrender | 55 |
| 7.15. Reports/Minutes Required at Surrender to Agents of Requesting State..... | 56 |
| 7.16. Capacity | 56 |
| 8. Country by Country Analysis..... | 57 |
| 8.1. Algeria | 57 |
| 8.1.1. Legal Basis for Extradition..... | 57 |
| 8.1.2. Extraditable Offences..... | 57 |
| 8.1.3. Conditions for Extradition..... | 58 |
| 8.1.4. Grounds for Refusal, Personal and Territorial jurisdiction..... | 58 |
| 8.1.5. What is not Considered a Political Crime | 59 |
| 8.1.6. Nationals – Extradition and Jurisdiction | 59 |
| 8.1.7. Jurisdiction over Crimes committed against the State..... | 60 |
| 8.1.8. Dual Criminality | 60 |
| 8.1.9. Ordinary and Simplified Procedures of Criminals' Extradition: Articles 702-707 of the Code of Criminal Procedure..... | 60 |

| | |
|---|----|
| 8.1.10. Time Limits in Chronological Order | 62 |
| 8.1.11. Time Limits in Summary Proceedings | 62 |
| 8.1.12. Concurrent Requests | 62 |
| 8.1.13. Challenges..... | 63 |
| 8.1.14. Universal Jurisdiction..... | 63 |
| 8.1.15. Conflict of Jurisdiction / Challenges | 64 |
| 8.1.16. Cooperation | 64 |
| 8.1.17. INTERPOL e-extradition Initiative..... | 64 |
| 8.2. Egypt | 65 |
| 8.2.1. Legal Basis for Extradition | 65 |
| 8.2.2. The Authority Responsible for Deciding on Extradition Requests..... | 68 |
| 8.2.3. Extraditable Offences..... | 69 |
| 8.2.4. Extradition of Nationals and Cooperation in Prosecution of Nationals | 69 |
| 8.2.5. Jurisdiction..... | 69 |
| 8.2.6. Conflict of Jurisdiction..... | 70 |
| 8.2.7. Other Grounds for Refusal..... | 71 |
| 8.2.8. Cooperation | 71 |
| 8.2.9. Statistics | 71 |
| 8.3. Israel..... | 72 |
| 8.3.1. Threshold Requirements for Extradition | 72 |
| 8.3.2. Evidentiary Requirements..... | 72 |
| 8.3.3. Other Reasons for Refusal of Extradition:..... | 73 |
| 8.3.4. What Is Not Considered a Political Offence | 74 |
| 8.3.5. Extradition Proceedings | 74 |
| 8.3.6. Nationals – Extradition and Jurisdiction | 75 |
| 8.3.7. Jurisdiction over Crimes Committed against the State..... | 75 |
| 8.3.8. Territorial Jurisdiction and the Flag Principle..... | 76 |
| 8.3.9. Universal Jurisdiction..... | 76 |
| 8.3.10. Conflict of Jurisdiction..... | 76 |
| 8.3.11. Challenges in Conflict of Jurisdiction Matters | 77 |
| 8.3.12. Cooperation | 77 |
| 8.4. Jordan | 77 |
| 8.4.1. Legal basis for Extradition | 77 |
| 8.4.2. Nationals..... | 78 |
| 8.4.3. Other Reasons for Refusals | 78 |
| 8.4.4. Procedure..... | 78 |
| 8.4.5. Cooperation | 78 |
| 8.5. Lebanon | 79 |
| 8.5.1. Bilateral/Multilateral Agreements..... | 79 |
| 8.5.2. Threshold requirements for Extradition | 79 |
| 8.5.3. Reasons for Refusal | 80 |
| 8.5.4. Extradition Proceedings | 80 |
| 8.5.5. Nationals – Extradition and Jurisdiction | 81 |
| 8.5.6. Territorial jurisdiction..... | 81 |
| 8.5.7. Jurisdiction over Crimes Committed against the State..... | 82 |
| 8.5.8. Universal Jurisdiction | 83 |

| | |
|---|-----------|
| 8.5.9. Applicability of Foreign Law | 83 |
| 8.5.10. Effect of Foreign Judgements | 83 |
| 8.5.11. Conflict of Jurisdictions..... | 84 |
| 8.5.12. Cooperation | 84 |
| 8.6. Morocco | 85 |
| 8.6.1. Legal Basis for Extradition..... | 85 |
| 8.6.2. Nationals – Extradition and Jurisdiction | 85 |
| 8.6.3. Jurisdiction over Crimes against the Kingdom and Crimes of Terrorism..... | 86 |
| 8.6.4. Threshold Requirements..... | 86 |
| 8.6.5. Political Offences | 87 |
| 8.6.6. Other Reasons for Refusal | 87 |
| 8.6.7. Procedures | 87 |
| 8.6.8. Conflict of Jurisdictions | 88 |
| 8.6.9. Universal Jurisdiction..... | 88 |
| 8.6.10. Cooperation | 88 |
| 8.7. Palestine | 89 |
| 8.7.1. Introduction | 89 |
| 8.7.2. Multilateral Agreements | 90 |
| 8.7.3. Threshold Requirements for Extradition | 90 |
| 8.7.4. Reasons for Refusal | 90 |
| 8.7.5. The Limited Territorial and Personal Jurisdiction of the Palestinian National Authority..... | 91 |
| 8.7.6. Nationals – Extradition and Jurisdiction | 91 |
| 8.7.7. Universal Jurisdiction..... | 92 |
| 8.7.8. Cooperation and Reform | 92 |
| 8.8. Tunisia | 92 |
| 8.8.1. Legal basis for Extradition | 92 |
| 8.8.2. Nationals – Extradition and Jurisdiction | 93 |
| 8.8.3. Jurisdiction over Crimes against the State | 93 |
| 8.8.4. Temporary Surrender..... | 93 |
| 8.8.5. Conditions for Extradition..... | 94 |
| 8.8.6. Reasons for Refusal | 94 |
| 8.8.7. What is not Considered a Political Crime..... | 95 |
| 8.8.8. Proceedings..... | 95 |
| 8.8.9. Summary Proceedings..... | 96 |
| 8.8.10. Temporary Surrender | 96 |
| 8.8.11. Concurrent Requests | 96 |
| 8.8.12. Terrorism..... | 96 |
| 8.8.13. Conflict of Jurisdiction..... | 97 |
| 8.8.14. Universal Jurisdiction..... | 97 |
| 8.8.15. Cooperation | 98 |
| 9. Most Significant Hurdles to Extradition as Indicated by the SPCs..... | 99 |
| Recommendations..... | 100 |

| | |
|---|------------|
| 10. General Recommendations on Improving South-South and North-South Cooperation | 102 |
| 10.1. Political Considerations | 102 |
| Recommendation..... | 102 |
| 10.2. Political Offences Exception..... | 102 |
| 10.2.1. Different Approaches to Political Offence | 104 |
| 10.2.2. The EU Approach to Political Offence | 105 |
| 10.3. Arab States & EU on the Definition of Terrorist Offence | 107 |
| 10.4. Lack of Trust | 109 |
| 10.5. Different Categorisations of Certain Groups Relating to Terrorism..... | 111 |
| 11. Concluding Remarks | 113 |

Relevant International Treaties

The grounds for jurisdiction that allow a request for extradition established by the United Nations (UN) Treaties are:

- Territoriality: the location of the offence is a basis since the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (art. 5).
 - Registration of aircraft or maritime vessels: art. 6 of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation establishes that jurisdiction exists when the offence is committed against or on board a ship flying the flag of the state at the time the offence is committed.
 - Nationality of the offender: since the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, with the exception of the 1988 Airport Protocol, every treaty introduced the requirement that a State Party must establish jurisdiction over an alleged offender who is national of that State.
 - Protection of nationals and national interests: the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents introduced the status or nationality of the victim, and the 1979 Convention introduced the protection of national interests principle in art. 5 as a mandatory ground of jurisdiction.
1. Model Treaty on Extradition (Adopted by General Assembly Resolution 45/116, amended by General Assembly Resolution 52/88) & Revised Manual on the Model Treaty on Extradition.¹
 2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 ('1988 Drug Convention'), Art. 6 (Extradition), Art. (Transfer of sentenced persons);
 3. International Convention for the Suppression of the Financing of Terrorism (1999) (Terrorist Financing Convention).
 4. International Convention for the Suppression of Terrorist Bombings (1997) (Terrorist Bombing Convention).
 5. Convention on Simplified Extradition Procedure between the Member States of the European Union (1995) (EU 1995 Convention).
 6. Convention relating to extradition between the Member States of the European Union (1996) (EU 1996 Convention).
 7. European Convention on Extradition, of 13 December 1957 (Council of Europe 1957 Convention). (ETS No. 24) (opened for non-European States)
 8. Budapest Convention on Cybercrime of 23 November 2001 (ETS No. 185), Art. 22(3) (Jurisdiction), Art. 24 (Extradition), Art. 35(2)(b) (24/7 Network).

1. The Manual on the Model Treaty on Extradition was reviewed in an Intergovernmental Expert Group Meeting, organized by the United Nations Office on Drugs and Crime (UNODC), in cooperation with the International Association of Penal Law (AIDP), the International Institute of Higher Studies in Criminal Sciences (ISISC) and the Monitoring Centre on Organized Crime (OPCO), and hosted by ISISC in Siracusa, Italy, from 6-8 December 2002. The new version was further updated to include more comprehensive references to the UN Convention against Transnational Organized Crime and the UN Convention against Corruption.

9. United Nations Convention against Transnational Organised Crime of 15 November 2000 ('the Palermo Convention'), Art. 16 on (Extradition), Art. 17 on (Transfer of Sentenced Persons) and the Protocols thereto;
10. United Nations Convention against Corruption of 31 October 2003 ('the Merida Convention'), Art. 44 (Extradition), Art. 45 (Transfer of sentenced persons).
11. Council Framework Decision of June 2002 (Council of European Union) and the related European Arrest Warrant (EAW)

Counter-Terrorism Conventions with Provisions about Extradition

1970 Convention for the Suppression of Unlawful Seizure of Aircraft (arts. 6-8, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco and Tunisia).

- 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (arts. 6-8, accessed/ratified/signed by Algeria, Israel, Tunisia and Jordan).
- 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (arts. 6-8, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, the State of Palestine, Egypt, and Lebanon).
- 1979 International Convention against the Taking of Hostages (arts. 6-10, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
- 1980 Convention on the Physical Protection of Nuclear Material (arts. 9-11, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Lebanon).
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (complement to the 1971 Convention, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Egypt, Lebanon).
- 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (arts. 6-7, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
- 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (complement to the 1988 Convention, art. 3, accessed/ratified/signed by Algeria, Tunisia, Egypt, Lebanon).
- 1997 International Convention for the Suppression of Terrorist Bombings (arts 6-12, accessed/ratified/signed by Algeria, Israel, Morocco, Tunisia, Egypt).
- 1999 International Convention for the Suppression of the Financing of Terrorism (arts. 7, 9-15, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt).
- 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (arts. 9-16, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
- 2005 Amendment to the Convention on the Physical Protection of Nuclear Material (art. 11, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia).
- 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (arts. 6-15, accessed/ratified/signed by Algeria).
- 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (arts. 6-15, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia).

- 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and Protocols (2010, 2014): not in force.

Regional Conventions

1. Riyadh Arab Agreement for Judicial Cooperation 1983 Art. 38 (Arts. 39-46) – all SPCs except Israel are parties to this agreement (hereinafter Riyadh Agreement)
2. Arab Convention for the Suppression of Terrorism 2006 (all Members of the Arab League ratified)
3. The Organization of African Unity's Convention on the Prevention and Combating of Terrorism, 1999 (Arts. 8-13)

1. Introduction

As stated by Professor Cherif Bassiouni, “International criminal law enforcement in the practice of States relies on six modalities of inter-State cooperation in criminal matters. These modalities are extradition; legal assistance, transfer of sentenced persons, transfer of penal proceedings, seizure and forfeiture of illicit proceeds of crime and recognition of foreign penal judgments.”² States relied on these modalities in order to tackle international, transnational and domestic crimes and although independent from each other they are nevertheless interrelated and many times appear in the same bilateral and multilateral treaties, especially those concerning one of the international crimes. For instance, Bassiouni in 2008 reviewed 267 conventions to distil no less than 28 international crimes namely aggression, mercenarism, genocide, crimes against humanity, war crimes, nuclear terrorism, theft of nuclear materials, apartheid, slavery and slave-related practices, torture and other forms of cruel, inhuman or degrading treatment, unlawful human experimentation, piracy, aircraft hijacking and unlawful acts against international air safety, unlawful acts against the safety of maritime navigation and the safety of platforms on the high seas, threat and use of force against internationally protected persons, crimes against U.N. and associated personnel, taking of civilian hostages, use of explosives, unlawful use of the mail, financing of terrorism, unlawful traffic in drugs and related drug offenses, organized crime, destruction and/or theft of national treasures, unlawful acts against certain internationally protected elements of the environment, international traffic in obscene materials, falsification and counterfeiting, unlawful interference with submarine cables and bribery of foreign public officials. Hence, inadequate legislation to regulate these modalities or the lack of sufficient expert personnel may pose significant challenge to effective law enforcement across borders.³

2. M. Cherif Bassiouni, 'Foreword' in Rodrigo Yepes-Enríques and Lisa Tabassi eds., *Treaty Enforcement and International Cooperation in Criminal Matters with Special Reference to the Chemical Weapons Convention*, (T.M.C. Asser Press, 2002) vii-viii.

3. Ibid.

2. Methodology

This document will analyse and compare the national legislations (constitution, penal and criminal procedure codes) of the Southern Partner Countries (SPCs) in terms of extradition, the transfer of sentenced persons, the transfer of penal proceedings and conflict of jurisdictions and map out their status related to ratification, implementation and application of relevant bilateral and multilateral extradition treaties (Legal Analysis). It will then analyse the cooperation among states on the South-South and North-South platforms.

Secondly recommendations on legal frameworks will be suggested to facilitate cooperation in the form of the above-mentioned modalities.

Data on SPCs domestic legislation was gathered mainly from the following sources:

- Legislation available online;
- Answers to the thematic questionnaires provided by the CrimEx Members of the SPCs;
- Answers to particular questions provided by scientific consultants as well as by the SPC delegates during the debates within the CrimEx sessions and in bilateral meetings;
- Middle East and North Africa Financial Action Task Force, Mutual Evaluation Reports;
- Euromed Fiches.

3. General Introduction on Extradition

“Extradition, is the oldest and most firmly established form of international cooperation in criminal matters and a process with which all members of the international community are familiar.”⁴ Extradition is also a critical component in relation to any treaty or scheme involving individual criminal liability and ‘the most challenging and complex form of co-operation, particularly as between States of a different legal tradition’.⁵ Extradition takes place between functioning States – even where State’s sovereignty is compromised due to military occupation or other foreign control, extradition may still occur.

Extradition may be formulated:

- For the purpose of prosecution, that is, in order to prosecute an individual suspected of having committed a crime;
- For the purpose of enforcement, that is to say, in order to enforce a custodial sentence following the conviction of an individual

A Request for Extradition does not constitute a presumption of guilt. The obligation to prosecute, if extradition is refused does not mean, that an allegation proving to have no basis must be brought to court but rather that the case will be turned over to the appropriate domestic law enforcement agencies to determine in good faith whether prosecution is warranted.

Extradition has become increasingly important in recent years for the following three reasons:

1. The global prospects for and incidence of crime, particularly of a transborder character, are greater than ever before. The world is vastly more inter-connected through telecommunications, internet, digitalisation, improved transportation links, and advanced transactional mechanisms. Commercial markets are expanding, fuelled by greater opportunities for trade and profit. Hence in the 21st Century criminals can more easily harm State A’s interests while acting from State B’s territory through counterfeiting, financial fraud, and cybercrime.⁶
2. Today criminals have more available safe havens and greater physical mobility, including porous international borders, than in times past, and can more easily evade detection and arrest.⁷ The INTERPOL ‘Red Notices’ issued for wanted persons have increased six-fold over the span of a decade, from 1,378 in 2003, to 3,126 in 2008, to 8,857 in 2013.⁸
3. Since WWII and particularly since the 1970’s with the ‘internationalisation of drug enforcement’, the global demand for tracking down and bringing fugitives to justice has increased. As explained by Sadoff: ‘States have asserted more expansive and innovative grounds for extraterritorial

4. Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 UN Doc. E/CN.7/590 at 152.

5. Kimberly Prost, ‘Extradition: The Practical Challenges’ in Rodrigo Yepes-Enriques and Lisa Tabassi, *supra* note 2, 202.

6. David A. Sadoff, *Bringing International Fugitives to Justice: Extradition and Its Alternatives* (Cambridge University Press, 2016) 19 (hereinafter: Sadoff)

7. *Ibid.*, 20-21.

8. *Ibid.* See INTERPOL Annual Report 2013, at 58 available at <https://www.interpol.int/News-and-media/Publications2/Annual-reports/2013>

jurisdiction and for exploring alternative means to extradition to secure their physical custody aboard. This trend is exemplified by the flood of model treaties on international law enforcement cooperation adopted by the UNGA between 1985 and the early 1990s⁹ and by the growing number of multilateral crime suppression treaties related to terrorism, drug trafficking, and other forms of illegal conduct

NOTE: The value of transnational organised crime has been estimated at 3.6 percent of the global economy.¹⁰

NOTE: It has been noted that there is a 'tsunami of criminal activity on the horizon' in the form of cybercrime, costing businesses an estimated US \$ 2trillion per year by 2019.¹¹

Extradition entails the government-to-government transfer between the *authorities* of two States, as opposed to the *States* themselves, as a charged person or convicted criminal technically could be turned over to pursuing State officials within host State territory, in non-sovereign territory/international space, or even inside the geographical borders of a third State.¹²

NOTE: In the *Lockerbie Case*, an extradition was effected between Dutch and Scottish authorities, allowing for the criminal prosecution of two Libyan nationals before a Scottish judicial panel in a courtroom on a former NATO airfield in the Netherlands; this was "the first time that a national civilian court had ever conducted an entire criminal trial in the territory of another sovereign country."¹³

Extradition consists solely of a *physical transfer*; while it typically entails an arrest of an individual beforehand, such antecedent action is not technically part of the extradition process itself, nor is the prosecution, sentencing, and/or punishment that may follow.¹⁴ It is a cooperative mechanism that calls upon States to work in a coordinated manner; and sometimes it involves negotiated compromises in which the extradition is made on a conditional basis.¹⁵

An extradition request need not be made by authorities of the fugitive's homeland or country of residence but rather could be made by the authorities of any State with subject matter jurisdiction wishing to prosecute, and/or punish the subject individual.¹⁶

9. Sadoff, *supra* note 6, 22. See, e.g., UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners, Nov. 29, 1985, UN Doc. A/CONF.121/22/Rev.1 (1986); UN Model Treaty on Extradition, Dec. 14, 1990, UNGA Res. 45/116, Annex, 45 UN GAOR sup. (No. 49 A), at 212 UN Doc. A/45/49 (1990); UN Model Treaty on Mutual Assistance in Criminal Matters, Dec. 14, 1990, UN Doc. A/RES/45/117, as amended by UNGA Res. 53/112; UN Model Treaty on the Transfer of Proceedings in Criminal Matters, Dec. 14, 1990, UN Doc. A/RES/45/118; and UN Model Treaty on Supervision of Offenders Conditionally Sentences or Released, Dec. 14, 1990, UN Doc. A/RES/45/119.

10. See Council on Foreign Relations, *The Global Regime for Transnational Crime*, Issue Brief, (25 June 2013) 1.

11. Marc Goodman, "A Cybercrime Tsunami", *The Economist: The World in 2016*, Nov. 2015, at 154-55

12. Sadoff, *supra* note 6.

13. *Ibid.*, fn. 75 p. 47. See Donna E. Arzt, 'The Lockerbie 'Extradition by Analogy' Agreement: 'Exceptional Measure' or Template for Transnational Criminal Justice?', (2002) 18 *American University International Law Review*, 167-68.

14. Sadoff, *supra* note 6, 48.

15. *Ibid.*, 46-7.

16. *Ibid.*, 47-8.

3.1. Legal Basis for Extradition

Extradition is normally effected via a treaty, be it bilateral or multilateral; it may also occur by means of comity, reciprocity, or other agreements or arrangements, even possibly indirectly. An “indirect extradition” is an extradition between States that lack diplomatic relations with one another; and therefore all related communications and the physical transfer itself occur *via an intermediary party*.¹⁷

With regards to the SPCs under consideration it is important to note that while most of them have bilateral extradition agreements between each other and are all parties to the Riyadh Arab Agreement on Judicial Cooperation, this is not the case for Israel. Israel has signed bilateral agreements with the US, Australia, Canada, Fiji and Swaziland, in addition to being a member of the European Convention on Extradition, however it has no agreements with the rest of the SPCs. All the SPCs under consideration are however member states of the Palermo Convention against Transnational Organized Crime and Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which provide a basis for extradition between State Parties. An important caveat nevertheless applies in terms of reservations put to both conventions by Algeria which declare that their ratifications of said Conventions do not in any way signify recognition of Israel nor do they entail the establishment of relations of any kind with Israel. Other SPCs however did not express any such reservations thus Art. 6(3) of the Vienna Convention can be used as basis for extradition as well as Art. 16(4) of the Palermo Convention. Needless to say, these Conventions provide a limited basis for extradition as they only apply in respect of the offences listed. Art 6(3) of the Vienna Convention thus states that:

“If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.”

When a basis for extradition between two States exists in either bilateral extradition treaties or an applicable regional multilateral instrument, the next step for States will be the implementation of the obligations reflected in that agreement, by way of incorporation into domestic law, unless treaties are self-implementing in accordance of the legal system of that State.¹⁸ It has been noted that many of the impediments to effective extradition flow from inadequacies in the provisions of the treaties themselves or the domestic laws used to implement them.¹⁹ As a general rule, “a State cannot plead provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law.”²⁰ With regards to the SPCs under consideration, apart from Israel, they all subscribe to the monist approach to international law, whereby international agreements are mostly incorporated into the domestic legal order without the need for any legislative act. Therefore where the domestic legislation contradicts international agreements the latter will, at least in theory, have precedence over the former.

17. Ibid., 48.

18. Prost, supra note 5, 203.

19. Ibid.

20. James Crawford, *Brownlie's Principles of Public International Law* (8th ed. Oxford University Press, 2012) 51.

NOTE: *De Facto* Extradition: is defined as a State's formal or informal exercise of non-extradition-related laws, authorities, or administrative procedures that yields the delivery of a fugitive directly or indirectly to a State with a law enforcement interest in him or her:²¹ e.g., when the United States deported the then-political leader of Hamas to Jordan in May 1997 because Jordan agreed to receive him unconditionally and had no intention of prosecuting or punishing him.

3.2. Setting the Parameters of Extradition

- The subject should be a natural person not juridical person such as business or organisation.
- The subject must be convicted or alleged criminal who is wanted by law enforcement, rather than a *mere suspect* (i.e. when suspects are involved, States typically invoke mutual legal assistance treaties (MLATs) or mutual legal assistance agreements (MLAAs).
- Convicted criminals include those who have escaped from police custody or prison before receiving or serving out their assigned sentences, while alleged ones have been charged with a crime (or the functional equivalent thereof), whether in public or secret proceedings, and whether as its author, an accomplice, or a co-conspirator.²²
- The subject must be pursued because of his or her individual actions – not solely as the agent or representative of, or merely because of an affiliation with, a government.²³
- The subject should not be a minor (those under the age of majority, typically 18) as in this case special protective rules apply to them.²⁴ Article 38 of the Convention on the Rights of the Child (CRC), the Committee on the Rights of the Child adopted a General Comment noting, *inter alia*, that “States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation on hostilities, either as a combatant or through carrying out other military duties.”²⁵
- There are several other threshold requirements for extradition as well as grounds for refusal set by the States in their domestic legislations or in bilateral as well as multilateral treaties. Most States thus require double criminality in terms of the act and the proscribed penalty, the fact that the crime is not merely of a political, military or fiscal nature, the assurance that the person will have a fair trial and his human rights will be respected, the observance of the specialty principle, etc. One of the main grounds for refusal of an extradition request is the principle of non-extradition of nationals, described below.

21. Sadoff, *supra* note 6, 50-1.

22. *Ibid.*, 8-9.

23. *Ibid.*, 9.

24. *Ibid.*

25. Committee on the Rights of the Child (CRC), General Comment No. 6, *Treatment of Unaccompanied or Separated Children Outside their Country of Origin*, UN Doc. CRC/GC/2005/6, para. 28, Sep. 1, 2005.

3.3. Non-extradition of Nationals

States many times include in their constitutions or laws the prohibition of extraditing nationals. Apart from Israel, this is the case for all SPCs under consideration. However, the principle *aut dedere aut judicare* (extradite or prosecute) is well established in most of the UN treaties against terrorism and is also a binding rule since it is embodied in Security Council Resolution 1373 (2001). In the words of the 1997 Convention for the Suppression of Terrorist Bombings, a State party that does not extradite a person to a requesting State Party shall (including the cases of extradition of nationals) “be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.” In addition, UN Security Council’s Resolutions 1456 (2003) and 1566 (2004) specify that the obligation to bring terrorists to justice shall be carried out ‘on the basis of the principle to extradite or prosecute’.

3.4. Simplified and Summary Extradition

Cases of expedited or abbreviated extradition, which may be formally executed are known as summary extradition. The most common type is when the subject of an extradition request consents to the extradition (i.e. *consented return*). Summary extradition has been provided in a number of regional arrangements such as the European Convention on Simplified Extradition Procedure between the Member States of the EU, and is covered as well in article 6 of the Model Treaty on Extradition.

For instance, the Council, by an act of 10 March 1995, adopted the European Convention on Simplified Extradition Procedure between Member States of the European Union with the aim to facilitate the application between the Member States of the European Convention on Extradition of 13 December 1957. The 1995 Convention obliges Member States to surrender persons sought for the purpose of extradition under simplified procedures on two conditions namely that (1) *the person in question consents to be extradited* and that (2) *the requested State gives its agreement*.

The following information from the requesting State is regarded as adequate:

- the identity of the person sought;
- the authority requesting the arrest;
- the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgment;
- the nature and legal description of the offence;
- a description of the circumstances in which the offence was committed;
- the consequences of the offence in so far as this is possible.

Articles 16 (8) of the Palermo Convention and 6 (7) of the Vienna Convention of 1988 deal with summary extradition and are worded identically. According to the Commentary on the Palermo Convention,

Paragraph 8 of Article 16 attracted two official interpretive Notes.²⁶ “The first was this paragraph should not be interpreted as prejudicing in any way the fundamental legal rights of the defendant.”²⁷ The second was that one example of the implementation of this paragraph would be speedy and simplified procedures of extradition, subject to the following factors: (1) the domestic law of the requested State Party for the surrender of persons sought for the purpose extradition; (2) the agreement of the requested State Party and the consent of the individual subject to extradition. In addition, “the consent, which should be expressed voluntarily and in full awareness of the consequences, should be understood as being in relation to the simplified procedures and not the extradition itself.”²⁸

All SPCs have indicated that summary extradition is available under their domestic legislation and some have elaborated on the procedure which has to be followed in such instances (see below).

Within the European Union, since 2004, regular extradition proceedings have also been simplified from traditional treaty-based extradition proceeding to a fast-track surrender procedure based on the principle of mutual recognition, with the aim to simplify and speed-up the process.²⁹ The European Arrest Warrant (EAW), replaced lengthy extradition procedures within the European Union’s territorial jurisdiction. It improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or spell in detention.³⁰ The EAW implies faster and simpler surrender procedures and *an end to political involvement*; European Union countries can no longer refuse to surrender, to another EU country, their own citizens who have committed a serious crime or are suspected of having committed such a crime in another EU country, on the grounds that they are nationals. However, the person wanted still has the right to appeal.

26. Ibid.

27. A/55/383/Add. I, Note 29.

28. David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and Its Protocols* (Oxford University Press, 2007) 182.

29. Auke Willems, ‘Extradition on the Two Sides of the Atlantic: The U.S. Model as Blueprint for the European Arrest Warrant?’ (2016) 27 *Criminal Law Forum*, 443.

30. European Commission, *Justice, Building a European Area of Justice*, available online at http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm.

4. General Aspects on Criminal Jurisdiction

A pursuing State needs to be able to exercise jurisdiction over the wanted individual and the alleged crime. Jurisdiction in international law is defined as "...the limits of the legal competence of a State or other regulatory authority... to make, apply, and enforce rules of conduct upon persons."³¹ It is a concept that is integral to state sovereignty³² as it denotes the reach of state power. The ability of a state to make laws that apply to persons or property is known as 'prescriptive jurisdiction' or 'legislative jurisdiction', while adjudicative jurisdiction refers to the capacity of a state to host litigation in its legal system in respect of persons or property.³³ Enforcement jurisdiction is the capacity of a state to enforce non-compliance with its laws, including breaches that occur abroad.³⁴ Nonetheless, states may not exercise enforcement jurisdiction outside of their territory "...except by virtue of a permissive rule derived from international custom or from a convention"³⁵ or when the consent of the affected state is granted.³⁶ Conversely, states may wield prescriptive jurisdiction in respect of acts that occur outside of their territory.³⁷ There are several types of enforcement jurisdictional competence, namely the territorial principle and the flag principle, the active (or nationality) principle, the passive personality principle, the protective principle, universal jurisdiction and the representation principle.³⁸ The last one is a derivative jurisdiction and its main purpose is to avoid prosecution gaps with regard to cases where prosecution may fail because of a legal or factual impossibility of extraditing the suspect to the State that exercises original criminal jurisdiction thereby implementing the *aut dedere aut iudicare* principle.³⁹

4.1. Subject Matter Jurisdiction

Subject matter jurisdiction can be justified on either a territorial or extraterritorial basis, however, the exercise must not be unreasonable. "If a crime is committed on a pursuing State's soil, even if the perpetrator then flees to another State, that pursuing State can set out a *territorial* claim over the crime. If, by contrast, the crime occurs within another State's territory, a pursuing State must make its case based on an *extraterritorial* ground to claim jurisdiction over the conduct at issue."⁴⁰

31. Christopher Staker, 'Jurisdiction' in Malcolm D Evans (ed), *International Law* (4th edn, Oxford University Press, 2010) 309.

32. Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, Oxford University Press, 2015) 5-6.

33. Roger O'Keefe, *International Criminal Law* (Oxford University Press, 2015) 4.

34. Staker, *supra* note 45, 331-33.

35. *Lotus Case (France v Turkey)* PCIJ Rep Series A No 10 (7 September 1927) 18-19.

36. Staker, *supra* note 45, 331.

37. *Lotus Case*, *supra* note 49.

38. Luc Reydam, *Universal Jurisdiction: International and Municipal Legal Perspectives* (Oxford University Press, 2002) 21-24.

39. Kai Ambos, *Treatise on International Criminal Law: Volume III: International Criminal Procedure* (Oxford University Press, 2016) 230-233.

40. Sadoff, *supra* note 6, 69.

4.2. Territorial Jurisdiction

- Rooted in the principle of national sovereignty.
- When an individual violates the domestic laws of another State, (s)he is legally accountable to that State for any such acts or omissions, even if (s)he has no domicile or residency there.
- “The fact that every state exercises territorial supremacy over all persons on its territory, whether they are its nationals or aliens, excludes the exercise of the power of foreign States over its nationals in the territory of another State.”⁴¹
- “Territorial claims of criminal jurisdictions become more complicated when an offence begins (or is conceived) on one State’s territory but is consummated (or its effects are experienced) on another’s.”⁴² States vary in their approach, each generally recognizing and applying one of the following three doctrines:
 - Subjective territorial principle – “where a State stakes a jurisdictional claim to prosecute a crime that commenced or a portion of which occurred within its territory, even though the crime was concluded or its effects felt elsewhere.”⁴³
 - Objective territorial principle – “wherein a State chooses to assert jurisdiction over a crime that, while commenced elsewhere, was completed or resulted in injury or damage within its territory, even in instances where the chief offender never set foot on the prosecuting State’s territory.”⁴⁴

Some challenges to the territorial principle:

- It is not always clear within whose territory an actual or alleged crime was committed – certain vessels or building may belong to one State but be located within another’s territory. The so-called flag principle is an extension of the territorial principle and is important in the context of vessels navigating the seas (both territorial and other) and aircrafts flying in air space or operating in other states’ territories.
- When a crime is initiated on one State but consummated on another; or a crime was intended to injure a State but never came to fruition, there could be multiple competing claims of jurisdiction over that crime.

4.3. Extraterritorial Jurisdiction

Under international law, States have reasonably wide latitude to establish criminal laws with the ‘spatial scope’ to cover events or conduct occurring overseas and to authorize their courts to adjudicate such crimes. Traditionally, civil law States have been more inclined than common law States to exercise extraterritorial jurisdiction. Below are the four bases for extraterritorial jurisdiction which have been recognized to some extent.

41. Sir Robert Jennings & Sir Arthur Watts (eds.), Vol. I *Oppenheim’s International Law* (9th ed. Oxford University Press, 1992) 901.

42. Sadoff, *supra* note 6, 73.

43. *Ibid.*

44. *Ibid.*, 74-5.

4.4. Active Personality Principle

It focuses on a national who is the alleged *offender* of a crime overseas. According to this principle, a pursuing State may assert extraterritorial jurisdiction over its own nationals (and at times even residents) for crimes they committed abroad, even if not punishable under the law of the territorial State or elsewhere, and even if the accused is also a national of the territorial State itself (i.e. dual citizen).⁴⁵

- Both Common and Civil law countries adhere to active personality principle though Civil law countries are more inclined in applying the principle.
- What follows are three instances where Common law countries apply this principle:
 - Serious offences, such as murder or manslaughter, are committed by its national abroad;
 - a State's own security or governmental functions are put at risk by its nationals overseas (foreign fighters);
 - due to economic or cultural factors, developing countries are perceived as unable to suppress certain crimes in which a developed State's national are directly engaged. (foreign fighter / terrorism).

4.5. Passive Personality Principle

The passive personality principle allows a State to claim extraterritorial jurisdictions over a national who is the victim of a crime committed abroad. This principle has no utility regarding so-called 'victimless' crimes such as drug smuggling because of its requirement that there exist one or more victims. "With the increased incidence of, and intolerance for, such pernicious offences as international terrorism, torture, hostage-taking, crimes against humanity, and genocide, many States have come to adopt legislation and enter into treaties that authorize such subject matter jurisdiction while, at the same time, not contesting others' assertion on this ground."⁴⁶ For Example, the United Kingdom, which exceptionally does not endorse the passive personality principle for its own use, is willing to accommodate other States' invocation of jurisdiction on this ground in compliance with the terms of an international treaty.⁴⁷

- The *passive personality principle* is "increasingly accepted as applied to terrorist and other organized attacks on a state's nationals by reason of their nationality."
- The growing appeal of the principle stems from the perception that States increasingly need to intervene out of a duty to protect their nationals living, working, studying, or traveling abroad, especially as many are targeted precisely because of their citizenship; and territorial States cannot always be counted on to demonstrate the judicial capacity and/or political will to hold violators accountable.⁴⁸ "A number of States since the mid-1970s (e.g., France and Sweden) have come to expressly adopt the passive personality principle as they believe that a State should prosecute terrorists for crimes

45. Ibid., 79-80.

46. Ibid., 82.

47. Ibid., fn. 136.

48. Ibid., 82.

perpetrated against its nationals when the State with primary responsibility for such prosecution has failed to do so.”⁴⁹

- Reasons for resistance to this principle include:
 - Its tendency to undercut the sovereignty of the State where the alleged crime occurred, and hereby foster, rather than minimize, inter-State jurisdictional conflicts;
 - Relatedly, it may be viewed as tantamount to a ‘vote of no confidence’ in other States’ criminal law systems and their capacity to effectively bring offenders to justice;
 - Its prospects for prosecutorial abuse through States’ selective enforcement to protect their nationals abroad;

4.6. Protective Principle

Under this principle, which derives from its sovereign status, a State may choose to prosecute non-nationals who commit crimes abroad that threaten the integrity or security of the State or endanger or undermine its essential governmental institutions or functions, or public interests. The fundamental purpose of this principle is to “safeguard the political independence of the State”, rather than to promote a State’s politics or interests overseas or to protect nationals abroad from any possible harm.

4.7. Universal Jurisdiction⁵⁰

Universal jurisdiction or the universality principle is a type of extraterritorial jurisdiction in international law. It permits *any* state to prosecute persons accused of committing certain grave human rights abuses regardless of where the offence occurred and irrespective of the nationality of the accused person(s) or victims.⁵¹ It is a procedural rule that applies to offences criminalised in substantive law, and can be relied on by States without a sovereign nexus to the wrongdoing. It is the inhumanity of the act that demands the perpetrator be

49. Ibid., 83.

50. Special thanks to Dr Amina Adanan, Maynooth University Department of Law, National University of Ireland, Maynooth for drafting this section on Universal Jurisdiction.

51. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (Geneva Convention I), Art 49; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Geneva Convention II), Art 50; Geneva Convention relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Geneva Convention III), Art 129; Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Geneva Convention IV), Art 146; International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243 (Apartheid Convention), Art 5; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I; AP I), Art 85; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1987, entered into force 26 June 1987) 1465 UNTS 85 (UNCAT), Arts 5(2), 7; United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UN Convention on the Law of the Sea), Art 105; Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict (adopted 26 March 1999, entered into force 9 March 2004) 2253 UNTS 212 (Second Protocol to the 1954 Hague Convention), Art 16 (1); International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entry into force 23 December 2010) 2716 UNTS 3 (Convention on Enforced Disappearance; CED), Arts 5, 9(2), 11(1); *National Commissioner of the South African Police Service v Southern African Human Rights Litigation Centre and Another* [2014] ZACC 30, Constitutional Court of South Africa, 30 October 2014; *Public Prosecutor v Higanro et al*, Assize Court of Brussels, 8 June 2001.

arraigned, because he/she violates the common interests of the world community. As such it is a rationale-based form of enforcement jurisdiction. The crimes to which the jurisdiction applies are international piracy, the slave trade, genocide, war crimes, crimes against humanity, apartheid, torture, enforced disappearances, and extrajudicial killing. Other than piracy, the crimes to which universal jurisdiction applies were historically committed by or with the complicity of State authority. Today, non-state actors such as rebel groups and corporations are as likely to commit or be ancillary to the commission of such offences.

Traditionally, territoriality is preferred by common law jurisdictions, whereas the nationality and passive personality principles are conventionally utilised by states from the civil law tradition. In more recent times, the majority of states rely on a number of the types of enforcement jurisdictions provided under international law. The exercise of universal jurisdiction is more far reaching than the nationality or passive personality principles because it permits the forum State to try *any* persons regardless of nationality. Therefore, it is more likely to prevent impunity for international crimes.

Since the early 2000s, there is a trend in states legislating for the active personality principle in respect of the above-mentioned crimes as opposed to universal jurisdiction. In such instances, the forum state legislates to prosecute offences committed abroad only where the accused is a national, a resident or where he/she subsequently acquires the nationality of the forum State after committing the crime. Thus, enforcement jurisdiction is limited to extraterritorial offences that have a sovereign nexus to the forum state. This transition is much criticised.⁵² As Naomi Roht-Arriaza comments:

*...[R]equiring a nexus through the nationality or residence of the victims, or through “national interest”, ignores the fundamental claim of universal jurisdiction to be based on the interests of all states in suppressing certain heinous crimes that affect international order and thereby reduces universal jurisdiction to a variant of passive personality jurisdiction.*⁵³

4.8. Conflict of Jurisdiction and Concurrent Requests for Extradition

Where several States claim to have an adequate jurisdictional link a so-called positive conflict of jurisdiction can emerge.⁵⁴ In the sphere of transnational crimes, conflicts of jurisdiction and concurrent requests for extradition from different States for the same person are not uncommon, in fact such conflicts are “simply a part of the reality of international law.”⁵⁵ However a balancing of the sovereign interests of the States concerned must take place and States have to devise criteria based on which they give priority to certain requests or their own jurisdiction over others. Furthermore, if States do not consult each other in order to settle a conflict of jurisdiction, this can lead to proceedings being conducted in a State which is not the best suited for this (e.g. when the relevant evidence and witnesses are located in another State) or to parallel proceedings being conducted in different States.

52. Luc Reydam, 'The Rise and Fall of Universal Jurisdiction' in William Schabas and Nadia Bernaz (eds.), *The Routledge Handbook on International Criminal Law* (Routledge, 2010) 350; Naomi Roht-Arriaza, 'Guatemala Genocide Case' (2006) 100 *American Journal of International Law* 207; Steven R Ratner, 'Belgium's War Crime Statute: A Postmortem' (2003) 97 *American Journal of International Law* 888.

53. Roht-Arriaza, *ibid.*, 212.

54. Ambos, *supra* note 53, 235.

55. Alex Mills, 'Rethinking Jurisdiction in International Law' (2014) 84 *British Yearbook of International Law* 1 199.

The Model Treaty on Extradition addresses concurrent requests in Art. 16 but merely provides that States have full discretion to determine to which of the requesting States the person is to be extradited to. The Revised Manual on the Model Treaty however explains that States may wish to specify the matters to which the requested State shall (or may) have regard:

“These may include all relevant circumstances and, in particular, if the requests are made pursuant to treaty, the possibility of subsequent extradition between the requesting States, the respective interests of the requesting States, if the requests relate to different offences, the relative seriousness of the offences; the time and place of commission of each offence; the respective dates of the requests; the nationality of the person and of the victims; and the chronological order in which the requests were received.”⁵⁶

According to the Revised Manual, the fixing of criteria “leaves the requested State with discretion, while reference to fixed criteria may be of considerable aid in balancing the respective equities. For example, a requested State should consider which request is made pursuant to treaty, in which there is an obligation to extradite, as opposed to a competing request made pursuant to statute, in which no such obligation exists. In considering whether to prefer extradition to a person’s State of nationality or another State, the requested State should determine if the State of nationality does not extradite its nationals, since in such a case a decision to extradite the person to that State may result in the other requesting State never being able to obtain extradition of the person. Other interests of a particular requesting State may militate in giving priority to its case, e.g., where it is prosecuting its public official for corruption. Each criterion serves as a reminder of interests that may be present in a particular case that are worthy of consideration by the requested State. Reliance on such specifically articulated criteria may also be useful for the purpose of explaining the reasons for the requested State’s decision.”⁵⁷

In case of multiple extradition requests from Member States of the Riyadh agreement regarding the same offence, priority should be given to the State Member whose interest was compromised by the crime, then to the State on whose territory the crime took place, then to the State whose nationality the person wanted held at the time of the commission of the crime. In situations where all the circumstances are the same, it is preferable to extradite to the one who filed the request first. However when the extradition requests relate to multiple offences, priority should be given based on the circumstances of the offences, its seriousness and the place where it was committed.

In Art. 41 (c) of the Riyadh Agreement it is stipulated that a crime is not subject to extradition if it was committed in the territory of the requested party, except when such crime has caused damage to the interests of the requesting party and its laws stipulate that perpetrators of such crime be prosecuted and punished. The Agreement further allows refusal of an extradition request when the person wanted is a national of the requested State provided that the latter exercises its active personality jurisdiction over such a national and charges him or her where double criminality exists and the penalty is at least one year (Art. 48). Article 46 of the Agreement deals with situations of concurrent extradition requests for the same crime and stipulates that priority shall be accorded to the contracting party whose interests were damaged by the crime, followed by the contracting party in whose territory the crime was committed, followed by the contracting party of which the person whose extradition is requested was a national at the time of committing the crime. If circumstances converge preference shall be accorded to the first contracting

56. UNODC, Revised Manuals on the Model Treaty on Extradition, para. 254.

57. Ibid., para. 257.

party to submit the extradition request, but if extradition requests pertain to several crimes, weighing them one against the other shall be based on the circumstances of the crime, its seriousness, and the place in which it occurred. This Article does not however prejudice the right of the requested party to freely decide on the requests submitted to it from various contracting parties taking into consideration all relevant circumstances.

5. General Theory on the Transfer of Sentenced Persons⁵⁸

With the increase in international travel and migration, it has become progressively more common for countries around the world to convict and sentence foreign citizens to terms of imprisonment or other forms of deprivation of liberty. The nature of transnational organized crime means that it is increasingly common for criminals involved to be convicted and sentenced in foreign countries. Even though this is a specialized area of law that forms part of the growing international cooperation between States in criminal justice matters there is no single international instrument that covers the transfer of sentenced persons throughout the world.⁵⁹

Generally, it is preferable that prisoners are imprisoned or otherwise deprived of liberty in their own countries, where they have access to visits from their families and where their rehabilitation, re-socialization and reintegration is aided by familiarity with the local community and culture.⁶⁰ However, where prisoners are inappropriately deported or otherwise removed to serve their sentences in their home countries, the result may be that they avoid punishment completely and simply resume their criminal activities.⁶¹

5.1. Framework for Transfer of Sentenced Persons

Transfer regimes are based on bilateral or multilateral agreements that offer a framework for transferring prisoners. In 1985, the Seventh UN Congress on the Prevention of Crime and the Treatment of offenders adopted the UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the treatment of foreign prisoners (see Annex 1). This agreement provides a model not only for bilateral agreements but also for multilateral agreements that all UN Member States can adapt to their specific legal systems.⁶²

The transfer of sentenced persons is seen to be an important means of cooperation to prevent and combat crime, which is the purpose of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime. All three conventions refer to the possibility of concluding agreements to facilitate the transfer of persons convicted abroad of the offences covered by the Conventions to another State to complete their sentence. Among them is the United Nations Transnational Organized Crime Convention, which states, in Article 17, that:

"States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there."

58. This section is mainly based on the UNODC Handbook on the International Transfer of Sentenced Persons available online at https://www.unodc.org/documents/organized-crime/Publications/Transfer_of_Sentenced_Persons_Ebook_E.pdf.

59. Ibid.

60. Michael Plachta, 'Human Rights Aspects of the Prisoner Transfer in a Comparative Perspective' (1993) 53 *Louisiana Law Review* 1043-1089.

61. Ibid.

62. Ibid.

Article 45 of the UN Convention against Corruption states:

“States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.”

To support the implementation and use of transfer mechanisms, States are required to ensure that their national legislation facilitates such cooperation. In 2012, the UNODC has published a Handbook on the International Transfer of Sentenced Persons to explain how transferring sentenced persons to serve their sentences in their home countries can contribute both to their fair treatment and effective rehabilitation.

5.2. Human Rights Issues

The argument for encouraging the transfer of sentenced persons has a strong basis in international human rights law. Article 10, para. 3, of the International Covenant on Civil and Political Rights (ICCPR) specifies that the “essential aim” of a prison system is the “reformation and social rehabilitation” of prisoners. The Standard Minimum Rules for the Treatment of Prisoners echo this duty to facilitate the social rehabilitation of offenders. Similarly, the strong emphasis in the revised European Prison Rules on managing detention “so as to facilitate the reintegration into free society of persons who have been deprived of their liberty” (rule 6) has influenced the interpretation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁶³

Almost all instruments that regulate international prison transfers specify social rehabilitation as one of the grounds for supporting such transfers. For example, paragraph 1 of the Model Agreement states:

The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of cooperation.

The most recent development in respect of multilateral prisoner transfers is framework decision 2008/909/JHA (Justice and Home Affairs). By its nature, the framework decision is limited to the 28 member States of the European Union and is binding on them: they were obliged to implement it by 5 December 2011. The distinguishing feature of the framework decision is that it extends the category of prisoners who are subject to transfer without their consent beyond those referred to in the Additional Protocol to the European Convention. In essence, all foreign nationals who do not meet a narrow list of exceptions will be subject to transfer if the sentencing State initiates the process. The receiving State will only be in a position to prevent such a transfer if it can invoke one of the grounds of non-recognition or non-enforcement listed in article 9. The introduction of a duty to enforce sentences imposed by the courts of another State can be linked to the principle of mutual recognition. In 1999, the principle of mutual recognition was endorsed as the cornerstone of judicial cooperation in criminal matters within the European Union. The “special mutual confidence” of member States in other member States’ legal systems enables them to recognize the judicial decisions of other States.⁶⁴

63. Ibid.

64. Ibid.

The subject matter is also regulated by the Riyadh Agreement and the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences of which Egypt, Jordan, and Palestine are all State Parties (see below).

5.3. Significance

There are many significant law enforcement benefits to the transfer of sentenced persons. If there is no prisoner transfer programme, the vast majority of foreign nationals in custody in a sentencing State will eventually be repatriated by means of deportation and the receiving countries have no control over the timing and mode of the convicted person's arrival in their country or over what the person will do, and have no information regarding the offence committed. This is not beneficial to the sentencing State or the administering State.

5.4. Extradition vis-à-vis Transfer of Sentenced Persons

Allowing for the transfer of sentenced persons may be particularly useful in achieving the proper and effective administration of justice *in cases in which the extradition of a person is refused on the basis of nationality*. In such a case, a State may agree to the extradition of one of its nationals on condition that, upon conviction and sentencing, he or she is transferred back to his or her country of origin to serve the sentence. (i.e. Israel law of extradition). See article 16(11) of the Palermo Convention; and article 44 (12) of the Convention against Corruption.

Similarly, when extradition is requested for the purposes of enforcing a sentence and is denied on grounds of nationality, the requested State, if its domestic law so permits, may choose to recognize and enforce the foreign criminal judgement through which the sentence was imposed in the requesting State. This option is also provided for in international instruments.⁶⁵

5.5. Specialized Legal Instruments

Specialized legal instruments that enable the transfer of sentenced persons from one country to another are surprisingly recent. Increased cooperation between States led to a watering down of the rigid application of the State sovereignty doctrine. The first steps away from such a doctrine came as a result of bilateral agreements between States. A 1954 judicial convention between Lebanon and the Syrian Arab Republic is credited as being the first such agreement. It allowed the contracting States to execute each other's sentences but, except in the case of short sentences, the consent of both States and the sentenced person was required.

65. See article 16, paragraph 12, of the Organized Crime Convention; and article 44, paragraph 13, of the Convention against Corruption.

Multilateral arrangements structured around international treaties also began to emerge. The first of these, in 1964, was the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders. As its name suggests, it does not deal directly with sentenced prisoners, but it does provide for the original prison sentence being carried out in the State to which the sentenced person has been transferred.⁶⁶

5.6. The 1985 European Convention on the Transfer of Sentenced Persons (opened for non-European States)⁶⁷

One feature of the European Convention, explained more fully below, is that the transfer of a sentenced person is subject to the consent of the sentenced person concerned. The requirement has been modified somewhat by the Additional Protocol to the Convention which was opened for signature by States parties to the Convention in 1997. Articles 2 and 3 of the Additional Protocol provide that sentenced persons who have fled from the sentencing State or who would be subject to deportation or expulsion after completing their sentence may be transferred without their consent. As of 31 January 2012, the Additional Protocol has been ratified or acceded to by 35 States parties, all of which are member States of the Council of Europe.

5.7. Bilateral Agreement

The fact that bilateral agreements may remain in force, even between European Union Member States that are bound by framework decision 2008/909/JHA, demonstrates the important role that bilateral prisoner transfer agreements continue to play in international prisoner transfers, both in Europe and elsewhere. Various bilateral agreements continue to be entered into by States throughout the world, even as the number of regional multilateral agreements has increased. In this regard, the United Nations has played an important role. The Model Agreement provides a basis for States that wish to negotiate a bilateral agreement. However, in considering aspects of some existing bilateral agreements, it becomes clear that they sometimes differ in significant ways from the Model Agreement.

The reasons for adopting bilateral transfer agreements are often similar to the reasons for concluding multilateral agreements. Indeed, bilateral agreements exist and operate contemporaneously with multilateral conventions for the transfer of sentenced persons in many States. For example, although the United Kingdom is a State party to the European Convention and the Scheme for the Transfer of Convicted Offenders within the Commonwealth and is subject to framework decision 2008/909/JHA, the Government has also concluded bilateral prisoner transfer agreements with Antigua and Barbuda, Barbados, Brazil, Cuba, Dominica, Egypt, Ghana, Guyana, India, Lao People's Democratic Republic, Libya and Morocco.

There is, therefore, no single international legal framework that governs all international transfers of sentenced persons. The instrument that comes closest to universal acceptance is the European Convention.

66. See articles 16-21.

67. Israel is a state party.

However, since December 2011, prisoner transfers within the European Union are governed by framework decision 2008/909/JHA, so the Convention has lost some of its significance as it will no longer be applied to prisoner transfers between European Union Member States.

Moreover, it is likely that the number and range of international agreements for the transfer of sentenced persons will continue to expand. States wishing to transfer prisoners therefore have to look closely at what international instruments are available to them. If they are not already parties to an appropriate agreement, they can accede to existing multilateral instruments and/or enter into new bilateral or multilateral agreements.

5.8. Requirements that must be fulfilled prior to the transfer of a sentenced person

5.8.1. Final Judgement

In the words of paragraph 10 of the Model Agreement: “a transfer shall be made only on the basis of a final and definitive sentence having executive force.” The term ‘final’ should be understood as referring to the exhaustion of all normal appeal processes.

5.8.2. Term Remaining to be Served

For a sentenced person to be transferred, there must be a minimum period of the sentence still to be served at the time of the request. In most multilateral instruments the minimum period is set at six months (see for example the Agreement between Malta and Egypt on the Transfer of Sentenced Persons 2001-art. 3(1)(c)). Some bilateral agreements, such as those between the United Kingdom and Morocco set a minimum period of a year.

5.8.3. Dual Criminality

Bilateral agreements may also contain a dual criminality requirement. For instance, the prisoner transfer agreements between the United Kingdom and Morocco require that the acts or omissions on account of which bilateral agreements may also contain a dual criminality requirement. For instance, the prisoner transfer agreement between the United Kingdom and Morocco requires that the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State.

In some instances, there may be a perceived need to waive the dual criminality requirement for humanitarian reasons. An administering State may decide that it would rather have a national serve his or her sentence in a “home” prison rather than leave him or her in the sentencing State, even though the conduct for which the sentence was passed is not a crime in the administering State.

Therefore, national legislation in some States does not automatically require dual criminality, thus leaving scope for such exceptions. In other States, a departure from the dual criminality requirement would be impossible, as the prisoner would be entitled to release upon return to the administering State, as he or she could not be detained for conduct that was not an offence in that State.

The UN Model Agreement takes the principle of dual criminal liability further by indicating that the offence has to fall within the competence of judicial authorities. Thus, punishment imposed by administrative authorities would in no case, even if it amounted to deprivation of liberty, fall within the scope of such a transfer agreement.

5.8.4. Ties to Administering State

Paragraph 1 of the Model Agreement refers to “the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence”. The Model Agreement takes no position on whether a prisoner should be transferred to the country of nationality or to the country of residence, if they are different, but leaves it to the administering State to accept also non-nationals residing in its territory.

In the Declaration made to the European Convention Israel and Armenia extends the definition of the term “national” to persons who were nationals at the time of the commission of the offence.

A particularly inclusionary definition is that put forward jointly by the 28 Member States of the European Union, of which all are signatories to the Convention, in article 2 of the Agreement on the application among the member States of the European Communities of the Council of Europe Convention on the Transfer of Sentenced Persons:

“For the purposes of applying article 3, paragraph 1 (a), of the Convention on Transfer, each member State shall regard as its own nationals the nationals of another member State whose transfer is deemed to be appropriate and in the interest of the persons concerned, taking into account their habitual and lawful residence in its territory.”

5.8.5. Consent of States

The transfer of prisoners is based on an agreement between States. It relates to a single case and is based on mutual trust between the States concerned. No State has an obligation to request a transfer or to grant a transfer at the request of another State. Initially, the international transfer of sentenced persons required the consent of three parties: the sentencing State, the administering State and the sentenced person.

5.8.6. Consent of Sentenced Persons

Historically, the consent of sentenced persons was a requirement for international transfers. It is still at the core of most international instruments in this area, including the UN Model Agreement, which is based on a system of voluntary transfer. The consent requirement is also a feature of several multilateral treaties. Article 3, paragraph 1 (d), of the European Convention provides that a sentenced person may be

transferred if, inter alia, the transfer is consented to by the sentenced person or, where in view of his or her age or physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative.

The requirement that prisoners must consent to the transfer ensures that transfers are not used as a method of expelling prisoners, or as a means of disguised extradition.

5.8.7. Human Rights

States may be forbidden, as a matter of national law or of binding international law, to transfer a sentenced person whose fundamental human rights would be threatened by transferring him or her to another country in order to serve the sentence.

Most of the law in this regard has developed in cases where the question has related to expulsion, deportation or, according to more recent jurisprudence, extradition. A State cannot remove persons if there is a threat to their life, or if they are likely to be subject to torture or to inhuman or degrading treatment or punishment in the country to which they are being sent.

Article 3 of the UN Convention against Torture (CAT) prohibits removal of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Further, in paragraph 12 of its general comment No. 31, the Human Rights Committee (HRC) commented that article 2 of the International Covenant on Civil and Political Rights (ICCPR) places an obligation on States "not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant [risk to life, or of being exposed to torture or cruel, inhuman or degrading treatment or punishment, respectively], either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters."

5.8.8. Exercising Discretion

Even where all the formal requirements for transfer have been met, States still have considerable discretion in deciding whether to go ahead with a transfer or not. A key fact in exercising this discretion is deciding whether a particular transfer will in fact assist the social rehabilitation of the sentenced person who potentially may be transferred

6. Transfer of Criminal Proceedings

The plea of *forum non conveniens*, which is commonly known in civil proceedings and allows for the transfer of jurisdiction to a more appropriate forum, is not generally available in criminal law proceedings due to the essentially territorial nature of the crime and the general prohibition of such a possibility contained in criminal law. When it comes to transnational crimes, however, the international nature of such offences and the plurality of jurisdictions involved raise the possibility of the transfer of the criminal proceedings, by the State authorities, to another State which could prove a more appropriate forum. The transfer of proceedings has become relatively widespread, particularly among civil law countries. The European Convention on the Transfer of Proceedings in Criminal Matters for example, contemplates the situation where a requesting State may ask another State, in which adequate criminal proceedings are possible, to take over the proceedings. If the requested State agrees to this request, a 'transfer of criminal proceedings' is taking place.⁶⁸ According to Art. 8 a request may be made in any of these cases:

- a. If the suspected person is ordinarily resident in the requested State;
- b. If the suspected person is a national of the requested State or if that State is his State of origin;
- c. If the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
- d. If proceedings for the same or other offences are being taken against the suspected person in the requested State;
- e. If it [i.e. the requesting State] considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
- f. If it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;
- g. If it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;
- h. If it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so.

The transfer of proceedings is also to be considered where a State is aware of proceedings in another Contracting State for the same offence;⁶⁹ when two or more Contracting States have jurisdiction over several offences which are materially distinct but ascribed either to a single person or several persons acting in unison; or where a single offence is ascribed to several persons so acting.⁷⁰

The Vienna Convention in Art. 8 requires the parties to give consideration to the possibility of using the cooperative mechanism of transfer of proceedings in instances in which it would be in the interests of the proper administration of justice to do so. It does not however impose any obligation upon parties to actually go through with such a transfer in any given case. The convention does not articulate a hierarchy of the

68. Explanatory Report on the European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, Council of Europe, 1985) 20.

69. Art. 30 (Part IV of the Convention, dealing with 'Plurality of Criminal Proceedings').

70. Art. 32.

priority to be afforded to parties in instances involving concurrent jurisdiction, therefore the transfer of proceedings serves as a solution this problem.⁷¹ Similarly, the Palermo Convention states that: "States Parties shall consider the possibility of transferring to the another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution."⁷² The transfer of proceedings is important in the context of the consolidation of various criminal proceedings, relating to distinct offences, involving the same individual or individuals, which may have been committed in one or more States and in circumstances where a transfer would be in the interests of effective prosecution.

71. Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (UN, 1988) 213.

72. Art. 21.

7. Comparisons of SPCs on Issues of Extradition, Transfer of Sentenced Persons and Transfer of Proceedings

The following section compares the law and practice of the SPCs in the form of charts to more clearly demonstrate the convergence and discrepancies of fundamental principles of extradition between the countries.

Apart from Israel, all SPCs follow the monist approach to international law, whereby international agreements are mostly incorporated into the domestic legal order without the need for any legislative act. Therefore, where the domestic legislation contradicts international agreements the latter will have precedence over the former.

7.1. Legal Bases for Extradition

| | |
|------------------|--|
| Algeria | Bilateral (most effective)/multilateral/regional agreements based on the principle of reciprocity |
| Egypt | Multilateral/bilateral agreement; Reciprocity; Law No. 140/2014 – the President of Egypt may approve an extradition request after the acceptance by the Cabinet of Ministers in the absence of a treaty or agreement |
| Israel | Multilateral/ bilateral agreements; Reciprocity; <i>Ad hoc</i> agreements |
| Jordan | Multilateral/ bilateral agreements |
| Lebanon | Multilateral/bilateral agreements; Comity; Reciprocity |
| Morocco | Multilateral/bilateral agreements; Reciprocity; Comity; <i>Ad hoc</i> agreements |
| Tunisia | Multilateral/bilateral agreements; Reciprocity; <i>Ad hoc</i> agreements |
| Palestine | Multilateral/bilateral agreements |

NOTE: UN Counter-Terrorism Conventions (such as the 1997 Convention for the Suppression of Terrorist Bombings), the Vienna Convention of 1998, the UN Convention against Transnational Organised Crime, the UN Convention against Corruption, the Arab Agreement on Judicial Cooperation (Riyadh Agreement) can be the legal basis for extradition avoiding the need of several bilateral treaties.

7.1.1. Analysis

Political considerations are inextricably linked to extradition. A lack of trust and different geopolitical interests between countries can result in a lack of bilateral extradition agreements and a general unwillingness to act based on reciprocity or comity in such cases. Out of the answers provided to the questionnaire only Morocco indicated that comity can constitute a legal basis for extradition. Reciprocity was mentioned as a legal basis by Israel, Algeria and Tunisia, however it is unclear whether this indicated 'reciprocity' is meant as one which is already part and parcel of bilateral and multilateral agreements, or whether it creates an additional basis for extradition despite a lack of a formal agreement. In March 2017, the Jordanian Court de Cassation blocked the extradition of AA to the US, finding that their bilateral treaty with Jordan from 1995 had never been ratified by the Parliament. The existence of an effective treaty or agreement is a *sine qua non* in the Jordanian law⁷³ therefore it leaves no room for flexibility in this regard.

In the absence of agreements and the lack of the possibility of using comity or reciprocity as the bases for extradition there are very few alternatives left to insure the successful prosecution of an individual in another jurisdiction. One such alternative is bypassing cooperation with the other state and kidnapping the suspect from the host state to put him/her on trial. The United States has used this option on a number of occasions, even when a treaty existed with the host State.⁷⁴ Israel and Turkey have also used this option on separate occasions for the abduction of Adolf Eichmann and Abdullah Öcalan.

However the invasion of a country's sovereign territory is always a risky venture and can create large political costs for both countries, especially since such transactions are not subject to traditional constraints of probable cause or judicial review.⁷⁵ Even cases where the forcible abduction of terrorists happens in secrecy and in cooperation with elements of the host State's government, i.e. 'extraordinary rendition', can be damaging for the reputation of the governments involved once brought to the knowledge of the public.

In light of the aforementioned, greater legal cooperation between countries and the existence of bilateral and multilateral treaties as well as the options of comity and reciprocity is highly encouraged. According to some, multilateralism in the field of extradition is bound to fail, however. The conclusion of broad multilateral treaties is restrained due to constraints such as the extradition of one country's citizen to another country and on the other hand the reluctance to extradite individuals / fugitives to countries that have disreputable legal or punitive systems.⁷⁶ Furthermore, bilateral treaties are easy to monitor and enforce as reciprocity and retaliation are direct.⁷⁷ Contrary to this opinion, the growing number of multilateral treaties appears to suggest that the advantages of multilateralism are not negligible. "The speed and uniformity of the EAW may convince other countries that multilateral treaties are more effective... A truly universal extradition system, in which all countries participate, could be more effective at disincentivizing crime... Similarly, a single extradition code would help governments and officials better understand the requirements for extradition and reduce the likelihood that extradition would be denied because of procedural mistakes."⁷⁸

73. Law of Criminals Extradition for 1927, Arts. 5-6.

74. See Michael H. Cardozo, Note and Comment, 'When Extradition Fails, Is Abduction the Solution?', (1961) 55 *American Journal of International Law* 127; D. Cameron Findlay, 'Abducting Terrorists Overseas for Trial in the United States: Issues of International and Domestic Law,' (1988) 23 *Texas International Law Journal* 29-30; G. Gregory Schuetz, Comment, 'Apprehending Terrorists Overseas Under United States and International Law: A Case Study of the Fawaz Yunis Arrest', (1988) 29 *Harvard International Law Journal* 499.

75. William Magnuson, 'The Domestic Politics of International Extradition', (2012) 52 *Virginia Journal of International Law*, 868.

76. Gabrielle Blum, 'Bilateralism, Multilateralism, and the Architecture of International Law' (2008) 49 *Harvard International Law Journal* 360.

77. Ibid.

78. Magnuson, supra note 92, 873-874.

7.1.2. Recommendations

States are encouraged to show more flexibility in terms of allowing reciprocity and comity to provide the legal bases for extradition when there is no legally valid bilateral or multilateral agreement. This could lead to formal agreements in the future, once trust is established between the States in question. The Model Treaty on Extradition (Adopted by General Assembly Resolution 45/116, amended by General Assembly Resolution 52/88) & Revised Manual on the Model Treaty on Extradition can be of a great assistance in this regard.

7.2. Domestic Laws Governing Extradition

| | |
|------------------|---|
| Algeria | Code of Criminal Procedure |
| Egypt | Extradition is not comprehensively covered in one law – instead, particular crimes such as human trafficking or smuggling are dealt with in special laws with relevant provisions on extradition pertaining to these crimes. Law 140, 2014 furthermore deals with extradition (see below). Other relevant provisions are found in bilateral and regional agreements, thus there is little in terms of general rules on extradition, but rather a complex system of provisions that vary based on the crime in question and the relevant treaty. |
| Israel | Law of Extradition - 1954 amended 8 times |
| Jordan | Extradition of Fugitive Criminals Act 1927 This law is outdated and its annex listing the extraditable offences is no longer applicable. Instead Jordan mostly relies on the Riyadh Agreement when dealing with extradition requests. (The Model Extradition Committee of the Ministry of Justice proposed a draft new bill for extradition 2016) |
| Lebanon | Criminal Code |
| Morocco | Code of Criminal Procedure |
| Tunisia | Code of Criminal Procedure + Organic Law No. 2016-61, dated 3 rd August 2016, pertaining to the prevention and countering of human trafficking (trafficking in persons) (Art 27+28+29) ⁷⁹ + Organic Law No. 2015-26 of 7 th August 2015 on the fight against terrorism and the repression of money laundering (Arts. 87, 88, 89) ⁸⁰ |
| Palestine | Penal Code of 1960 + Extradition of Fugitive Criminals Act and its Amendments (1927) applicable in the West Bank + Extradition Act (1926) applicable in the Gaza Strip The two laws differ in terms of area of applicability as well as substance. A new law is being prepared which will replace them. |

79. See http://www.legislation.tn/fr/detailtexte/Loi-num-2016-61-du-03-08-2016-jort-2016-066_2016066000611?shorten=Dx6o

80. See http://www.legislation.tn/fr/detailtexte/Loi-num-2015-26-du-07-08-2015-jort-2015-063_2015063000261?shorten=aTEw

7.2.1. Analysis

Egypt has no legislation regulating the process of extradition. This creates a legal gap with several legal implications for the process of extradition. The detainee has no access to a judge comparable to the Egyptian criminal procedures. Another implication is that Egyptian Courts are not part of the process like in other countries which require a decision from a competent court to extradite a requested criminal, leaving the decision to extradition in this case to the Public Prosecution. There have been many attempts to introduce articles regarding extradition in the Criminal Procedures Code but due to substantive delays related to the amendments this has not yet happened.

The law of Palestine remains fragmented between the laws handed down from the Ottoman Empire, the British Rule and the Hashemite Kingdom and this is also reflected in the outdated Extradition of Fugitive Criminals Act of 1927 which needs modernisation. Work is underway on preparing a legislative and organizational framework, by forming a national team consisting of all relevant national institutions working on setting out an act for judicial cooperation and preparing a procedures manual that shall identify the roles and powers to handle extradition requests. Palestine has indicated that due to the outdated nature of their domestic law it is not in fact being used, but that instead the Riyadh Agreement is relied on. However, a draft for a new law already exists.

Jordan, which theoretically also applies the Extradition of Fugitive Criminals Act of 1927, rather relies on the Riyadh Agreement in practice. Bilateral agreements also render most of the provisions of the 1927 law non-applicable (see evidentiary requirements below) and the annex to the law which lists the extraditable offences no longer applies either. Similarly to Palestine, Jordan is also discussing a new draft law which would replace the outdated one. The Jordanian delegation participating in this project has indicated however, that the decisive factor in MLA and extradition is political will and less-than-perfect domestic laws in their opinion and (recent) practice do not present real obstacles.

While reliance on the Riyadh Agreement may solve the issue of outdated laws to an extent, it itself is an old document. The Arab League has therefore started a process of updating it in order to make it more flexible and it is receiving comments from Members at the moment on this issue. Solutions are being sought to avoid situations such as refusals of extradition requests on mere technicalities. For example, instances such as where a State denies an extradition request when it requires the signatures of both the Minister of Justice and the Foreign Minister and only one such signature is present.

7.2.2. Recommendations

Egypt is encouraged to speed up the process of amending the Criminal Procedures Code by introducing provisions on the extradition process which will address the legal gap currently present.

As for Palestine, the biggest obstacle to an orderly legal system continues to be the Israeli occupation which hinders the national sovereignty on the Palestinian territories and weakens the ability of Palestinian law enforcement bodies to enforce the orders of arrest and summons, as well as implement judgments. Nevertheless, Palestine is encouraged to work on their legal system, in spite of the difficulties faced.

7.3. Extradition of Nationals

| | |
|------------------|---|
| Algeria | No extradition of nationals; status considered at the time of the alleged offence; however, referring to its bilateral agreements, Algeria promises to bring to trial its subjects who committed crimes on the territory of the other country, subject to dual criminality. |
| Egypt | No extradition of nationals, instead a country might request from Egypt to prosecute the crime and this will be considered a judicial cooperation request. The point at which the status is considered is dependent on the relevant bilateral agreement. For example, according to the bilateral agreement with Jordan, the status is considered at the time of the alleged offence. According to other bilateral agreements, the status is considered when deciding on the request. Egypt does not recognize or enforce criminal sentences issued abroad. |
| Israel | Nationals can be extradited; status considered at the time of the commission of the offense. However, nationals will only be extradited for the purpose of prosecution after the requesting State certifies that upon conviction, the sentenced person will be transferred back to Israel for the execution of the sentence. In the event that extradition is sought for the purpose of enforcing a sentence upon an individual who was a national and a resident of Israel during the time (s)he committed the offense, the requested state will request that the sentence will be served in Israel. |
| Jordan | No extradition of nationals; status considered at the time of the alleged offence; the Kingdom refuses to hand a national over and instead prosecutes him or her before the Jordanian courts based on the proceedings already undertaken by the requesting State. |
| Lebanon | No extradition of nationals; however the person will be prosecuted in Lebanon under the aut dedere aut iudicare principle. Lebanon does not enforce criminal sentences issued abroad (only civil obligations). |
| Morocco | No extradition of nationals; status considered at the time of the alleged offence. However a Moroccan national may be prosecuted and sentenced in Morocco for acts committed abroad unless it has been proven that a definitive ruling has been given abroad and if sentenced, the person has completed the penalty ordered or been pardoned. Morocco does not enforce judgments issued abroad against their nationals but retries them instead. |
| Tunisia | No extradition of nationals; status considered at the time of the decision on extradition. Tunisia has active and passive personality jurisdiction and thus the person may be prosecuted and sentenced by Tunisian courts, unless it is acknowledged that the foreign law does not punish said offence or if the guilty party can show that (s)he has been definitely prosecuted abroad and, if sentenced that (s)he has completed the sentence or the time limit has expired or pardon has been obtained. |
| Palestine | No extradition of nationals; status considered at the time of the alleged offence; according to the Basic Law of 2003, a Palestinian may not be deported or prevented from returning to his or her country. No Palestinian may be extradited to a foreign State. Instead (s)he would be brought before Palestinian courts. |



CASE STUDY

Iraq issued an extradition request for a Jordanian citizen who committed a crime in Iraq. The request was refused by the court of first instance on the ground of nationality. However, since the citizenship was acquired only after the crime had been committed, the court of second instance found that it could not be a ground for refusal of the request. The case was sent back to the court of first instance to proceed accordingly.



CASE STUDY

A woman was murdered in country X. The brother of the victim, who had fled to Jordan, was suspected to have committed the murder and country X issued a request for extradition. Because he was a Jordanian citizen, Jordan refused the extradition but requested from country X to send evidence to Jordan to enable prosecution there. The evidence was never transferred; thus Jordan could not prosecute the individual or fulfil its *aut dedere aut iudicare* duty.

7.3.1. Analysis

The refusal to extradite nationals clearly presents an insurmountable hurdle to extradition requests. However, the decision whether to extradite nationals or not is an essential part of sovereignty and personal jurisdiction over one's subjects, therefore it is entirely in the States' prerogative and in practice questions of realpolitik frequently come into play. Often the protection of one's own citizens outweighs the benefits of promoting the rule of law in a foreign country.

Sometimes close political and diplomatic ties between certain countries make them more willing to extradite their own citizens. Examples include, US extradition treaties with the UK, Italy and Uruguay. Concerns about persecution may be mitigated when allies deal with one another; yet they are nevertheless not completely eliminated. In 1978, the Israeli Knesset enacted a law prohibiting the extradition of citizens, despite the explicit provision to the contrary into the extradition treaty with the US. "The fact that Israel would risk violating its international obligations in order to prevent the extradition of its citizens shows just how powerful its perceived interests in a citizenship exception was. It also suggests that the exception is not unilaterally imposed by the United States, but rather is at times imposed or demanded by the weaker party."⁸¹ Similarly, although the extradition treaty between the United States and the UK after 9/11 included no citizenship exception, it did not take long before this was called into question. In 2004, three former employees of the British bank, National Westminster were extradited to the United States on charges of financial fraud related to the Enron fiasco. This provoked an outcry among civil rights groups and the business community in the UK, leading to street protests and an emergency meeting of Parliament.⁸² The British government complained about the treaty and stated that "[t]he situation is grossly unfair and it is exasperating that the Americans seem to hold all the cards."⁸³ The UK government eventually enacted a statute allowing the home secretary to veto the extradition of British citizens.⁸⁴

81. Robert S. Adler & Elliot M. Silverstein, 'When David meets Goliath: Dealing with Power Differentials in Negotiations' (2000) 5 *Harvard Negotiation Law Review*, 18.

82. Alan Cowell, 'A U.K. Court Approves Extradition of Three Bankers', *Wall Street Journal* (11 July 2006) at C3.

83. David Cracknell and Sarah Baxter, 'Hain Backs NatWest 3 Fight', *Sunday Times* (9 July 2006), News at 2.

84. David Leppard, 'Minister Gets Power to Veto US Extraditions', *Sunday Times* (14 Oct. 2007), News at 4.

Israeli law has been amended and Israel now routinely extradites its citizens to the US. For example, in January 2012, four Israelis were extradited to the US on charges relating to their participation in multiple lottery telemarketing fraud schemes. The schemes targeted elderly victims in the United States and netted the defendants millions of dollars in profits.⁸⁵ Similarly, in June 2016, Mr. S, a Georgian and Israeli citizen, and Mr. O., an Israeli citizen were extradited to the U.S. The two individuals were arrested in July 2015 for charges arising out of Mr. S's orchestration of massive computer hacking crimes against US financial institutions, brokerage firms, and financial news publishers, including the largest theft of customer data from a US financial institution in history in furtherance of securities market manipulation schemes.⁸⁶

The Israeli Supreme Court noted that failing to extradite Israelis in such cases would hurt the ability of Israeli authorities to cooperate with other countries to counter global crime and would essentially offer protection to Israeli citizens to commit crimes using their telephones and computers the victims of which would be citizens in foreign countries.⁸⁷

The extradition of the JCC bomb hoaxer, however, proved more controversial. In this case, the Justice Ministry rejected an informal request from the US to extradite the suspect which was instead charged on multiple counts in Israel.⁸⁸ However the issue here was not a flat-out rejection of extradition based on citizenship but rather the consideration of several factors which led the Ministry to consider Israeli jurisdiction the most appropriate to try the individual, even though a large number of the bomb threats occurred in the US. These factors included the fact that the defendant allegedly committed crimes in a large number of foreign jurisdictions, thus an all-encompassing trial in Israel would prevent him from facing trial in numerous locations around the world. Furthermore, all the crimes were committed while he was residing in Israel, even though the effects were felt all over the world, whereas some of the crimes, including weapons possession and attacking a police officer, were specifically tied to Israel. Additional considerations included the fact that the defendant was a minor when he committed the crimes, and minors are usually not extradited, as well as that he has asserted various physical and mental problems, which might also make extradition problematic. Furthermore, as the Jerusalem Post indicated, Israel might reconsider and approve the request once it is formally submitted in which case it would drop the charges relating to actions which had effect in the US so that extradition would not be disabled on the grounds of double jeopardy.

On the other side, the extradition of citizens is highly unlikely to be allowed by any of the other SPCs. For example, Tunisia refused to extradite its nationals over to any foreign power in light of investigations into the beach attack on 26 June 2015 that killed thirty-eight people, thirty of whom were British nationals. Despite the involvement of ten British investigators in the case, the Tunisian government was adamant that the suspects would be investigated domestically and according to Tunisian law.⁸⁹

85. Federal Bureau of Investigation, Manhattan U.S. Attorney Announces Extradition of Four Israeli Defendants Charged in Multi-Million-Dollar Phony "Lottery Prize" Schemes, <https://archives.fbi.gov/archives/newyork/press-releases/2012/manhattan-u.s.-attorney-announces-extradition-of-four-israeli-defendants-charged-in-multi-million-dollar-phony-lottery-prize-schemes>.

86. US Department of Justice, The United States Attorney's Office, Southern District of New York, <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-extradition-defendants-linked-massive-network>.

87. Allison Kaplan Sommer, 'Bomb Hoaxer's Mom Makes Bid for Sympathy, Fearing Extradition to U.S.', (3 April 2017), <http://www.haaretz.com/israel-news/1.781025>.

88. Yonah Jeremy Bob, 'Israel Charges Teen Hacker over JCC Bomb Threats, Blackmailing US State Senator', (4 April 2017), <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/JCC-Bomb-threat-hacker-indicted-charged-with-blackmailing-US-Senator-488803>.

89. Middle East Eye, 'Tunisia to refuse to extradite suspects in Sousse beach attack', (8th July 2015) <http://www.middleeasteye.net/news/tunisia-refuse-extradite-suspects-sousse-beach-attack-612134320>; apart from question of nationality preventing the extradition, there is furthermore no bilateral extradition treaty between the UK and Tunisia.

The Arab Convention for the Suppression of Terrorism in Art. 6 (h) allows for the legal systems of States not to allow the extradition of its nationals. It merely mandates that in this case, the requested State shall prosecute any such persons who commits in any of the other Contracting States a terrorist offence that is punishable in both States by deprivation of liberty for a period of at least one year or more. The nationality of the person whose extradition is sought shall be determined as at the date on which the offence in question was committed, and use shall be made in this regard of the investigation conducted by the requesting State.⁹⁰

Only Tunisia has indicated that the status of nationality is considered at a different point than provided for in this Convention, namely at the time of the decision on the extradition request.

The Riyadh Arab Agreement for Judicial Cooperation, Article 39 states on the extradition of nationals:

'Each of the contracting parties may refuse to extradite its nationals provided that it undertakes within the limits covered by its jurisdiction to charge which so ever such national who has committed crimes punishable by law in the territories of any other contracting party, whenever the laws of the two states concerned impose a detentive penalty of at least one year, or if a more severe penalty is foreseen in the laws of any of the two contracting parties, once the other contracting party issues a request for legal prosecution accompanied by the appropriate files, documents and information in its possession. The requesting party shall be notified of measures taken in this regard.'

'The nationality of the accused shall be determined as on the date on which the crime for which extradition is requested was committed.'

Tunisia has indicated that it considers the status of the nationality at the time of the decision on the request and Egypt has indicated that the point at which it considers the nationality varies from agreement to agreement. This can create situations where individuals move to countries and acquire nationality after the commission of a crime to avoid extradition. Theoretically under the *aut dedere aut iudicare* principle they would nevertheless not be able to avoid prosecution. However, in the interest of justice and the most appropriate forum for judicial proceedings it would be better to extradite in situations where the nationality is acquired after the commission of the crime.

The European Convention on Extradition states in Art. 6 '(a) A contracting Party shall have the right to refuse extradition of its nationals. (b) Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term 'nationals' within the meaning of this Convention. (c) Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognized as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in subparagraph (a) of this article.'

The European Arrest Warrant (EAW) does not permit the exception to extradition based on nationality. However, the courts of several member states of the European Union have struck down domestic laws implementing the EAW in relation to the extradition of nationals.⁹¹

90. The Arab Convention for the Suppression of Terrorism 1988, Art. 6, para. h.

91. See Alicia Hinarejos, 'Recent Human Rights Developments in the EU Courts: The Charter of Fundamental Rights, the European Arrest Warrant and Terror Lists', (2007) 7 *Human Rights Law Review*, 796-97 and Daniel Sarmiento, 'European Union: The European Arrest Warrant and the Quest for Constitutional Coherence' (2008) 6 *International Journal of Constitutional Law*, 173-75.

7.3.2. Recommendations

Compromises with regards to the extradition of nationals can present good practice, such as the formula adopted by Israel, whereby the national can be extradited, however only after the requesting State certifies that upon conviction, the sentenced person will be transferred back to Israel for the execution of the sentence, if they so wish. Another important compromise is the principle of *aut dedere aut iudicare* whereby the requested State undertakes to prosecute the offence in cases of refusal to extradite. All of the SPCs have indicated that they follow this principle and their legal systems mostly also allow for the transfer of proceedings in this regard (see table and analysis below). The obligation arising from *aut iudicare* does not require prosecution *per se* but rather that the case will be turned over to the appropriate domestic law enforcement agencies to determine in good faith whether prosecution is warranted.⁹² In some international agreements it is additionally mandated that there be no undue delay in proceeding with prosecution. In terms of terrorist offences, the following SPCs which do not extradite their nationals have indicated that they submit such cases without undue delay to their competent authorities provided that the alleged offences fall within the scope of the international counter-terrorism instruments.⁹³ Palestine has noted that it does so in relation to money laundering and terrorism financing offences, whereas Jordan indicated that it does not do so at all. Jordan has further stated that it does not effectively practice its obligation to extradite or prosecute, including by implementing the measures set forth in Security Council Res. 2322(2016) concerning extradition.

Art. 4(a) of the Model Treaty on Extradition, states that if the person whose extradition is requested is a national of the requested State extradition may be refused. However, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested. Taking 'appropriate action' here refers also to taking over responsibility for enforcing a sentence, or the remainder of it, imposed in the requesting State.⁹⁴ While Palestine and Tunisia have indicated that they are able to enforce such a sentence on their nationals, however Morocco and Jordan do not allow for this option.

As suggested in the Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters⁹⁵ the States concerned will need to cooperate closely in advance and the authorities of the State in which the person wanted is located should be consulted at the earliest opportunity on the process of carrying out domestic investigation and prosecution in the requested State if extradition is not possible. Close cooperation is necessary as most if not all of the relevant evidence will have to be gathered in and transferred by the requesting State.⁹⁶ It has to be acknowledged that when prosecution proceedings are initiated in the host State, a number of logistical, financial and evidentiary hurdles will appear which will present considerable cost. This includes transferring victims and witnesses and potentially translating their testimonies. Thus, in the interest of a more practical and more effective trial, extradition is many times a better option than prosecution. Otherwise, States should at least consider the option of transfer of proceedings (see below).

92. This formulation first appeared in the 1917 'Hague Hijacking Convention' more formally known as the Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, UN Doc. A/C.6/418/CORR.1, Annex II, 860 U.N.T.S. 105, 22 U.S.T. 1641, reprinted in 10 International Legal Materials 133 (1971) and has proven to be a model for such a provision in almost all international and regional treaties since then.

93. See list of such instruments and the membership of the analysed SPCs above.

94. para. 70.

95. para. 76.

96. para. 76.

It is not always trusted that the host State's judicial authorities have the will or capacity to prosecute and punish its offending national adequately and there may be cases of protecting the accused when he/she has powerful political contacts.⁹⁷ It has further been observed that States are generally less inclined to take such prosecutions seriously unless its nationals are among the crime's victims.⁹⁸ There is substantive mistrust in this regard which could be addressed by ensuring that the proceedings are as transparent as possible and by allowing observers from the requesting State to participate in the trials. In extreme cases, the transfer of a fugitive to a suitable third State may be an option, as was the situation in the *Lockerbie* case.

7.4. Transfer of Proceedings

| | |
|----------------|---|
| Algeria | <p>Request for transfer of proceedings possible to and from a foreign court</p> <p>Procedure: The Public Prosecutor with territorial competence issues the denunciation of criminal proceedings to the requested country, having secured agreement (a bilateral treaty) from the Ministry of Justice; this denunciation is issued to the country in question through diplomatic channels.</p> <p>Official denunciations (transfer of proceedings) are also possible in the context of a multilateral treaty or under the principle of reciprocity in the absence of a treaty.</p> |
| Egypt | <p>The basis for transfer of proceedings can be international conventions, such as the UN Convention on organized Crime and UN Convention against corruption but in practice it is mainly bilateral agreements. In case there is no multiplayer/bilateral treaty the principles of reciprocity or courtesy is applicable on a case by case basis. The Ministry of Justice is the Central Authority that receives all international legal requests for assistance in criminal matters at first. It accesses and studies it and decides on grounds for approval or refusal. When a request is compliant and possible for execution, the Ministry of Justice sends it to the competent authority according to the tasks assigned in the legal request so it can be executed.</p> <p>In case there is no treaty between the requesting state and Egypt, the Egyptian Ministry of Foreign Affairs sends the judicial cooperation request directly to the Egyptian Public Prosecution 'International Cooperation Office' and the request is studied and if approved the decision will be sent to the competent authority to be executed.</p> <p>Domestic law does not regulate requesting/receiving the transfer of proceedings. However, this is suggested in the new Criminal Procedures draft amendment.</p> <p>Any legal request should include detailed information on the facts, the articles of law relative to the incrimination of the offence, possible articles covering time limits, confidentiality, the name(s) of the law enforcement officers/agents or experts of the requesting state and their contact details (name, telephone number; email address) and all other information relevant to the executing authority to perform the execution of the legal request as efficient as possible. In addition to this human rights guarantees should be mentioned in the request.</p> |
| Israel | Transfer of proceedings is not possible in Israel |

97. Sadoff, *supra* note 6, 384-385.

98. *Ibid.*, 384.

| | |
|------------------|---|
| Jordan | <p>Transfer of proceedings to foreign jurisdiction is possible on the basis of a multilateral or bilateral agreement, whereas Jordan does not issue requests for transfer of proceedings from foreign jurisdictions. The Ministry of Justice receives international legal requests for assistance in criminal matters at first. The request is then forwarded to the Attorney General's Department. There it is accessed and studied. When a request is compliant and possible to deal with it will be executed. Any legal request should at least behold detailed information on the facts, the articles of law relative to the incrimination of the offence, possible articles covering time limits, confidentiality, the presence of law enforcement officers/agents or experts of the requesting state and their contact details (name, telephone number, email address), specific rules applicable and all other information relevant to the executing authority to perform the execution of the legal request as efficient as possible.</p> <ul style="list-style-type: none"> • Double criminality is required |
| Lebanon | <p>Request for transfer of proceedings possible to and from a foreign jurisdiction</p> <p>Procedure: Lebanon asks for the file, which includes the judgment and investigations done so far. Usually the file will be known from the Interpol red notice in terms of the crime and name of the suspect</p> |
| Morocco | <p>Request for transfer of proceedings possible to and from a foreign jurisdiction</p> <p>Procedure: after receiving the official report through diplomatic channels or directly, if permitted by virtue of bilateral or multilateral convention, the Moroccan Ministry of Justice makes sure that it is compliant and proceeds to send it to the competent legal authority so that the appropriate legal decisions and steps be taken and the requesting party will be kept informed, as quickly as possible, of its outcome</p> |
| Palestine | <p>Transfer of proceedings to a foreign jurisdiction is possible on the basis of a multilateral/bilateral agreement or reciprocity.</p> <p>Code of Criminal Procedure stipulates in Article 57 that:</p> <p>“The Deputy Prosecutor who must undertake procedures outside his jurisdiction can transfer the proceedings to a deputy of this other jurisdiction which is competent in this case”.</p> <p>Legal requests for assistance in criminal matters are received through diplomatic channels, starting with the Arabic Liaison Department of the Palestinian Ministry of Foreign Affairs, which in turn transfers the requests to the Ministry of Justice. The role of the Ministry of Justice is that of a mediator. The Ministry of Justice sends it to the competent Public Prosecution which does all needed to execute the requests. Currently, a specialized Public Prosecution has been established in the field of international judicial cooperation and specialized Public Prosecutors have been trained.</p> <p>Any legal request should at least behold detailed information on the type of case, the requesting party and the requested party, the facts, the articles of law relative to the incrimination of the offence, the task to be performed, in particular, the names of the witnesses, their residence and the questions to be asked, possible articles covering time limits, confidentiality, the name(s) of the law enforcement officers/agents or experts of the requesting state and their contact details (name, telephone number, email address) and all other information relevant to the executing authority to perform the execution of the legal request as efficient and well as possible.</p> <p>According to the Oslo Accords, even if an Israeli citizen commits an offense within the territory of the State of Palestine, the jurisdiction is for the Israeli judiciary, thus the defendants are extradited, and their file is referred to the Israeli police at the request of the Israeli liaison without any judicial decision made by Palestinian courts.</p> <p>No requests for the transfer of criminal proceedings from foreign jurisdictions are made from Palestine.</p> |

Tunisia

Request for transfer of proceedings possible **to and from** a foreign jurisdiction

As regards extradition, Tunisia, like many countries, does not extradite its own citizens and in order to prevent persons from escaping from criminal proceedings, it is possible to request a delegation of the criminal proceedings against the person forming the subject matter of the extradition request, thus allowing the State of origin to pursue the suspect itself.

- Double criminality and reciprocity are always required.

Similarly, Tunisia may delegate criminal proceedings to a State that refuses to extradite one of its citizens who has committed an offence in Tunisia.

All international bilateral and multilateral conventions ratified by Tunisia which can form the legal basis for transfer of proceedings:

- United Nations Convention Against Corruption of 2003;
- International Convention on the Fight against the Financing of Terrorism of 1999;
- the Single Convention on Narcotic Drugs of 1961;
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;
- Palermo Convention on Transnational Organized Crime of 2000;
- Additional Protocol to the United Nations Convention on Transnational Organized Crime with a view to Preventing, Repressing and Punishing Human Trafficking and in Particular the Trafficking of Women and Children.

In the absence thereof, the question will be dealt with on a case-by-case basis and according to the principle of reciprocity.

Procedure: letters rogatory are sent or received in the context of mutual judicial assistance. The legal requests must indicate the nature of the matter, the body issuing the request, the body to which the request is addressed, the type of offence, the name of the person sought or sentenced and any useful information concerning the facts of the case and the tasks entrusted to the requested authority at an international level.

The competent body will send the file containing an account of the facts, a reference to the applicable articles in the criminal code, the investigation files and the evidence.

In the area of judicial cooperation, the decision to accept and to cooperate is the responsibility of the Directorate-General of Criminal Affairs at the Ministry of Justice.

In all cases, the application from the requesting State must be presented in the form of international letters rogatory sent through diplomatic channels containing all useful information regarding the facts of the case and the tasks entrusted to the requested authority.

Authorities which execute/recognize the measure:

The Investigating Judge, the Public Prosecutor; the Senior Public Prosecutor at the Court of Appeal (depending on the stage of the case) and the central authority within the Ministry of Justice (as the focal point).

Confidentiality. Given the very sensitive nature of cases related to terrorist crimes, the information relating to this, and in particular those relating to the special investigative techniques and investigative procedures carried out by special agents of national safety with the assistance of the telecommunication technical agencies and under the supervision of the Public Prosecutor, remains confidential for reasons of national security.

7.4.1. Recommendations

As noted above, there are several instances in which it is advisable for States to consider transfer of proceedings, especially in the interest of justice and a more effective trial. SPCs wishing to take advantage of this form of international cooperation have to ensure that their domestic law adequately provides for both

the transfer of proceedings to foreign States and the acceptance of transfers from those States. This includes the ability to discharge the obligation to prosecute once the transfer of proceedings has been accepted and ensuring that the necessary legislative measures are in place to allow the party concerned to exercise the necessary jurisdiction in respect of the offences in question.

The answers provided to the questionnaire indicated that Algeria, Morocco and Tunisia allow for transfer of proceedings to and from a foreign jurisdiction according to established procedures. Jordan however indicated that it only allows for transfer of proceedings to other countries.⁹⁹ Unsurprisingly, Palestine is a peculiar case, whereby the transfer of proceedings is mandatory in relation to Israeli citizens committing crimes on Palestinian territory, whereas Palestine does not issue requests for the transfer of proceedings into its territory from other countries. The answers provided to the questionnaire indicated that due to some countries not recognizing Palestine as a State, they refuse to cooperate in investigations with their Palestinian colleagues. In practical terms, the Palestinians are hindered in their ability to contribute to joint investigations especially since their jurisdiction and sovereignty are severely curtailed.

NOTE: Israel, Egypt, and Lebanon did not provide data in this regard.

7.5. Transfer of Sentenced Persons

| | |
|------------------|--|
| Algeria | <ul style="list-style-type: none"> • Party to the Riyadh Agreement • Domestic legislation does not enable the transfer of sentenced persons to a foreign jurisdiction |
| Egypt | <ul style="list-style-type: none"> • Party to the Riyadh Agreement <ol style="list-style-type: none"> 1. With regard to the transfer of sentenced persons from Egypt to the country which issued the sentence, Egypt has concluded several bilateral treaties (for example with the UK and Northern Ireland). The principles of reciprocity and courtesy apply. 2. With regard to the transfer of a person sentenced for a crime (s)he committed in Egypt and the judgment was issued by an Egyptian court, the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences applies |
| Jordan | <ul style="list-style-type: none"> • Party to multilateral/bilateral treaties enabling the transfer of sentenced persons (Riyadh Agreement and the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences) • Domestic legislation enables the transfer of sentenced persons to a foreign jurisdiction |
| Morocco | <ul style="list-style-type: none"> • Party to multilateral treaties (Riyadh Agreement and the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences) and bilateral treaties enabling the transfer of sentenced persons, • Domestic legislation enables the transfer of sentenced persons to a foreign jurisdiction unless it involves a Moroccan national. |
| Palestine | <ul style="list-style-type: none"> • Party to multilateral treaties enabling the transfer of sentenced persons (Riyadh Agreement and the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences) • Domestic legislation enables the transfer of sentenced persons to a foreign jurisdiction |
| Tunisia | <ul style="list-style-type: none"> • Party to multilateral/bilateral treaties (party to Riyadh Agreement but only signatory of the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences) • Domestic legislation enables the transfer of sentenced persons to a foreign jurisdiction |

99. Note that this potentially conflicts with the answer on the question of extradition of nationals, where Jordan indicated that they would deny such a request, however they would prosecute the individual in Jordan based on the proceedings already undertaken by the requesting State.

7.5.1. Extradition for Execution of Penalty – Minimum Sentence Issued by Requesting State

| | |
|----------------|----------------------------|
| Algeria | Min. 2 months imprisonment |
| Israel | No minimum |
| Lebanon | Min. 2 months imprisonment |
| Morocco | Min. 4 months imprisonment |
| Tunisia | Min. 2 months imprisonment |

7.5.2. Analysis

According to the data on the website of the Arab League, Egypt, Jordan and Palestine have ratified the 'Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences'. Tunisia has signed but not ratified it, while Algeria, Lebanon and Morocco have not ratified or signed the Agreement.

Furthermore, the Riyadh Agreement includes provisions on the execution of sentences against convicted persons in their own States. Verdicts passed in the territory of any of the Parties to the Agreement may be enforced in the territory of another Party if it so requests, as long as the convict is a national of that Party and the penalty for the crime in its territory is at least 6 months. Furthermore there must be at least 6 months remaining of the sentence; the crime in question should not fall under non-extraditable offences; and both the Party which issued the judgment and the person convicted consent to the execution request.¹⁰⁰ According to Art. 59 sentences may not be executed when the execution systems of the two parties are inconsistent with each other; where the penalty has elapsed according to the laws of either party; or if the penalty is considered reformatory, disciplinary, one of controlled liberty, or secondary or supplementary in accordance with the laws and legal system of the Party requesting execution. When it comes to amnesty, both general and special amnesty issued by the Party which passed the sentence will apply to the person convicted. However, a special amnesty will not apply if issued by the Party requesting execution of penalty. If the latter issues a general amnesty which includes the person convicted, the Party which had passed the sentence has to be notified and it may request within 15 days that the convict be returned to it to serve the remaining period of his sentence.¹⁰¹ The Party requesting execution may apply to the person convicted such secondary and supplementary penalties as would correspond to the penalty administered in accordance with its laws if the sentence does not stipulate such penalty or its equivalent.¹⁰²

¹⁰⁰. Art. 58.

¹⁰¹. Art. 61.

¹⁰². Art. 62.

7.6. Extraditable Offences

| | |
|----------------|---|
| Algeria | <p>Non-political</p> <p>+</p> <p>Double criminality – not clear at which point – left to discretion of Supreme Court (does not require identical terminology)</p> <p>+</p> <p>Punishable in the requesting State with criminal punishment (<i>crime</i>) or a punishment for a lesser offence (<i>délit</i>) with a minimum sentence of two years or more¹⁰³</p> <p>Some bilateral treaties stipulate a different period.</p> |
| Egypt | <p>Non-political; not merely military</p> <p>+</p> <p>Double criminality at the time of the decision on request (does not require identical terminology)</p> <p>+</p> <p>According to most bilateral treaties: a minimum of one year sentence in both countries (some bilateral treaties stipulate a different period)</p> |
| Israel | <p>Non-political; not merely military</p> <p>+</p> <p>Double criminality at the time of the commission of offence (does not require identical terminology)</p> <p>+</p> <p>Minimum one-year sentence had it been committed in Israel</p> |
| Jordan | <p>Double criminality at the time of the commission of offence (does not require identical terminology)</p> |
| Lebanon | <p>Non-political</p> <p>+</p> <p>Dual criminality at the time of the receipt of the extradition request (does not require identical terminology)</p> <p>+</p> <p>Important felonies and misdemeanours</p> <p>+</p> <p>Minimum one-year sentence under the law of the requesting State or the law of the state in whose territory the acts were committed for all the offences covered by the request</p> |
| Morocco | <p>Non-political; not merely military</p> <p>+</p> <p>Double criminality at the time of the commission of offence (does not require identical terminology)</p> <p>+</p> <p>Criminal penalty or a torturous penalty for a lesser offence with a minimum sentence of one year</p> |
| Tunisia | <p>Non-political; not merely military</p> <p>+</p> <p>Double criminality at the time of the decision on request¹⁰⁴</p> <p>+</p> <p>Criminal penalty or correctional penalty in Tunisia</p> <p>+</p> <p>Penalty of imprisonment of min. 6 months in requesting State for all offences specified in the extradition request combined¹⁰⁵</p> |

103. Code de Procédure Pénale, Arts. 697-691.

104. Code de Procédure Pénale, Art. 311.

105. Code de Procédure Pénale, Art. 311(2).

| | |
|-----------|---|
| Palestine | Non-political |
| | + |
| | Double criminality |
| | + |
| | One of the enumerated offences enumerated in Table 1, annexed to the Extradition of Fugitive Criminals Act 1927 |

7.6.1. Analysis of Dual Criminality Requirement

Dual criminality is a fundamental requirement in all extradition regimes and all SPCs require it for the extraditable offences. That is, the conduct for which extradition is sought must constitute an offence in both the requesting and requested State. When it comes to extradition relating to convention offences this requires the creation of specified offences under domestic law. Yet it is possible that particular domestic provisions elaborate much of the details of the offences differently from the domestic provisions of other member states.¹⁰⁶

The dual criminality test in extradition has been considerably simplified in recent times. The approach has moved from listing the offences to a general test of punishment and to a consideration of the underlying conduct instead of focus on the description of the offence. The United Nations 1990 Model Extradition Treaty provides in Art. 2(2) that determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether: (a) the laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology, (b) under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account. If these principles are applied the specific differences in the domestic descriptions of the offences do not matter.

All the states have indicated in their questionnaires that they have included as extraditable offences the offences set forth in the international instruments or required under resolutions 133 (2001) and 2178 (2014).

The Riyadh Agreement further loosened the double criminality requirement. According to Article 40, this requirement is satisfied not only if the acts are punishable by the laws of both the requesting and requested parties but also in cases where they are only punishable under the laws of the requesting party as long as the individual in question is a national of the requesting State or of another contracting party which applies the same penalty.

In the 2009 MENA FATF Mutual Evaluation Report it was noted that in terms of money laundering, Lebanon did not adequately criminalise the relevant crimes.¹⁰⁷ The money laundering crime does not cover all main wanted crimes, which the report considered to affect the ability of the country to offer international cooperation in this regard. The effectiveness however could not be properly evaluated as there was no case related to the extradition of said criminals.¹⁰⁸ The Report further found that the financing of terrorism definition did not detail what the financing act should include with regard to saving or collecting money as

¹⁰⁶. Yepes-Enriquez and Tabassi, *supra* note 2, 206.

¹⁰⁷. Middle East and North Africa Financial Action Task Force, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Lebanese Republic (10 November 2009), 190.

¹⁰⁸. *Ibid.*, para. 40.

mentioned in Art. 2 of the Convention for the Suppression of the Financing of Terrorism; also the financing of terrorism crime context did not include the use of funds by a terrorist, but was only limited to the financing of terrorism or terrorist acts or terrorist organizations. In addition, there was no reference to the term of funds and therefore there is no definition or reference to the fact that these funds could be from a licit or an illicit source, which might affect the international cooperation in this field.¹⁰⁹ Whether lacking definitions such as the ones described here in practice present a real problem will depend on whether States are flexible in considering the double criminality threshold to be met and do not require identical wording or not. Most of the SPCs, have indicated that identical wording is not required as long as both States criminalise the underlying conduct.

In terms of the Riyadh Agreement, there is an obligation to extradite (Art. 40) when the penalty in both parties is one year or more, whether that is the maximum or minimum in the gradation of the stipulated penalty. Several SPCs (all signatories of the Agreement) have indicated thresholds higher than this, namely one year (or even two) minimum penalty. It would be advisable to lower this threshold to the level of the Riyadh Agreement.

Pursuant to the Algerian Code of criminal procedure, in the case of a convicted individual, extradition may be granted when the penalty pronounced by the court of the requesting State is two months of imprisonment or more. Some bilateral treaties establish different thresholds.

7.6.2. Domestic Provisions Incorporating Treaty Provisions in Terms of Extraditable Offences

| Algeria | Israel | Jordan | Morocco | Tunisia | Palestine |
|---------|--------|--------|---------|---------|-----------|
| Yes | Yes | No | Yes | Yes | Yes |

7.7. Specific Evidentiary Requirements

| | |
|-----------|---|
| Algeria | No more than what is admitted as evidence in criminal procedures |
| Israel | Prima facie evidence (see further explanation below) that would have led to the prosecution of the individual in Israel if committed in Israel. |
| Jordan | According to the domestic law, the evidence needs to be such that it would be accepted by a judge for a conviction . This is however only theoretically applicable and is not actually applied in practice. Usually the evidentiary requirements or lack of any such requirements are set in bilateral agreements. |
| Lebanon | No |
| Morocco | No |
| Tunisia | No |
| Palestine | No |

¹⁰⁹. Ibid., para. 695.

7.7.1. Analysis

Out of the States under consideration, the *prima facie* evidentiary requirement is only present in Israel. It is an important safeguard against unwarranted extradition requests, yet it undoubtedly complicates the process. The UK parliament abolished the *prima facie* rule for European countries already in the Extradition Act of 1989. It was considered that the rule 'did not offer a necessary safeguard for the [fugitive] ... but was a formidable impediment to entirely proper and legitimate extradition requests'.¹¹⁰

Nevertheless, the removal of the *prima facie* rule can mean that extraditions are sought merely for the purposes of investigation and the system can be used for ulterior motives when there is actually no evidence against the person in question. The Swedish extradition request for the founder of WikiLeaks, was a case in point. Considering that the EAW also removes the checking of political motives behind extradition requests, such a model would appear very vulnerable to abuses out of political considerations. Thus, the principle of dual criminality and *prima facie* evidentiary rules can be the best way of preventing political motives from lurking behind extradition requests used as a means of going after political opponents and human rights activists.

7.8. National Central Authority Responsible for Processing Extradition Requests

| | |
|----------------|--|
| Algeria | Ministry of Justice – the Division on specialized criminal cases - evaluates the request after it receives the file with the verified documents from the Ministry of Foreign Affairs. The Public Prosecutor at the Supreme Court interrogates the foreigner who then appears before the Criminal Chamber at the Supreme Court within 8 days. The latter provides a reasoned opinion on the extradition request. |
| Egypt | As a general rule, the International Cooperation and Human Rights Department within the Ministry of Justice, is responsible for receiving extradition requests through diplomatic channels by the Ministry of Foreign Affairs and in certain cases through Interpol. In certain cases, requests are sent directly from the Ministry of Foreign Affairs to the Public Prosecution (International Cooperation Office). This office is responsible for studying the request. It creates a file for it and determines whether the request is approved or not depending on the discretion of the Attorney General. Alternatively, the president of Egypt might approve an extradition request after an acceptance by the Cabinet of Ministers in the absence of a treaty or agreement. |
| Israel | Ministry of Justice (Department of International Affairs in the State's Attorney's Offices). It may direct the petition to be submitted to the Jerusalem District Court to determine whether the requested person is extraditable. |
| Jordan | specialized Extradition requests normally go from the Ministry of Foreign Affairs to the Minister of Justice which only transfers it to the Prosecutor General Office which in turn sends it to the judiciary There is no department for international cooperation at the Ministry of Justice and the Department of the Prosecutor General has no specialized office to deal with international cooperation, however efforts are underway to try and establish such a specialized unit |
| Lebanon | The Ministry of Justice (Public Prosecutor at the Court of Cassation) |

¹¹⁰ A Review of the United Kingdom's Extradition Arrangements, Following Written Ministerial Statement by the Secretary of State for the Home Department of 8 September 2010, Presented to the Home Secretary on 30 September 2011.

| | |
|------------------|---|
| Morocco | Ministry of Justice (Directorate of Criminal Affairs and Grace) |
| Tunisia | Ministry of Justice. The Ministry of Foreign Affairs handles communications regarding extraditions and transfers the files to the Ministry of Justice which ensures that they are in order. |
| Palestine | Ministry of Justice (Public Prosecution) |

7.9. Tracking and Monitoring System for Outgoing and Incoming Extradition Requests

A coherent and complete system for monitoring requests allows for better tracking of cases and a more precise evaluation of the effectiveness of cooperation in this regard.

| | |
|------------------|---|
| Algeria | The Subdirectorate of specialized criminal justice (central organ of the Ministry of Justice) is in charge of all files regarding international criminal assistance and extradition. Statistics on the subject are kept and follow up of incoming in addition to outgoing applications is ensured |
| Israel | Exists |
| Jordan | N/A |
| Lebanon | N/A |
| Morocco | Exists |
| Tunisia | A service within the Directorate General of criminal affairs monitors extradition requests |
| Palestine | N/A |

7.10. Time Limits

| | |
|----------------|---|
| Algeria | <p>Ordinary proceedings</p> <ol style="list-style-type: none"> 1. After the arrest, the foreigner is interrogated to establish his or her identity and inform him or her of the reasons for his or her arrest - within 24 hours 2. (S)he is transferred to the capital's prison and the relevant documents are sent to the prosecutor general at the Supreme Court - as soon as possible 3. The prosecutor general interrogates him or her and submits the report to the Supreme Court - within 24 hours 4. All reports and relevant documents are sent to the criminal division of the Supreme Court – immediately 5. The foreigner or the concerned party appears before the criminal division of the Supreme Court – within 8 days (an additional 8 days can be granted upon request by the public prosecutor or the foreigner) 6. The file with the final decision is sent to the Minister of Justice – within 8 days <p>Summary proceedings</p> <ol style="list-style-type: none"> 1. a copy of the declaration verifying the foreigner's consent is referred through the Prosecutor General at the Supreme Court, to the Minister of Justice to take the necessary action - without delay |
| Egypt | Different time limits are set in different bilateral agreements, based on how complex the requirements are for the authorisation/certification of documents, whether translations are needed, etc. |

| | |
|----------------|---|
| Israel | <p>According to Israel's Extradition Law, arrest can be requested either before the submission of a petition for extradition (due to urgency) before the District Court of Jerusalem (Provisional arrest) or after. In case of arrest before the filing of the petition for extradition, the arrest warrant will be valid for a maximum of 60 days before filing a petition before the court for his/her extradition. After the Requesting State has submitted a Request for Extradition of the detained wanted person the Attorney General may request the court an additional period not exceeding ten days to submit the petition before the court.</p> <p>If extradition is affirmed, it shall take place within sixty days from the day on which the declaration that a person is extraditable becomes final (section 19(a) of the Extradition Law).</p> |
| Jordan | Generally speaking there are no time limits, however they exist in some bilateral agreements. |
| Lebanon | No time limits |
| Morocco | <p>Legal stage: Criminal Chambers of the Court of Cassation shall rule on the request within 5 days of seizure</p> <p>Administrative stage: no time limits</p> |
| Tunisia | The foreigner appears before the Court of Appeal within 15 days from notification of the arrest |

7.11. Options for Appeal

| | |
|------------------|---|
| Algeria | None |
| Egypt | None |
| Israel | There is a right to appeal a decision rendered by the District Court and the appeal shall be submitted to the Supreme Court, sitting as a Court of Criminal Appeals, within thirty days from the day on which the decision is rendered. |
| Jordan | Appeal possible in 15 days from the verdict |
| Morocco | None |
| Tunisia | None |
| Palestine | Decision can be appealed within 15 days to the Court of Appeal |

7.12. Simplified Extradition Proceedings when a Person Gives Consent to Surrender

| | |
|----------------|--|
| Algeria | If the concerned party decides upon trial to waive his or her right to benefit from the provisions relating to ordinary proceedings, and formally accepts his or her extradition to the authorities of the requesting country, then the court validates such a declaration. A copy of this declaration is referred without delay, through the Prosecutor General at the Supreme court, to the Minister of Justice to take the necessary action. ¹¹¹ |
| Egypt | No provisions for adopting simplified procedures exist |

¹¹¹. Arts. 708-711.

| | |
|------------------|--|
| Israel | Following the submission of a petition, the requested person may announce his willingness to return to the requesting country. In this case, the judicial procedure shall be suspended and the requested person shall be kept in detention until his surrender to the requested country but not more than for 15 days, or 30 days under exceptional circumstances approved by the District Court on application by the Attorney General. The rule of specialty and other clauses contained in the Extradition Law will not be applied. However, the clauses of the Extradition Law will apply when the requested person consents to the court declaring him or her extraditable within the framework of the petition. ¹¹² |
| Jordan | Simplified procedures are available if the requested person announces his or her willingness to return to the requesting State by signing a statement for the police. More commonly, such a statement will be given in front of a judge, signed and approved by the attorney general. |
| Lebanon | So-called administrative extradition is possible only based on some bilateral treaties, for example: bilateral agreement with Syria |
| Morocco | Available |
| Tunisia | Available |
| Palestine | Available |

7.13. Can Requests be Sent to Bodies Specialized in Human Rights Issues in Order to Freeze an Extradition Request

| | |
|----------------|--|
| Algeria | No |
| Israel | No, however a petition against the minister's extradition order can be subject to judicial review of the High Court of Justice |
| Jordan | No |
| Morocco | Claims can be submitted to the Committee against Torture in proceedings to freeze the execution of extradition decisions |
| Tunisia | No |

7.14. Temporary Surrender

| | |
|------------------|---|
| Algeria | Not available |
| Egypt | Available in some bilateral agreements, for example with Saudi Arabia |
| Israel | Available |
| Jordan | Available |
| Lebanon | Not available |
| Morocco | Available |
| Tunisia | Available |
| Palestine | Available |

¹¹² Art. 20(B).

7.15. Reports/Minutes Required at Surrender to Agents of Requesting State

| | |
|------------------|---|
| Algeria | Required and signed by agents responsible for the operation so as to maintain a written record of the procedure |
| Egypt | Required |
| Israel | Required |
| Jordan | N/A |
| Morocco | N/A |
| Tunisia | N/A |
| Palestine | N/A |

7.16. Capacity

| | |
|------------------|--|
| Algeria | An office at the Ministry of Justice is dedicated to dealing with applications for legal assistance and extradition (the office of mutual legal assistance in criminal matters) with modern means of communication and qualified personnel (magistrates, translators, civil servants, etc.) |
| Egypt | The International Cooperation Office has permanent staff which can provide translations from and to English and French. In situations involving other languages translators are called from the relevant embassies. |
| Israel | Department of International Affairs in the State's Attorney's Office has 17 attorneys specializing in extradition requests, mutual legal assistance and transfer of sentenced persons |
| Morocco | The Ministry of Justice has all the necessary human resources, including expertise of magistrates, executives and interpreters to complete extradition procedures. Nevertheless it has noted request translation problems as a challenge. |
| Palestine | The Department of International Affairs in the State's Attorney's Office has many prosecutors specializing in extradition requests and mutual legal assistance |
| Tunisia | Necessary capacity exists to facilitate legal assistance/extradition. There is a translation service at within the Ministry of Justice, under the authority of the directorate general of legal affairs and there is a service within the directorate general of criminal affairs that is in charge of these persons. |

8. Country by Country Analysis

8.1. Algeria

8.1.1. Legal Basis for Extradition

Article 82 of the Algerian Constitution (as modified in 2016) stipulates that no one shall be extradited outside Algeria except according to and in application of the extradition law. Extradition law is provided for in the Algerian Code of Criminal Procedure, in bilateral agreements to which Algeria is a party as well as in multilateral treaties. The provisions related to the extradition of criminals are stipulated in the Code of Criminal Procedure in Articles 694-720. Judicial Cooperation is mainly based on agreements and in the absence of such agreements it depends on the principle of reciprocity in the field of mutual legal assistance requests. As for extradition, Algeria can extradite on the basis of a bilateral treaty or agreement that remains the most effective legal instrument on the subject. In the absence of a bilateral treaty, Algeria can extradite on the basis of a multilateral or regional treaty whilst basing itself on the principle of reciprocity.

NOTE: UN Treaties against terrorism can also be the legal basis for extradition (such as the 1997 Convention for the Suppression of Terrorist Bombings ratified by Algeria according to the presidential decree 2000/444 of the 23 of December 2000). This treaty is not automatically a basis for extradition in the absence of agreement between the concerned countries. It remains an option provided to the required countries if they decide to accept the extradition (article 9/2 of the treaty). The same provision exists in other multilateral conventions such as the UN convention against corruption [art /44/4) or UNTOC (art 16/4)].

As to the extradition of criminals, the measures and procedures shall be applied according to the provisions of the Code of Criminal Procedure; as no person may be extradited to a foreign government unless (s)he is subject to prosecution for a crime (felony or misdemeanour) punished under Algerian law or has been convicted therein.

8.1.2. Extraditable Offences

Algeria adopted a 'penalty approach' to extradition as opposed to 'a list approach' which eliminates the need to set out all the relevant offences in a subsidiary document and replaces it with 'a test based on the applicable penalty' (does not require identical terminology). All offences set forth in international or regional instruments of which Algeria is a member State are deemed to be extraditable offences – this includes the UN Counter-Terrorism Conventions and Security Council Resolutions 1373 (2001) & 2178 (2014). According to Article 697 of the Code of Criminal Procedure, Algeria can extradite when facts are punishable in the requesting state with criminal punishment (*crime*) or a punishment for a lesser offence (*délit*) with a minimum sentence of two years or more. In the case of convicted persons, the extradition is possible if the sentence pronounced is two months or more.

8.1.3. Conditions for Extradition

When the offence was committed:

- on the territory of the requesting State by a subject of that State or a foreigner
- outside the territory of the requesting State by a subject of that State
- outside the territory of the requesting State by an individual who is foreigner to that State, when the offence is among those that can be prosecuted under Algerian law in Algeria, even when if committed by a foreigner abroad.¹¹³

8.1.4. Grounds for Refusal, Personal and Territorial jurisdiction

According to Article 698 of the Code of Criminal Procedure, extradition shall not be granted in any of the following circumstances:

1. If the person required to be extradited is of Algerian nationality at the time of committing the crime in question, however the latter's prosecution and judgment by national jurisdiction is guaranteed
2. If the crime or misdemeanour has a political nature or it was found out, under the circumstances, that the extradition is requested for a political purpose,
3. If the crime or misdemeanour is committed within the Algerian territory. According to the territoriality principle, any breach whose act characterizing one of the constitutive elements of a crime has been committed in Algeria is considered to have been committed in the Republic's territory.¹¹⁴ National territory includes domestic and territorial waters according to Art. 3 of the Code of Criminal Procedure and Art. I of the Customs Code. According to the flag principle, Algerian jurisdiction is competent to ascertain crimes committed on the high seas on vessels flying an Algerian flag regardless of the nationality of the perpetrators as well as crimes committed in an Algerian port on board a foreign vessel. Algerian jurisdiction remains competent to ascertain crimes committed on board Algerian aircraft regardless of the nationality of the perpetrator of the offence or if the aircraft lands in Algeria after the crime.¹¹⁵
4. If the crime or misdemeanour is followed up and a final judgment is rendered therein in Algeria even if it is committed outside Algeria,
5. If the public action lapsed by prescription before submitting the request or the penalty lapsed by prescription before arresting the person to be extradited. In general, whenever the public action lapses in the applicant country according to the laws of the applicant country or the country required to carry out the extradition, as long as in the latter instance the offence is among those which can be persecuted by the State even when committed outside its territory and by a foreigner;¹¹⁶
6. If a pardon is granted in the applicant country or the country required to carry out the extradition provided that in the latter case, the crime may have been followed up in such country if it was committed outside its territory by a foreigner;

¹¹³. Art. 696.

¹¹⁴. Art. 586.

¹¹⁵. Arts. 590-591.

¹¹⁶. Art. 698 (2-6).

7. Human rights and torture concerns. This provision is not expressly included in article 698 of the Code of criminal procedure. However, in practice, when examining passive extradition requests, the Algerian judicial authority deciding on the request remains vigilant regarding the respect for the rights of the person to be extradited in the requesting State.

Article 695 of the Code of Criminal Procedure provides that no person may be handed over to a foreign government unless (s)he has been the subject of a criminal prosecution or been sentenced for an extraditable offence. Article 696 adds that the Algerian government may hand over a non-Algerian person to a foreign government, at the latter's request, if this person is found in Algeria and faces prosecution in the requesting State or has been sentenced by a court in that State. However, extradition may not take place unless the offence, subject of the request, has been committed:

- In the territory of the requesting State by one of its citizens or by a foreigner;
- Or outside its territory by a citizen of that State;
- Or outside its territory by a foreigner if the offence is one of those that may be prosecuted in Algeria under Algerian law, even if committed by a foreigner abroad.

8.1.5. What is not Considered a Political Crime

Algeria has noted that it is very important for successful extradition practices that political crimes do not include terrorism.

8.1.6. Nationals – Extradition and Jurisdiction

According to Article 698 of the Code of Criminal Procedure, the extradition of Algerian citizens is not acceptable. By referring to the bilateral agreements held by Algeria in the field of extradition of criminals, we find that neither of the involved parties hand over their subjects to the other; however, the country to which the request is submitted promises to bring to trial its subjects who committed crimes on the territory of the other country, crimes that are punishable under the laws of both countries. A person cannot be extradited if he/she has been classified as an Algerian national on the date of the events described in the extradition request.¹¹⁷ According to the active personality principle and the principle of *aut dedere aut iudicare*, Algeria has jurisdiction over crimes (felonies and misdemeanours) committed by its nationals abroad and is competent to judge them on the condition that they are not definitively judged abroad in accordance with Articles 582-583 of the Code of Criminal Procedure and Article 3 bis 2 of the Law on Money Laundering and Financing of Terrorism. Algerian courts are competent to judge any crime of terrorism committed by their nationals regarding terrorist offences of whatever nature committed in the country or another state and will do so without undue delay.¹¹⁸ Algeria has ratified all the international instruments for prevention and response to terrorism whilst transposing into its repressive regulatory framework offences set out within these instruments.

A sentence imposed on an Algerian national under the domestic law of the requesting State cannot be enforced in Algeria. According to the passive personality principle, when an Algerian is the victim of a crime

¹¹⁷ Art. 698(1).

¹¹⁸ Arts. 87 bis 6 and 87 bis 11 of the Criminal Code.

(felony or misdemeanour) abroad, regardless of the nationality of the perpetrator, Algerian law is applicable under Art. 588 of the Code of Criminal Procedure and Article 3 bis 2 of the Law on Money Laundering and Financing of Terrorism.

8.1.7. Jurisdiction over Crimes committed against the State

Under the protective principle Algeria has jurisdiction over crimes, even if committed abroad by a foreigner, when such acts threaten national security, institutions, diplomatic personnel, national currency and Algerian nationals.

8.1.8. Dual Criminality

Extradition may not be accepted in any case if the act is non-punishable under the Algerian law by the sanction for a felony or misdemeanour. Article 697 of the Code of Criminal Procedure lists the extraditable offences, whether requested or afforded, as follows: (1) All acts that are punishable as felonies under the law of the requesting State; (2) The acts that are punishable under the law of the requesting State as misdemeanours if the minimum term of the applicable sanction according to the provisions of this law equals to or exceeds 2 years or, in the case of a sentenced person, if the sentence imposed by the court in the requesting State equals to or exceeds two months of imprisonment.

The acts of attempt or participation are subject to the previous rules provided they are punishable under the law of the requesting country and the country requested to conduct extradition. If the request is related to several crimes committed by the person requested to be extradited and a judgment has not been rendered therein, extradition shall not be accepted unless the maximum period of the applicable sanction under the law of the requesting country for such crimes is equal to or exceeds imprisonment by two years. If the person requested to be extradited has been sentenced before in any country through a final judgment by imprisonment for 2 months or more for one of the misdemeanours of the general law, extradition shall be accepted according to the previous rules. In other words, extradition shall be accepted only for felonies or misdemeanours but without consideration of the period of the applicable or sanction ruled in the last crime.

8.1.9. Ordinary and Simplified Procedures of Criminals' Extradition: Articles 702-707 of the Code of Criminal Procedure

Any request for extradition shall be addressed to the Algerian Government through the diplomatic channels and accompanied either by a judgment or sentencing to punishment, even if by a default judgment or in absentia, or by an act of criminal procedure formally ordering or acting in full right to refer the sentenced or accused person to the criminal jurisdiction, either by a warrant of arrest or of any other act having the same power issued by the judicial authority, provided that the latter papers include the precise indication of the matter for which they are issued and the date of the act in question.¹¹⁹ At the same time, the applicant country must submit a copy of the provisions applicable to the incriminated act along with an account of the relevant facts.¹²⁰ The above-mentioned items must be issued in original or in authenticated copy.

¹¹⁹ Art. 702.

¹²⁰ Art. 702.

The extradition request is, after verification of the documents, sent over with the file by the Ministry of Foreign Affairs to the Ministry of Justice which evaluates the request.¹²¹ The Public Prosecutor shall interrogate the foreigner to verify his or her identity and inform him or her of the title by virtue of which (s)he is under arrest within twenty-four hours after the arrest.¹²²

Minutes shall be made of such procedures.¹²³ The foreigner shall be transferred as soon as possible and detained in the capital's prison.¹²⁴ At the same time, the documents submitted in support of the extradition request shall be referred to the Public Prosecutor at the Supreme Court who in turn interrogates the foreigner and submits a report in this regard within twenty-four hours.¹²⁵ The said minutes and all other documents shall be immediately sent to the criminal chamber at the Supreme Court. The foreigner appears before it eight days at most counting from the date of submitting the documents.¹²⁶ At the request of the Public Prosecution or the foreigner, an additional period of 8 days can be accorded prior to the hearings.¹²⁷ After that, the foreigner is interrogated and a report is made on such interrogation. The court hearing shall be held publicly unless decided otherwise pursuant to a request of the public prosecution or the foreigner.¹²⁸ The statements of the public prosecution and the concerned party shall be heard and the latter may hire a certified attorney and a translator.¹²⁹ The foreigner may be released temporarily any time during the procedures.¹³⁰ If the concerned party decides upon trial to waive his right to benefit from the previous provisions, and accepts his extradition officially to the authorities of the requesting country, then the court validates such a declaration. A copy of this declaration is referred without delay, through the Public Prosecutor, to the Minister of Justice to take the necessary action.¹³¹ If the individual subject to extradition does not consent to be extradited the Supreme Court provides a reasoned opinion on the extradition request. The opinion is not favourable if the court considers that there has been a mistake or that the legal conditions have not been met. The file has to be sent to the Minister of Justice within 8 days counted from the start of the hearings.¹³²

Article 712 added that the prosecutor general at the court may, in case of expedition, and upon direct request by the judicial authorities in the applicant country, order the temporary arrest of the foreigner, if only a notice has been sent to them by mail or any other express means which would have a physical written effect that shows the existence of any of the documents set out in Article 702. A legal notice must be sent, at the same time, to the Ministry of Foreign Affairs, about the request via diplomatic channels or by mail or wire or any other mailing means that might have a written effect. The public prosecutor must inform the Minister of Justice and the prosecutor general at the Supreme Court of such arrest.

¹²¹. Art. 703.

¹²². Art. 704.

¹²³. Art. 704.

¹²⁴. Art. 705.

¹²⁵. Art. 706.

¹²⁶. Art. 707.

¹²⁷. Art. 707.

¹²⁸. Art. 707.

¹²⁹. Art. 707.

¹³⁰. Art. 707.

¹³¹. Art. 708.

¹³². Art. 709.

8.1.10. Time Limits in Chronological Order

1. After the arrest, the foreigner is interrogated to establish his identity and inform him or her of the reasons for his arrest - within **24 hours**
2. (S)he is transferred to the capital's prison and the relevant documents are sent to the prosecutor general at the Supreme Court - **as soon as possible**
3. The prosecutor general interrogates him or her and submits the report to the Supreme Court - within **24 hours**
4. All reports and relevant documents are sent to the criminal division of the Supreme Court – **immediately**
5. (S)he appears before the Supreme Court – within **8 days** (an additional 8 days can be granted upon request by the public prosecutor or the foreigner)
6. The file with the final decision is sent to the Minister of Justice – within **8 days**

8.1.11. Time Limits in Summary Proceedings

A copy of the declaration verifying the foreigner's consent is referred through the Prosecutor General at the Supreme Court, to the Minister of Justice to take the necessary action - **without delay**

8.1.12. Concurrent Requests

Article 699 of the Algerian Code of Criminal Procedure covers situations where requests are received from two or more States for the extradition of the same person. It provides that the priority rests with the requested State where its interests were deteriorated cause of the commission of the crime at issue and in the second place the State where the crime was committed on its territory.

If the request relates to different offences, the priority will be determined based on the seriousness of the offence, the place of commission, the chronological order in which the requests were received and the commitment undertaken by one of the requested States to extradite the same individual to other requested States. No statistics in the field of extradition of criminals were available to the experts.

The following are the most important bilateral agreements signed by Algeria in this field:

- Agreement on the implementation of provisions and criminals' extradition with France on August 27, 1964.
- Agreement on criminals' extradition and judicial collaboration in criminal matters with Belgium on June 12, 1970.
- Agreement on criminals' extradition with United Arab Emirates on October 12, 1983.
- Agreement on criminals' extradition with Spain on December 12, 2006.
- Agreement on criminals' extradition with Italy on July 22, 2003.
- Agreement on criminals' extradition with Nigeria on March 12, 2003.
- Agreement on criminals' extradition with South Africa on October 19, 2001.
- Agreement on criminals' extradition with Pakistan on March 25, 2003.

- Agreement on criminals' extradition with Iran on October 19, 2003.
- Agreement on criminals' extradition with the UK on July 11, 2006.
- Agreement on criminals' extradition with South Korea on March 13, 2006.
- Agreement on criminals' extradition with China on November 6, 2006.
- Agreement on criminals' extradition with Portugal on January 22, 2007.
- Agreement on criminals' extradition with Vietnam on April 14, 2010
- Agreement on criminals' extradition with Kuwait on October 12, 2010
- Agreement on criminals' extradition with Saudi Arabia on April 13, 2013
- Agreement on mutual legal assistance and judicial cooperation with Morocco on March 15, 1963, completed by the Protocol signed in Ifran on January 15, 1969.
- Agreement on mutual legal assistance and legal and judicial cooperation with Tunisia on July 26, 1963
- Agreement on mutual legal assistance and legal and judicial cooperation with Egypt on February 29, 1964
- Agreement on legal and judicial cooperation with Jordan on June 25, 2001.

8.1.13. Challenges

Algeria has experienced problems of refusal to arrest persons subject to international arrest warrants or red notices relating to corruption, drug trafficking, etc. by countries despite having proof of the presence of such individuals in these countries. They have nevertheless attempted to resolve such problems by addressing extradition applications despite the non-arrest of said individuals.

Concerning refusal by host countries to arrest and extradite wanted person, the reasons essentially fall under one of the following reasons:

- A lack of bilateral extradition treaty with the host/requested country (e.g. USA)
- Some other countries like the UK are very demanding (especially regarding evidence).

Furthermore there are differences between civil law and common law systems: the conditions and formalities required are different.

- Human rights standards: the requested/host country makes it certain that the wanted person will have a fair trial in the requested country.
- Other difficulties have arisen in relation to the death penalty

8.1.14. Universal Jurisdiction

International instruments and resolutions of the United Nations Security Council have been transposed into national legislation, for example: The nature of foreign terrorists.

Pursuant to the Algerian Code of criminal procedure (Art. 588), Algerian courts are competent to prosecute and try, in accordance with Algerian law, any foreigner who, outside of the Algerian territory, is guilty, as perpetrator or accomplice, a) of a felony or a misdemeanour against the Algerian State's security or fundamental interests, or against Algerian diplomatic agents and the premises of diplomatic and consular missions, or b) of counterfeiting banknotes and coins that are legal tender in Algeria.

Algerian courts are also competent over the felonies or misdemeanours committed abroad against Algerian nationals.

8.1.15. Conflict of Jurisdiction / Challenges

All bilateral agreements ratified by Algeria on extradition and some on mutual assistance foresee provisions for transfer of procedures by means of official reporting mechanisms. Algeria has indicated that difficulties which arise from conflict of jurisdiction mainly emanate from the diversity of legal systems and the absence of bilateral and multilateral agreements with some States.

8.1.16. Cooperation

Algeria notes that the sincere will for cooperation, including facilitation, extension of deadlines, communication and coordination, is the number one factor in ensuring successful extradition practices. In this context it also notes the importance of reliable relationships without demanding guarantees absent a legal basis. Despite this, informal consultations with foreign counterparts rarely take place in advance of making requests for extradition. However, prior to refusing extradition, the State consults with the requesting State.

To make its national requirements more accessible and understandable all the necessary information is available in Arabic and French on the website of the Ministry of Justice,¹³³ which has been identified as another factor leading to successful extradition practices. Algeria has also participated in the EuroMed Justice project that popularised procedures related to international criminal assistance and extradition by drawing up procedural guides on requirements in order to obtain the assistance, etc.

Algeria is a member of the 'Arab legal cooperation network' regarding terrorism and transnational organised crime, which is in the process of preparing its rules of procedure. The Network is still in the design phase and a framework is being prepared in accordance with the recommendations of the League of Arab States (Arab justice ministers council). Algeria has been part of the INTERPOL e-initiative and has participated in its Working Group Meetings on the issue. However, the e-extradition is not yet used and functional in Algeria.¹³⁴

8.1.17. INTERPOL e-extradition Initiative

The aim of the e-extradition initiative is to develop technical and legal tools to significantly speed up and facilitate the transmission of extradition requests through INTERPOL's secure communications channels.

INTERPOL Red Notices can be issued at the request of a member State to seek the location and arrest of wanted persons with a view to extradition or similar lawful action. While these Notices are transmitted electronically via secure police channels, the actual request for extradition is still largely dependent on

¹³³. See <https://www.mjustice.dz/html/>.

¹³⁴. See <https://www.interpol.int/en/News-and-media/Events/2013/2nd-Working-Group-Meeting-e-Extradition-Initiative/2nd-Working-Group-Meeting-e-Extradition-Initiative>.

traditional modes of communication – for example, postal mail or diplomatic pouch – which are less secure and less efficient. The e-extradition initiative aims to bridge this technical gap by standardizing and streamlining the transmission process while ensuring the absolute security and integrity of the information in transit, and respecting legal obligations and institutional practices.

Two resolutions have been issued on the matter; i.e. the INTERPOL e-extradition Initiative (2013),¹³⁵ calling on member States to provide Interpol with the necessary support for the development of the initiative and the INTERPOL e-extradition rules (2014),¹³⁶ reiterating this call and approving the Rules as set out at Appendix I to Report AG-2014-RAP-20; entering into force with immediate effect.

The above resolutions are further premised on the constitution of the organization,¹³⁷ on Res. AGN/65/RES/12 calling on Interpol Members “*to do their utmost to ensure [...] that international instruments on extradition are applied effectively and that INTERPOL channels are used as often as possible for the transmission of requests for provisional arrests and any other documents relating to extradition requests*”, and on the discussions held during the 81st General Assembly session in Rome (2012) on “Enhancing INTERPOL’s Role in Extradition and Mutual Legal Assistance: the e-Extradition Initiative.”

Egypt, Israel, Lebanon, Tunisia, Jordan, Morocco and now also the State of Palestine, are all members of INTERPOL.

8.2. Egypt

8.2.1. Legal Basis for Extradition

Egypt can provide extradition of a criminal fugitive according to an international multilateral treaty, regional multilateral treaty, bilateral treaty, reciprocity or courtesy. Article 93 of the Egyptian Constitution stipulates that Egypt is committed to the covenants, agreements and international human rights conventions ratified by it. Article 93 gives the force of law to all the agreements made by Egypt and this is applicable in cases of extradition. In terms of domestic law, extradition is not comprehensively covered in one law – instead, particular crimes such as human trafficking or smuggling are dealt with in special laws with relevant provisions on extradition pertaining to these crimes. Provisions on extradition vary from law to law and from agreement to agreement, thus there is little in terms of general rules on extradition. Additionally law No. 140/2014 applies, which gives the president of Egypt the authority to approve an extradition request after the acceptance by the Cabinet of Ministers in the absence of a treaty or agreement.

Art. I provides: “Keeping into consideration that there should be no contradiction between law and international conventions relevant to extradition and transfer of sentenced persons in force in Egypt, the President of the Arab Republic of Egypt based on the request of the public prosecutor and after the acceptance of the

¹³⁵. AG-2013-RES-09 – INTERPOL e-extradition.

¹³⁶. AG-2014-RES-20 – INTERPOL e-extradition Rules.

¹³⁷. INTERPOL Constitution: Art. 2 the aims of the Organization are “*to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes*”; Art. 8(d) it is the responsibility of the General Assembly to determine the rules and regulations pertaining to the use of the INTERPOL Information System for the purpose of transmitting electronic requests for extradition.

Cabinet of Ministers may extradite or transfer sentenced persons to their home countries in order to stand trial or to execute a sentence if this is in the public interest.”

The Egyptian Code of Criminal Procedure is furthermore an essential part of extradition law, as it provides the public prosecution with the authority to investigate and prosecute suspects. In this regard the Judicial Instructions for the Public Prosecution include some provisions which regulate the role of the public prosecution in undertaking the procedures relevant to the extradition of fugitives and sentenced persons. According to Art. 1716 of the Instructions, extradition is considered to fall under the authority of the executive branch as it is a matter of State sovereignty and the intervention of the judicial branch is considered to be a contribution from a merely administrative point of view. Such intervention will not make the final decision of a judicial character. As a consequence, the temporary arrest for the purpose of extradition is not regulated by the general provisions which regulate arrests supervised by the judicial authorities.

International Multilateral Treaties

Egypt has ratified several international treaties which provide for extradition such as:

- a. United Nations Convention against Organized Transnational Crimes (Palermo Convention).
- b. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic
- c. Substances (Vienna Convention).
- d. United Nations Convention against Corruption (Merida Convention).
- e. Convention on the Prevention and Punishment of the Crime of Genocide.
- f. International Convention for the Suppression of the Financing of Terrorism.
- g. Convention on the Prevention and Punishment of Crimes against
- h. Internationally Protected Persons, including Diplomatic Agents.
- i. International Convention for the Suppression of Terrorist Bombing.
- j. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- k. Convention on the Prevention and Punishment of the Crime of Genocide.
- l. Convention on the Suppression and Punishment of the Crime of Apartheid.
- m. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Regional Multilateral Treaties

- a. Arab Agreement against Information Technology Crimes.
- b. Arab Agreement against Illicit Traffic in Narcotic Drugs.
- c. Arab Treaty for the Suppression of Money Laundering and Financing Terrorism.
- d. Arab Treaty for the Suppression of Organized Transnational Crimes.
- e. Arab Agreement on Extraditing Criminals- 1952. (Applicable with Arab Countries which did not sign the Riyadh Agreement)
- f. Arab Agreement on Judicial Cooperation. (Riyadh Agreement)
- g. Arab Agreement for the Enforcement of Judgments.

Bilateral Treaties

Egypt has concluded several bilateral agreements with several countries regarding judicial cooperation and extradition of criminals. It is worth mentioning in this regard that every treaty has its own terms and conditions regarding the language of the request, crimes subject to extradition and the exceptions for certain crimes, the time of temporary detention in the requested country and human rights assurances and guarantees.

Some of the bilateral agreements are listed below:

1. Convention on Judicial Cooperation between the Arab Republic of Egypt and the Hashemite Kingdom of Jordan
2. Convention on Judicial Cooperation between the Arab Republic of Egypt and Bahrain
3. Convention on Judicial Cooperation in Civil, Commercial, Personal Status and Penal Matters between the Arab Republic of Egypt and the Republic of Tunisia
4. Convention on Mutual Assistance and Judicial Cooperation between the Arab Republic of Egypt and the Peoples' Democratic Republic of Algeria
5. Convention on Mutual Assistance and Judicial Cooperation between the Arab Republic of Egypt and the Republic of Iraq
6. Convention on Judicial Cooperation in Criminal Matters between the Arab Republic of Egypt and the Republic of France
7. Convention on Cooperation in Civil, Commercial, Personal Status and Penal Matters between the Arab Republic of Egypt and the State of Kuwait
8. Convention on Judicial Cooperation in Criminal Matters between the Arab Republic of Egypt and the Kingdom of Morocco
9. Convention on Judicial Assistance in Criminal Matters between the Arab Republic of Egypt and the Hungarian Peoples' Republic
10. Convention on the Extradition of Fugitives between the Arab Republic of Egypt and Greece

Reciprocity

Egypt can provide assistance on the basis of the principle of reciprocity in the absence of any applicable international/regional treaty or bilateral agreement. The criterion of applying this principle is that the requesting country reassures in its request that it will cooperate in similar cases if requested to do so by Egypt. The principle of reciprocity requires that there are good diplomatic relations between both parties. It is worth mentioning in this regard that Egypt in this case accepts requests written in the English language. Due to the absence of a law regulating the extradition process in Egypt, there is a legal gap in cases involving extradition according to the reciprocity principle, as in the cases of requesting temporary detention of a criminal there will be no rules governing the period of detention until the extradition request is received by Egypt. Bilateral treaties normally cover this gap by stipulating the maximum period of temporary detention which normally varies between 40 or 60 days from the date of detention.

Courtesy

This principle depends on having good political relations with the requesting State and it is applicable in cases of absence of reciprocal treatment between Egypt and the requesting State.

The Lack of an Extradition/Judicial Cooperation Law

In terms of domestic law, extradition is not comprehensively covered in one law – instead, particular crimes such as human trafficking or smuggling are dealt with in special laws with relevant provisions on extradition pertaining to these crimes. Provisions on extradition vary from law to law and from agreement to agreement, thus there is little in terms of general rules on extradition. In 2014 the president of Egypt, Abdel Fatah El Sisi, signed the Law No. 140/2014 regarding extradition and transfer of sentenced persons. This Law gave the president the power to extradite a criminal if this is required for a supreme national interest. Thus, the decision to extradite a criminal might be considered a non-judicial and merely administrative decision as no court is involved in the decision.

The absence of a law for extradition has several implications. The detainee has no access to a judge comparable to the Egyptian criminal procedures. Another implication is that Egyptian Courts are not part of the process like in other countries which require a decision from a competent court to extradite a requested individual, leaving the decision to extradition in this case to the Public Prosecution. There are also no provisions for adopting simplified procedures relating to extradition.

There have been many attempts to introduce articles regarding extradition in the Criminal Procedures Code but due to substantive delays related to the amendments this has not yet happened. A new provision is currently under discussion within the Parliament, Ministry of Justice and the Council of State. This attempt may address the current legal gap and allow for extradition requests to be brought before Egyptian Courts to decide on them according to the relevant treaty/agreement.

8.2.2. The Authority Responsible for Deciding on Extradition Requests

The competent department at the Egyptian prosecution concerned with terrorism, illegal migration and smuggling of migrants, human trafficking, smuggling of antiquities and money laundering which deals with extradition of defendants and convicts requests and is the focal point for cooperation with foreign bodies and national committees concerned with combating these crimes is the International Cooperation Office affiliated to the Prosecutor General Office.

The International Cooperation Division is the focal point for cooperation with foreign bodies and national committees in relation to terrorism and money laundering crimes at the Ministry of Justice and it coordinates with the prosecution office in relation to MLA and extradition requests.

In addition, the National Coordinating Committee for International Cooperation in combating terrorism, which includes in its membership representatives from all the competent authorities, is specialized with coordinating among the relevant authorities and cooperating with foreign entities regarding the fight against terrorism; also, to follow up the execution of mutual legal assistance and extradition requests to/from Egypt.

As a general rule, the Egyptian Ministry of Justice is the central authority that receives extradition requests. More specifically, the International Cooperation department at the Ministry is responsible for receiving them through diplomatic channels by the Ministry of Foreign Affairs and in certain cases through INTERPOL. In certain cases, requests are sent directly from the Ministry of Foreign Affairs to the Public Prosecution (International Cooperation Office). This office is responsible for studying the request. It creates a file for it and determines whether the request is approved or not depending on the discretion of the Attorney General.

8.2.3. Extraditable Offences

All the relevant treaties and agreements for extradition stipulate dual criminality as a basis for accepting the extradition of a criminal. In certain cases, the dual criminality condition requires that the crime is punishable for no less than a certain period such as no less than one year as stipulated in several bilateral agreements between Egypt and other countries. The MENAFATF report¹³⁸ noted that the dual criminality condition may be an issue with respect to the lack of criminalization of participation in some forms of organized crime and trafficking in adult human beings.

8.2.4. Extradition of Nationals and Cooperation in Prosecution of Nationals

Article 62 of the 2014 Constitution prohibits the extradition of Egyptian nationals: “no citizen may be deported/expelled from State territory or banned from returning thereto.”

Instead a country might request from Egypt to prosecute the crime and this will be considered a judicial cooperation request. According to the MENAFATF Report, where the authorities have refused to extradite their nationals, they have in the recent past been able to prosecute Egyptian nationals involved in criminal activities. In two cases, involving terrorism and another involving misappropriation of funds, the authorities investigated and prosecuted two Egyptian nationals who were wanted in the United Kingdom and Kuwait respectively.¹³⁹

If a foreign State requests the Egyptian judicial authorities to investigate a certain case, a delegation request is submitted by the foreign judicial authorities via diplomatic channels to the Minister of Justice. After the investigations are carried out in Egypt, the delegation is returned to the State requesting international cooperation, according to bilateral or multilateral agreements, or on the principle of reciprocity.¹⁴⁰

8.2.5. Jurisdiction

Egypt has territorial jurisdiction over crimes committed on its territory. Art. 1 of the Penal Code provides that it is applicable to anyone who committed on Egyptian territory any of the crimes enumerated in it.

Egypt has active personality jurisdiction over its citizens. Art. 3 of the Penal Code provides that every Egyptian who commits outside Egypt a felony or misdemeanour that is criminalized in this code will be prosecuted accordingly when (s)he returns to Egypt if the act committed was also punishable under the law of the country where it was committed.

In terms of passive personality principle, Egypt only has jurisdiction over certain crimes and it does not recognize any universal jurisdiction as it is against the nature of the Penal Code whereby it is considered each country's responsibility to deal with crime on its territory.

138. Middle East and North Africa Financial Action Task Force (MENAFATF), Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Egypt (19th May 2009).

139. Ibid., para. 813, p. 177.

140. Ibid., para. 813, pp. 177-78.

In terms of the human trafficking law, its Art. 16 read in conjunction with Art. 4 of the Egyptian Penal Code provides that the human trafficking law should be applied to any human trafficking offences committed outside Egypt by non-Egyptian citizens if these are enumerated in Arts. 5 and 6 of said law so far as the relevant conduct was also prohibited in the State where it was committed, regardless of a potential lack of identical wording in the following situations:

- If the crime was committed on board of any of the means of transportation, be it air, road, or sea transportation, and the vehicle was registered under the Arab Republic of Egypt or holding its flag;
- If one or more of the victims are Egyptian;
- Where the preparation, planning, ordering, supervision or financing of the crime occurred in Egypt;
- Where the crime was committed by an organized criminal enterprise that exercises criminal activities in various jurisdictions including Egypt;
- Where the crime or its consequences bring injury to any Egyptian citizen or resident or the security of the Egyptian state or the interior or exterior interests of Egypt;
- Where the perpetrator of the crime was found in the Arab Republic of Egypt after (s)he committed the crime and was not extradited.

In terms of the Law on Combating Illegal Migration and the Smuggling of Migrants (No 82, 2016) Art. 20 specifies the same rules on jurisdiction as the above Art. 16 of the human trafficking law.

In terms of the protective principle, Article 2, Paragraph 2, of the Penal Code, stipulates that Egyptian law is applied without limitation, (except for what is stipulated in Article 4 of the Penal Code) and the Egyptian courts are competent to punish the offender who is an Egyptian or a foreigner; who commits abroad one of the following crimes:

- a. A felony against the government's security, as prescribed in Part I and 2 of book II of the Penal Code.
- b. A felony of forgery as prescribed in Article 206 of the Penal Code.
- c. A felony of counterfeit, forgery or falsification of a currency note or coins as prescribed in Article 202, or a felony of bringing into or taking out of Egypt that counterfeit, forged or false currency note or coin, circulating it, or possessing it for the purpose of circulating or dealing with it as prescribed in Article 203, providing the currency is legally circulated in Egypt.

The case is not suspended upon the presence of the accused and the judgement may be delivered during his or her absence. Furthermore, it is not necessary for the crime to be punished in the place where it occurs.

8.2.6. Conflict of Jurisdiction

When receiving concurrent extradition requests, the priority will be given to the country of the individual's nationality or the country in which the gravity of the crimes committed was greater. Apart from these criteria, the first requests applied will be given priority.

8.2.7. Other Grounds for Refusal

Political crimes: Article 91 of the Constitution specifically prohibits the “extradition of political refugees.” Political crimes are not subject to extradition. An attack/assault on a king, crown prince, president or their families is not considered a political crime. Egypt also does not consider acts of terrorism as political crimes. It is worth mentioning in this regard that several regional and bilateral agreements stipulate that the crime of assault/attacking presidents, Kings and crown princes are not considered political crimes. This is an exception to article 91 of the Egyptian Constitution.

- No extradition for acts considered to be crimes based on religious beliefs, ethnicity, political views or nationality.
- No extradition for crimes related to military courts that do not constitute crimes in the criminal codes.
- No extradition where there are fears that the requested person might be subjected to a punishment which is not defined in its national laws or if the requested person will be subjected to inhumane or degrading treatment or torture.
- No extradition in cases when the sentence was *in absentia*; if the case was sentenced for the same act before with a final sentence; if the requested State took a decision to discontinue investigating the case at a certain point; or if the crime committed by the requested person was pardoned at the time of the request.

8.2.8. Cooperation

According to a 2009 Report by the Middle East and North Africa Financial Action Task Force (MENA FATF) in respect to Anti-Money Laundering and Combating the Financing of Terrorism, Egypt’s domestic cooperation and coordination has been fairly robust, and Egypt has a strong legislative framework for the provision of mutual legal assistance and extradition that is not unduly restrictive. Egypt has been a member of INTERPOL since September 1993 where the second International Police Conference was held in Vienna and it is thus one of its founding members.

8.2.9. Statistics

The number of extradition requests sent by Egypt in 2004 amounts to 367, in 2005 amounts to 435, in 2006 amounts to 521 in 2007 amounts to 738.¹⁴¹

¹⁴¹. Ibid.

| Extradition Requests on Other Crimes made to Egypt by other Countries | | | | |
|--|------|------|------|------|
| | 2004 | 2005 | 2006 | 2007 |
| Extradition requests received by Egypt on nationals & foreigners living in Egypt | 25 | 42 | 37 | 43 |
| Extradition request for nationals granted | 18 | 33 | 26 | 19 |
| Extradition requests for foreigners granted | 7 | 9 | 11 | 18 |
| Extradition request not responded to | | | | 6 |

As the statistics provided to the assessors (see tables above) show, where a request has been made for the extradition of Egyptian nationals, the authorities have refused their extradition and instead prosecuted such nationals.

8.3. Israel

8.3.1. Threshold Requirements for Extradition

The existence of a treaty (including *ad hoc* bilateral treaty), a non-political offense, the requirement that the person whose extradition is sought is accused or has been convicted in the requesting State for an extraditable offense, reciprocity and double criminality are threshold requirements. Nationals at the time of the commission of the offense will only be extradited after the requesting State certifies that upon conviction, the sentenced person will be transferred back to Israel for the execution of the sentence. In addition, according to Israel's Extradition Law, it is not possible to extradite a person who was an Israeli national and a resident of Israel at the time of the commission of the offense only for the purpose of enforcement of a sentence. In this case the requesting State may ask for the enforcement of the sentence in Israel.

Once the court decides that all of the threshold requirements have been fulfilled, it should determine that none of the limiting factors listed in Sections 8, 10, 11, 17, and 21(l) of the Extradition Law exist.

8.3.2. Evidentiary Requirements

Israel requires a *prima facie* evidentiary standard, rooted in its common law traditions. There is no requirement that all evidence need to be submitted, rather a balance should be reached between the evidence available in the file and the practicalities of preparing, translating and transmitting the evidence. The required amount of evidence may vary from case to case depending on their complexity.¹⁴² Lack of evidence in a received request will not be a ground for automatic refusal. Rather, Israel will inform the requesting State exactly what evidence needs to be added to the initial request to avoid refusal, thereby making the process more straightforward. Evidence submitted by the requesting State should comply with common law principles of evidence (e.g. 'continuity of evidence'). The *prima facie* requirement is also set forth in the Reservations and Declarations made by Israel to the European Convention on Extradition.

¹⁴². Ibid.

Reservation to Article 2 of the European Convention on Extradition:

"Israel will not grant extradition of a person charged with an offense unless it is proved in a court in Israel that there is evidence which would be sufficient for committing him to trial for such an offense in Israel."

Declaration concerning Article 22 of the European Convention on Extradition:

"The evidence in writing, or the declarations given on oath or not, or certified copies of such evidence or declaration, and the warrant of arrest... shall be admitted as valid evidence in examining the request for extradition, if they have been signed by a judge or official of the requesting State or if they are accompanied by a certificate issued by such a judge or official or if they have been authenticated by the seal of the Ministry of Justice."

In its 'Practical Guide', Israel explains the requirements to resolve misunderstandings and unfamiliarity and encourages requesting States to not hesitate to contact their Department of International Affairs when in doubt regarding any questions relating to the preparation or submission of requests for provisional arrest or extradition (Tel.: 972-2-5419-614; Fax: 972-2-5419-644). The Department also deals with matters of Mutual Legal Assistance in Criminal Matters.

8.3.3. Other Reasons for Refusal of Extradition:

- A wanted person shall not be extradited for an offense, for which the penalty in the requesting State is death, if that is not the penalty for it in Israel, unless the requesting State undertook that the death penalty will not be imposed on him or her and that - if it was or will be imposed - it will be changed to lighter punishment.
- A wanted person shall furthermore not be extradited if (s)he would be tried for an offence other than those listed in the request;
- The Israeli Extradition Law specifies the circumstances that prevent extradition among which is if the request for extradition is likely to harm the public order (section 2b(8) to Israel's Extradition Law).

According to Art. 2B. of the Extradition Law, a wanted person shall not be extradited to a requesting State in any of the following cases:

1. The extradition request was submitted in respect of an offense that is political in nature, or it was submitted in order to accuse the wanted person for an offense that is political in nature or to punish him or her for it, even if his or her extradition is not requested because of the said offense;
2. There are reasons to suspect that the extradition request was submitted out of discrimination because of the wanted person's race or religion;
3. The extradition request was submitted because of a military offense that is one of the following: (i) an offense of which a person can be guilty only if (s)he was a soldier when(s)(s)he committed it; (ii) an offense in violation of security service statutes;
4. The wanted person was put on trial in Israel for the offense, in respect of which his or her extradition is requested, and (s)he was found innocent or guilty;
5. The wanted person was found guilty in another State of the offense, in respect of which his or her extradition is requested, and (s)he served his or her sentence or the remaining part thereof in Israel;
6. The extradition request was submitted in respect of an offense, on which the statute of limitations has run out or the statute of limitations has run out on the penalty imposed on him or her therefor under the laws of the State of Israel;

7. The extradition request was submitted in respect of an offense, in respect of which the wanted person was pardoned in the requesting State;
8. Acceding to the extradition request is liable to violate the public order or a vital interest of the State of Israel.

8.3.4. What Is Not Considered a Political Offence

Since the 1997 Convention for the Suppression of Terrorist Bombing, all the attacks listed in the UN Conventions against Terrorism cannot be considered a political offence. Article 11 of this Convention points out that "None of the offences set forth shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives".

Despite not allowing extradition in cases of political offences, Israel is very restrictive in its test of what constitutes a political offence. According to Art. 2(B)(b) of the Extradition Law, the following shall not be deemed an offence that is political in nature:

"an offence, in respect of which the two States undertook, in a multilateral convention, to extradite; (2) murder, manslaughter or causing severe injury; (3) false imprisonment, kidnapping or taking hostages; (4) sex offenses under sections 345, 347 or 348(a) and (b) of the Penal Law 5737-1977; (5) preparing or keeping weapons, explosives or other destructive material, or using any weapon or material, all in order to endanger human lives or to cause severe property damage; (6) causing property damage in order to endanger lives; (7) conspiring to commit any of the offense specified in paragraphs (1) to (6)."

8.3.5. Extradition Proceedings

Section 3 of the Extradition Law establishes that a Request for Extradition shall be submitted to the Minister of Justice (the Department of International Affairs in the State's Attorney's Office is the competent authority for all incoming and outgoing Requests for extradition), who may direct that a petition be submitted to the Jerusalem District Court to determine whether the requested person is extraditable. According to Section 5 of the Extradition Regulations, the petition shall include all documents provided by the requesting State along with the Request for Extradition itself. Full disclosure obligations apply with regard to evidence provided by the requesting State. During the oral hearings the sides may raise their arguments for and against the declaration of the requested person as extraditable. The court's decision is given before both parties.

Arrest can be requested either before or after the submission of a petition for extradition before the District Court of Jerusalem (Sections 5, 6, and 7 Extradition Law). In case of arrest before the filing of the petition for extradition, the arrest warrant will be valid for a maximum of 20 days, by which time a petition must be filed to the Court. The State may receive an extension of this period in exceptional circumstances (Section 7(b), (c) Extradition Law).

Following the submission of a petition, pursuant to an order signed by the Minister of Justice, the requested person may announce his or her willingness to return to the requesting State. In this case, the judicial procedure shall be suspended and the requested person shall be kept in detention until his or her surrender to the requested State but not more than for 15 days, or 30 days under exceptional circumstances. The rule of specialty and other clauses contained in the Extradition Law will not be applied. However, the clauses of the Extradition Law will apply when the requested person consents to the court declaring him or her extraditable within the framework of the petition.

Section 13 of the Extradition Law establishes that an appeal will be submitted to the Supreme Court sitting as a Court of Criminal Appeals within 30 days after the declaration of the requested person as extraditable or the denial of the petition. The declaration turns final 30 days after it is given (if no appeal was filed) or following the denial of the requested person's appeal.

At this stage, the Minister of Justice may order the execution of the extradition. The Minister's order may be subject to judicial review by the High Court of Justice.

8.3.6. Nationals – Extradition and Jurisdiction

Apart from the obvious restraints regarding the lack of extradition treaties and arrangements with other SPCs, Israel puts few impediments on extradition. Thus, after amending its 1999 law,¹⁴³ it now allows the extradition of its citizens¹⁴⁴ but provides the right to the wanted person, in appropriate circumstances, to serve his or her imprisonment sentence in his or her native State, thus considering the balance between the justice, including effective prosecution, and humanitarian considerations.¹⁴⁵

Israel follows both the active and passive personality principles and thus according to Art. 15 of the Israeli Penal Law has jurisdiction over offences committed by Israeli citizens or residents and according to Art. 14 over offences committed against Israeli citizens or residents.

8.3.7. Jurisdiction over Crimes Committed against the State

According to the protection principle, Israel has jurisdiction over 'offenses against the State or against the Jewish people.'¹⁴⁶

143. Particularly the refusal of extradition to the US in the case of Samuel Sheinbein led to tensions between the two countries and even a threat to withhold American aid from Israel by some US congressmen. It should be noted that under the principle of *aut dedere aut iudicare*, Mr. Sheinbein was charged in Israel, convicted and sentenced to 24 years of imprisonment.

144. Citizen and resident **at the time of commission of the crime** (as opposed to: at the time of the submission of the extradition request, which was the previous version of the law).

145. The Law of Extradition-1954 amended 8 times. Art. 1(a) Exemption to extradite a citizen (Amendment No. 6), 5759-1999 (Amendment No. 7), 5761-2001; an Israeli citizen and resident at the time of the commission of the offences for which his extradition is sought, shall not be extradited unless the requesting state has undertaken, in advance, to return the requested person to Israel for the purpose of serving his sentence in the event he was convicted and a prison sentence is imposed on him by the Requesting State. It should be noted that under certain circumstances, the State of Israel would none the less request the return of a wanted person so that he/she serve his sentence in Israel subsequent to his conviction and sentencing in the requesting state, even if that person was not an Israeli resident and citizen at the time of his/her commission of the offences.

146. Israeli Penal Law, Art. 13.

8.3.8. Territorial Jurisdiction and the Flag Principle

Art. 7 of the Penal Law addresses the difference between ‘domestic’ and ‘foreign’ offences and establishes Israeli jurisdiction when an offence was committed in Israel:

“Domestic offense” – (1) an offense, all or part of which was committed within Israel territory; (2) an act in preparation for the commission of an offense, an attempt, an attempt to induce another to commit an offense, or a conspiracy to commit an offense committed abroad, on condition that all or part of the offense was intended to be committed within Israel territory;

“Foreign offense” – an offense that is not a domestic offense;

“Israel territory”, for the purposes of this section is the area of Israel sovereignty, including the strip of its coastal waters, as well as every vessel and every aircraft registered in Israel.

The Israeli Law of Coastal Waters adopted the UN Convention on the Law of the Sea stating that the coastal waters considered to be a part of the country’s territorial waters will be 12 miles from the nadir on the beach. For the crime of piracy, Israel has jurisdiction also on the high seas.¹⁴⁷

8.3.9. Universal Jurisdiction

In 1950 Israel adopted the Law on the Prevention and Punishment of the Crime of Genocide, following the UN decision on formulating a Convention on the subject in 1948. In addition, Israel enables the establishment of universal jurisdiction in several internal laws such as the Nazi and Nazi Collaborators (Punishment) Law, 1950, or in specific provisions in the Dangerous Drugs Ordinance.

8.3.10. Conflict of Jurisdiction

Conflict of jurisdiction matters are addressed in international and bilateral agreements. The issue is further addressed in private international law and is provided for in a number of provisions in various internal laws in Israel. Israel has case law concerning the ‘centre of gravity’ of the case which provides guidelines concerning conflicts of jurisdiction.

Foreign judgments can be recognized and enforced in Israel pursuant to the Foreign Judgments Enforcement Law.

Close coordination between States from the beginning of the investigation and direct communication between the authorities has proven to be indispensable for successful investigations and prosecutions of crimes that have been committed in multiple jurisdictions. The existence of mechanisms for cooperation, including police-to-police cooperation in the investigative phases and effective use of mutual legal

¹⁴⁷. Ibid., Art. 169.

assistance treaties (multilateral and subject-matter treaties) are crucial to obtaining admissible evidence that leads to successful prosecutions.

8.3.11. Challenges in Conflict of Jurisdiction Matters

The main problem and challenges that Israel has encountered have emanated from the differences in the legal systems in terms of the requirements for obtaining Court orders or evidence such as bank records, e-mails, and different methods of surveillance in accordance with different domestic laws.

Additionally, challenges are sometimes encountered with regard to coordination and timing of the execution of requests in different jurisdictions, different disclosure requirements, and admissibility requirements.

8.3.12. Cooperation

Informal consultations between the requesting State and Israel take place frequently in advance of official requests when necessary, in the spirit of enhancing cooperation between the State parties. Furthermore, Israel informs the requesting State of its legal requirements once the extradition is requested. To clarify matters further, Israel has issued the 'Prima Facie Evidence Guide' described above. If an extradition request does not meet Israeli law requirements, it is explained to the requesting State what additional information is required or what clarifications should be provided prior to refusing extradition. Direct communication between the competent authorities via e-mail, close cooperation between the requesting and requested States before and during the proceeding, providing official clarifications to the Court in the requested State as issues arise and detailing the requirements under the extradition law have led to successful extradition practices.

In terms of regional judicial cooperation, Israel is member of the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC).

8.4. Jordan

8.4.1. Legal basis for Extradition

Extradition is regulated by the Jordanian Constitution, international agreements and the Law of Criminals Extradition of 1927. According to Article 2 of the Law, an escaping criminal is defined as every person who is convicted in a foreign country of a crime that requires extradition of such person, and that person is present in eastern Jordan, or was suspected to be present there, or on his or her way to this area. The expression (criminal escaping a foreign country) refers to any criminal or person convicted of a crime committed in the foreign country, requiring extradition. The answers in the questionnaire have indicated a need for a modern law.

8.4.2. Nationals

A person cannot be extradited if he/she is a Jordanian national. Jordan has personal jurisdiction over its nationals in such instances. The Kingdom refuses to hand him or her over and prosecutes him or her before the Jordanian courts based on the procedures already adopted by the requesting State. A sentence imposed on a Jordanian national under the domestic law of the requesting State cannot be enforced in Jordan.

8.4.3. Other Reasons for Refusals

- According to Article (21/2) of the Jordanian Constitution, political refugees shall not be turned in due to their political beliefs or because they defend freedom.
- The lack of an effective treaty or agreement with the requesting State will make a request unacceptable.¹⁴⁸ The jurisprudence has confirmed this stance. Notably in March 2017, the Court of Cassation blocked the extradition of Ahlam Ahmad Al-Tamimi to the US, finding that their bilateral treaty with Jordan from 1995 had never been ratified by the Parliament.

8.4.4. Procedure

The measures adopted with respect to the extradition requests: 1. Wire letters are sent through an INTERPOL unit in the requesting State to the Amman unit regarding the presence of a wanted person on the Jordanian territories. 2. The INTERPOL in Amman investigates and arrests the wanted person and refers him or her to the competent court. 3. The court addresses the Ministry of Justice to request the file of the wanted person from the country requesting the extradition. 4. The international relations office at the Ministry of Justice follows up on the case and communicates with the Ministry of Foreign Affairs to ask the competent authorities in the requesting State to transfer the file of the extradition case. 5. When the extradition file is received by the Jordanian authorities, it is transferred to the Attorney General in Amman or to the competent court, in order to hear the case of the wanted person, and decide whether (s)he should be handed over or not. 6. The court decides that the conditions of extradition are met, if it finds that the conditions meet a valid treaty or agreement with the requesting party. The decision of extradition should be approved by the King.

8.4.5. Cooperation

Jordan indicated in the questionnaire that it has taken no steps to ensure that other States are aware of its national legal requirements. It has further stated that relevant officials do not informally consult with foreign counterparts in advance of making requests for extradition. On the other hand, it mentioned official contacts as being of vital importance and their absence presenting a significant challenge. Despite this, prior to refusing extradition the requesting State is not consulted to provide it with the opportunity to present information and views on the matter. The answers called for direct contact between the Attorney General's department and the requesting State by phone and e-mail to improve the extradition process.

¹⁴⁸ Law of Criminals Extradition for 1927, Arts. 5-6.

Jordan is furthermore not a member of any regional judicial cooperation network that shares good practices. The Middle East and North Africa Financial Action Task Force Mutual Evaluation Report has noted that, regarding extradition, Jordan cooperates to a great extent and overcomes any legal or practical obstacle that prevents providing assistance. In the particular context of money laundering and terrorism financing it was however not possible to assess the effectiveness of this issue as there had been no extradition cases.¹⁴⁹

8.5. Lebanon

8.5.1. Bilateral/Multilateral Agreements

Lebanon has signed several bilateral agreements with different countries in the field of mutual legal assistance and extradition, such as the Judicial agreement signed between Lebanon and the Hashemite Kingdom of Jordan (April 6 1954); the Judicial agreement between Lebanon and the Syrian Arab Republic dated (February 25, 1950); the Judicial agreement between Lebanon and the Republic of Yemen regarding Extradition ratified by law of 24/01/1950; the Convention about Extradition signed between Lebanon and the State of Kuwait ratified by law applied under decree No. 15743 dated March 13, 1964; the Judicial agreement signed between Lebanon and Tunisia regarding the exchange of judicial cooperation and the Extradition ratified by virtue of Law No. 38/68 issued on December 30, 1968; the Extradition agreement signed between Lebanon and Iraq since 1929; the Extradition agreement signed between Lebanon and Bulgaria under Law No. 468 issued on 12/12/2002; and agreements with other Western countries including Belgium, Italy, UK, Cyprus, and Turkey.

The Arab Convention for the Suppression of Terrorism was ratified by Lebanon according to Law No. 57 of March 31, 1999.

Lebanon has not yet joined the UN Convention for the Suppression of Terrorism Financing (1999) since one of the ministries has some reservations regarding the translation of paragraph 5, clause 1 of article 2 on resisting foreign occupation.¹⁵⁰

8.5.2. Threshold requirements for Extradition

The Lebanese Criminal Code¹⁵¹ (hereinafter LCC) in Subsection 7 sets out the rules for extradition. According to Art. 30, nobody may be extradited to a foreign State in cases other than those provided for in the LCC, except pursuant to a legally binding treaty.

Extradition to a foreign State may be granted if the offences were committed in its territory or by its national(s) or they affected its security or financial status.¹⁵²

149. Middle East and North Africa Financial Action Task Force, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Jordan, (19th May 2009), para. 34.

150. Ibid., para. 158.

151. Lebanese Criminal Code, selected articles, Special Tribunal of Lebanon official translation, version September 2015, available at: file:///C:/Users/Polona/Downloads/CHATC-150903-2_OAR_T_EN.pdf (hereinafter LCC).

152. LCC, Art. 31.

Offences falling within the territorial jurisdiction or the jurisdiction *rationae materiae* or *ratione personae* of Lebanese law,¹⁵³ may not give rise to extradition.¹⁵⁴

8.5.3. Reasons for Refusal

Extradition shall not be granted:

1. If the offence is not punishable as a felony or misdemeanour under Lebanese law; this exception shall not be applicable, however, if the circumstances of the act constituting the offence cannot occur in Lebanon owing to its geographical situation;
2. If the penalty applicable under the law of the requesting State or the law of the State in whose territory the acts were committed is a term of imprisonment of less than one year for all the offences covered by the request; In the event of a conviction, if the sentence imposed is less than two months' imprisonment;
3. If an irrevocable judgement concerning the offence has been rendered in Lebanon, or if the public prosecution or the sentence has lapsed pursuant to Lebanese law, the law of the requesting State, or the law of the State in whose territory the offence was committed.¹⁵⁵

Extradition shall not be granted either:

1. If it is requested in connection with a political offence or if it seems to serve a political aim;
2. If the accused was enslaved in the territory of the requesting State;
3. If the penalty applicable under the law of the requesting State is contrary to the established social order.¹⁵⁶

Human rights concerns may also be a ground for refusal.

Unlike in most other SPCs, a merely fiscal nature of an offence does not provide a ground for refusal.

8.5.4. Extradition Proceedings

Extradition requests are sent to the Ministry of Justice via diplomatic channels. According to Art. 35 of the LCC the request shall be referred to the Public Prosecutor at the Court of Cassation, who shall check whether the legal conditions have been fulfilled and assess whether the charge has been adequately established. (S)he may also issue an arrest warrant for the person whose extradition is requested after questioning him or her: (S)he shall then refer the file together with his or her report to the Minister of Justice. The decision to grant or reject the request for extradition shall be taken pursuant to a decree adopted on the basis of a proposal by the Minister of Justice.¹⁵⁷

¹⁵³. As stipulated in Arts. 15 to 17, Art. 18.1 in fine and Arts. 19 to 21 of the LCC

¹⁵⁴. LCC, Art. 32.

¹⁵⁵. LCC, Art. 33.

¹⁵⁶. LCC, Art. 34.

¹⁵⁷. LCC, Art. 35.

An extradited accused cannot be prosecuted adversarially, subjected to a penalty or extradited to a third State for any offence committed prior to the extradition other than the offence giving rise thereto, unless the Government of the requesting State gives its consent.¹⁵⁸

8.5.5. Nationals – Extradition and Jurisdiction

Lebanon does not extradite nationals; however, it has active personal jurisdiction over them and thus the individual is brought before the Lebanese courts instead. Art. 20 of the LCC which defines jurisdiction *ratione personae* stipulates that 'Lebanese law is applicable to any Lebanese national who, acting outside Lebanese territory as a perpetrator, instigator or accomplice, commits a felony or misdemeanour that is punishable under Lebanese law. This shall be the case even if the accused loses or acquires Lebanese nationality after committing the felony or misdemeanour.' Lebanese law is also applicable outside Lebanese territory when it comes to offences committed by its officials during or in connection with the performance of their duties; or to offences committed by Lebanese diplomatic officials or consuls as long as they enjoy immunity under public international law.¹⁵⁹ On the other hand, Lebanese law shall not be applicable in Lebanese territory to offences committed by foreign diplomatic officials and consuls as long as they enjoy immunity under public international law.¹⁶⁰

In terms of passive personal jurisdiction, it seems to only apply in situations when the victim of an offence committed on board a foreign aircraft in Lebanese aerial space not extend beyond the interior of the aircraft is a Lebanese national (see below).

8.5.6. Territorial jurisdiction

Lebanese law is applicable to all offences committed in Lebanese territory. An offence shall be deemed to have been committed in Lebanese territory:

1. If one of the constituent elements of the offence, an act forming part of an indivisible offence or an act of principal or accessory participation is perpetrated in Lebanese territory;
2. If the result occurs or was expected to occur in Lebanese territory.¹⁶¹

The following are assimilated to Lebanese territory for the purpose of the application of criminal law:

1. The territorial sea extending to a distance of twenty kilometres from the shore, measured from the low-water mark;
2. The aerial space above the territorial sea;
3. Lebanese ships and aircraft;
4. Foreign territory occupied by a Lebanese army if the offences committed adversely affect the army's security or interests.

¹⁵⁸. LCC, Art. 36.

¹⁵⁹. LCC, Art. 21.

¹⁶⁰. LCC, Art. 22.

¹⁶¹. LCC, Art. 15.

5. The border area, the exclusive economic zone, the Lebanese continental shelf and platforms attached to the continental shelf, in conformity with the provisions of the United Nations Convention on the Law of the Sea, signed on 10 December 1982 at Montego Bay (Jamaica), to which the Government was authorized to accede by Act No. 29 of 22 February 1994.¹⁶²

Lebanese territory also includes the atmospheric layer covering its surface, in other words the aerial territory.¹⁶³ However, according to article 18, Lebanese law shall not be applicable to: offences committed on board a foreign aircraft in Lebanese aerial space if the offence does not extend beyond the interior of the aircraft, unless the perpetrator or the victim is a Lebanese national, or if the aircraft lands in Lebanon after the commission of the offence. Lebanese law will equally not apply for offences committed on board a foreign ship or aircraft in the Lebanese territorial sea or the aerial space above the territorial sea if the offence does not extend beyond the interior of the ship or aircraft.¹⁶⁴

Lebanese law is applicable to offences involving the seizure of foreign ships or their cargo if the ships in question enter Lebanese territorial waters. Lebanese law is applicable to any offence that is committed within or on board the ship under such circumstances, subject to the provisions of international treaties ratified by the Lebanese authorities.

Lebanese law is also applicable to the offence of seizure of ships' cargoes outside the territorial waters if the cargoes are conveyed into Lebanese territory for local consumption or for transit purposes.¹⁶⁵

Lebanon cannot exercise jurisdiction on the high seas.

8.5.7. Jurisdiction over Crimes Committed against the State

Article 19 defines Lebanon's jurisdiction *ratione materiae* and states that Lebanese law is applicable to any Lebanese national, foreigner or stateless person who, acting outside Lebanese territory or on board a foreign aircraft or ship as a perpetrator, co-perpetrator, instigator or accomplice, commits:

1. Offences against State security or offences involving the counterfeiting of the State seal, the counterfeiting or forgery of Lebanese or foreign banknotes or securities circulating by law or by custom in Lebanon, or the forgery of passports, entry visas, identity cards or extracts from the Lebanese civil status register. However, these provisions shall not be applicable to a foreigner whose act does not constitute a breach of international legal rules;
2. Any of the offences against the security of aerial navigation or shipping defined in Articles 641, 642 and 643, of the LCC;
3. Offences against the security of fixed platforms located on the continental shelf of a State Party to the Rome Protocol of 10 March 1988;
4. Offences aimed at compelling Lebanon to perform an act or to refrain from performing it, if a Lebanese national is thereby threatened, detained, injured or killed.

¹⁶². LCC, Art. 17.

¹⁶³. LCC, Art. 16.

¹⁶⁴. LCC, Art. 18.

¹⁶⁵. LCC, Art. 18.

8.5.8. Universal Jurisdiction

Article 23 of the LCC stipulates that Lebanese law is also applicable to any foreigner or stateless person who is resident or present in Lebanon and who, acting abroad as a perpetrator, co-perpetrator, instigator or accomplice, committed a felony or misdemeanour other than those cited in Articles 19, 20 and 21, if his or her extradition has not been requested or granted. This is also the case if the felony or misdemeanour was committed by a person against or on board a foreign aircraft chartered without a crew to a charterer whose headquarters or permanent residence is in Lebanon, if the extradition of the perpetrator has not been requested or granted.

8.5.9. Applicability of Foreign Law

According to Article 24, Lebanese law shall nevertheless not be applicable to the misdemeanours committed by nationals (Art. 20), if they are punishable with a term of imprisonment of less than three years, nor shall it be applicable to offences committed by a non-national resident of Lebanon acting abroad (Art. 23), if these offences are not punishable under the law of the State in whose territory they were committed.

If there is a difference between Lebanese law and the law in force in the place where the offence was committed, the judge may take this difference into account for the benefit of the accused when applying Lebanese law as set forth in Articles 20 and 23.¹⁶⁶ Preventive or corrective measures and provisions governing incapacity and extinguishment of rights provided for under Lebanese law shall be applicable regardless of the law in force in the place where the offence was committed.

According to Article 26 in the case of offences committed either in Lebanon or abroad, the personal law of the accused shall be taken into account for the purposes of prosecution:

1. Where one of the elements of the offence is subject to the legal provisions governing personal status or capacity;
2. Where an aggravating ground or a ground of excuse other than minority under criminal law ensues from the provisions governing personal status or capacity.

8.5.10. Effect of Foreign Judgements

Article 27 stipulates that with the exception of the felonies referred to in Article 19 (offences against the State) and offences committed in Lebanese territory, a Lebanese national or a foreigner shall not be prosecuted in Lebanon in any of the following cases:

1. If (s)he was prosecuted for the offence of fraudulent bankruptcy or negligent bankruptcy or for an offence related to these two offences or to either one of them, owing to the bankruptcy or insolvency of a company or business, if the headquarters of the company or business was located outside Lebanese territory and the prosecution was conducted in the country in which the headquarters was located;

¹⁶⁶ LCC, Art. 25.

2. In the case of all other offences, if a final judgement was rendered abroad and, in the event of a conviction, if the sentence was enforced or the enforcement lapsed due to prescription or an amnesty.

Judgements rendered abroad shall not preclude the prosecution in Lebanon of any offence referred to in Article 19 or committed in Lebanese territory, unless the foreign court judgement was rendered following an official notification by the Lebanese authorities.¹⁶⁷ However, the penalty imposed and the period spent in pre-trial detention abroad shall be deducted, to the extent determined by the Court, from the penalty imposed.¹⁶⁸

Article 29 stipulates that sentences imposed by foreign criminal courts in respect of acts characterized as felonies or misdemeanours by Lebanese law may be invoked:

1. With a view to the enforcement of preventive measures and the measures of incapacity and extinguishment of rights resulting therefrom, provided that they are in conformity with Lebanese law, and the enforcement of awards of restitution, damages and other civil awards;
2. With a view to imposing sentences pursuant to Lebanese law in respect of preventive measures and measures of incapacity and extinguishment of rights, comprising awards of restitution, damages and other civil awards;
3. With a view to applying the provisions of Lebanese law concerning recidivism, habitual criminal conduct, plurality of offences, stay of execution and rehabilitation. The Lebanese judge shall assess the validity of the foreign sentence in procedural and substantive terms in the light of the documents in the case file.

8.5.11. Conflict of Jurisdictions

When multiple requests for extradition are received from different States, be it for the same crime or for different crimes, factors which will be taken into consideration for deciding which State to extradite to will include the seriousness of the crime and the time of the receipt of the requests.

8.5.12. Cooperation

The answers provided to the questionnaire indicated that there have been no particular measures taken for ensuring that potential requesting States know the Lebanese domestic legal requirements for extradition. It is worth noting however that the relevant provisions from the Lebanese Criminal Code on extradition and jurisdiction are available in an official translation from September 2015 on the website of the Special Tribunal of Lebanon.

The MENA Report observed regarding extradition that “Lebanon is considered as highly cooperative and overcomes any legal or practical obstacle that precludes offering assistance in cases where both countries criminalize the main act of crime.”¹⁶⁹ The procedures usually adopted take place without delay knowing that this issue depends on the extent to which the country requesting the extradition responds and sends the extradition file, especially after arresting the wanted person.¹⁷⁰

¹⁶⁷. LCC, Art. 28.

¹⁶⁸. LCC, Art. 28.

¹⁶⁹. MENAFAFT Report, *supra* note 161, para. 40.

¹⁷⁰. *Ibid.*, para. 692.

8.6. Morocco

8.6.1. Legal Basis for Extradition

The Kingdom of Morocco has a legal framework allowing for judicial cooperation in the field of judicial assistance, exchange of information and extradition of criminals. Priority is given to international conventions with respect to judicial cooperation (Art. 713 of the Code of Criminal Procedure). In the absence of any such conventions, the general rules related to judicial relations with foreign authorities stipulated in Articles 713 to 749 of the Criminal Procedure Code are applied. Arts. 718-745 stipulate rules on extradition.

Multilateral Agreements

Morocco has signed several multilateral treaties which concern extradition, amongst them the treaties below:

- Palermo Convention;
- Vienna Convention 1988 (Drug Convention).

Bilateral Agreements

Morocco has entered into several bilateral extradition agreements, such as the ones with Belgium, Spain, France, Algeria, Italy, Libya, Poland, Romania, and Tunisia.¹⁷¹

8.6.2. Nationals – Extradition and Jurisdiction

A person cannot be extradited if he/she is a Moroccan national as has been classified as such on the date of the events described in the extradition request. A sentence imposed on a Moroccan national under the domestic law of the requesting State cannot be enforced in Morocco.

Morocco has active and passive personality jurisdiction over its nationals and follows the principle of *aut dedere aut iudicare*. The Code of Criminal Procedure envisages that all events classified as a crime by Moroccan law and committed outside the Kingdom of Morocco by a Moroccan may be prosecuted and sentenced in Morocco. However, the prosecution or sentencing can only take place if the defendant returns to Moroccan territory and it has not been proven that a definitive ruling has been given abroad and if sentenced, (s)he has completed the penalty ordered, or been pardoned. Moreover, in the case of a crime committed against an individual, it can only be prosecuted at the request of a public prosecutor following a claim by the victim or a report by the country's authorities or the authorities where the crime was committed.

¹⁷¹. Vade-Mecum Procédural Pénal de Coopération Juridique Internationale, Projet de Consolidation et Modernisation de l'Administration de la Justice du Maroc, Plan Stratégique de Développement du RMCJI, available at: http://adala.justice.gov.ma/production/Guides_Manuels/fr/MA-NUEL%20PROCEDURAL%20PENAL%20DE%20COOPERATION.pdf, p. 9

In the cases envisaged above, the prosecution or sentencing can take place even if the guilty party only acquires Moroccan nationality after committing the crime or offence. Morocco has established its jurisdiction over terrorist offences committed by its nationals regardless of where they were committed and will submit any such case without delay to its competent authorities for the purpose of prosecution.

Any foreigner who, outside the territory of the Kingdom, is guilty, as perpetrator, co-perpetrator or accomplice, of a crime, can be prosecuted and sentenced according to the provisions of Moroccan law if the victim of the crime is of Moroccan nationality.

8.6.3. Jurisdiction over Crimes against the Kingdom and Crimes of Terrorism

Under the protective principle any foreigner who, outside the territory of the Kingdom, is guilty, as perpetrator, co-perpetrator or accomplice, of a crime against the safety of the Moroccan state or counterfeiting of national monies or bank notes with legal validity in Moroccan, or crimes against agents or places of diplomatic or consular missions or public Moroccan establishments, can be prosecuted and sentenced according to the provisions of Moroccan law.

When a Moroccan, outside the territory of the Kingdom, is guilty, as perpetrator, co-perpetrator or accomplice of any of the offences described above, (s)he is punished as though it had been committed in Morocco.

Any co-perpetrator or accomplice who, outside the territory of the Kingdom, is guilty of any of the offences specified above is prosecuted as an accomplice in application of the above paragraph.

However, no crime or offence can be prosecuted against a guilty party who can prove that (s)he has been definitively judged abroad for the crime or offence and, if sentenced, that (s)he has completed his or her penalty or that the time limit has expired.

Without prejudice to any provision to the contrary, any person of Moroccan or foreign nationality shall be prosecuted and sentenced before the competent Moroccan jurisdictions who has committed, outside Moroccan territory, as principal perpetrator, co-perpetrator or accomplice to the crime of terrorism, whether or not the attack was against Morocco or its interests.

However, if the action in question affects Morocco and was committed by a foreigner outside the territory of the Kingdom, the perpetrator can only be prosecuted and sentenced if on Moroccan territory.

Moreover, an individual who has already been the subject of a judgment having acquired the force of *res iudicata* will not be prosecuted or tried, provided that (s)he has, if convicted, presented evidence that (s)he has completed his or her penalty or the penalty has lapsed.

8.6.4. Threshold Requirements

Extradition is only accepted if the offence covered by the requested State is committed by a national of that country or if the offence was committed by a foreigner (non-Moroccan) on its territory; or by a

non-Moroccan foreigner outside the country, if the offence attributed to him or her falls under the offences that are allowed to be followed under the Moroccan legislation inside Morocco even if committed abroad.

8.6.5. Political Offences

Extradition is not accepted for political offences or crimes related to political offences. An attack against the life of a Head of State, a member of his/her family or a member of the government is not considered as a political offence or as an event connected with such an offence.

8.6.6. Other Reasons for Refusal

- Prejudice to sovereignty, security or public order;
- Fiscal offences (tax offences, against customs rules and exchange controls, except in the event of commitment to reciprocity);
- Discrimination according to race, gender, religion, ethnic origin, etc.;
- Cruel, inhumane or degrading punishment (death penalty is not a reason for refusal). Moroccan legislation incriminates torture in compliance with the provisions of the International Convention against Torture. On 24 November 2014, Morocco ratified the optional protocol in respect of the Convention against Torture;
- The offence was committed on Moroccan territory. A crime or offence committed in Morocco by a foreigner can be prosecuted unless (s)he has been definitively judged abroad for the crime or offence and, if sentenced, (s)he has completed his or her penalty or that the time limit has expired. This includes crimes committed in its territorial waters and according to the flag principle, Morocco also has jurisdiction over crimes committed on the vessels flying an Algerian flag or airplanes registered under its legislation regardless of the nationality of the perpetrators,
- Expiry of the time limit, under Moroccan law or that of the requesting State;
- When the individual is already appearing before its courts;
- Absence of double criminality or the minimum penalty.

8.6.7. Procedures

Article 726 of the Penal Procedural Code stipulates that “the request for the extradition of persons shall be submitted to Moroccan authorities in writing and via diplomatic methods. There shall be attached to the request (1) the original or authenticated copy of the enforceable conviction or arrest warrant, or any other act with the same effect issued by the judicial authority in accordance with the procedures laid down in the law of the requesting State; (2) a summary of the acts for which the extradition is requested, in addition to the date and place of commission of such acts, accompanied by a copy of the legal texts applied to the criminal act; (3) a statement as accurate as possible about the wanted person’s particulars and any other information that may identify him or her or his or her nationality; (4) an undertaking not to investigate the convicted person in terms of any other procedure undermining his or her personal freedom for any act other than the act covered by the extradition. The Minister of Foreign Affairs sends the extradition request and the file after inspecting all its documents to the Minister of Justice who shall verify the accuracy of the request and take necessary legal actions.”

8.6.8. Conflict of Jurisdictions

Along bilateral and international agreements on the matter, the Moroccan Code of Criminal Procedure establishes guidelines on conflict of jurisdiction matters in Articles 704-713. International conventions take priority over national laws on legal cooperation with foreign States. Also, provisions on international cooperation only apply in the absence or silence of conventions on such provisions. Morocco has enumerated three main principles that are beneficial to resolving conflict of jurisdiction issues:

1. Consolidation of the international legal assistance network;
2. The desire to fight organized crime, including terrorism;
3. Privileging international legal cooperation over and above the strict interpretation of the principle of sovereignty.

8.6.9. Universal Jurisdiction

Moroccan law envisages a certain number of measures that fall perfectly within the scope of universal jurisdiction:

As mentioned above, the Code of Criminal Procedure establishes that any person of Moroccan or foreign nationality shall be prosecuted and sentenced before the competent Moroccan jurisdictions who has committed, outside Moroccan territory, as principal perpetrator, co-perpetrator or accomplice to the crime of terrorism, whether or not the attack was against Morocco or its interests.

However, if the action in question affects Morocco and was committed by a foreigner outside the territory of the Kingdom, the perpetrator can only be prosecuted and sentenced if on Moroccan territory.

The draft Moroccan Criminal Code envisages a series of crimes falling under the scope of universal jurisdiction (crimes against humanity, genocide, enforced disappearances). In fact, anyone can be prosecuted and sentenced by Moroccan courts if (s)he has committed a crime of genocide or crimes against humanity or any of the acts incriminated by international conventions ratified by Morocco and published in the official journal, as long as said person is on Moroccan territory.

8.6.10. Cooperation

Before making requests for extradition, informal consultation is possible, above all through liaison magistrates, INTERPOL, diplomatic channels, or the Quadripartite Commission of which Morocco is a member, together with France, Spain and Belgium, for matters connected with terrorism. An interface on the Ministry of Justice portal¹⁷² enables access to legal documents, such as the Code of Criminal Procedure, governing the methods of legal cooperation regarding extradition and the bilateral and multilateral conventions ratified by Morocco in this area, as well as instructions on what needs to be provided in the extradition request by each State depending on its bilateral treaty with Morocco or the lack of such a treaty according

¹⁷². ADALA MAROC Portail Juridique et Judiciaire du Ministère de la Justice du Maroc: <http://adala.justice.gov.ma/FR/Home.aspx>; (in Arabic: <http://adala.justice.gov.ma/AR/home.aspx>).

to the terms provided in its domestic legislation (Art. 726 of the Code of Criminal Procedure).¹⁷³ The portal and individual documents are available in Arabic and French.

Prior to refusing extradition, the State consults with the requesting State to provide it with the opportunity to present complementary information. Direct spontaneous contact between the competent central authorities of each State have contributed to successful extradition practices.

Morocco is a founding member of the Quadripartite Commission that also includes France, Spain and Belgium, for the coordination between prosecutors under the scope of the fight against terrorism.

8.7. Palestine

8.7.1. Introduction

The Palestinian legal system is a reflection of the unenviable political situation the land finds itself in. Between the Israeli occupation, the *de facto* authority of Hamas and a lack of statehood, Palestine is divided into several zones controlled by several different actors and a mix of outdated laws, mostly dating back to the Jordanian jurisdiction over the territories. The West Bank is divided into zones A, B and C, where A and B are controlled by the Palestinian National Authority and C is controlled by Israel. The Gaza Strip is officially controlled by the Palestinian National Authority, but *de facto* by Hamas.

Regarding extradition and jurisdiction, mainly Jordanian laws apply from the time of the Hashemite Kingdom when Jordan and the West Bank formed one country, thus the relevant provisions are worded in terms of Jordanian citizens and the territory of 'the Kingdom.' *Mutatis mutandis*, however, they apply to the Palestinian territory and Palestinians. Palestinians have obtained Palestinian citizenship independent from Jordanian nationality and Israeli nationality after the 1993 Peace Agreement.

The law of the State of Palestine remains fragmented between the laws handed down from the Ottoman Empire, the British Rule, and the Hashemite Kingdom and this is also reflected in the outdated Extradition of Fugitive Criminals Act of 1927.

Work is underway on preparing a legislative and organizational framework, by forming a national team consisting of all relevant national institutions working on setting out an act for judicial cooperation and preparing a procedures manual that shall identify the roles and powers to handle extradition requests. A model Constitution has furthermore been drafted, i.e. the Basic Law, providing a framework for the political and legislative system.¹⁷⁴

173. Vade-mecum Procédural Pénal de Coopération Juridique Internationale: http://adala.justice.gov.ma/production/Guides_Manuels/fr/MANUEL%20PROCEDURAL%20PENAL%20DE%20COOPERATION.pdfhttp://adala.justice.gov.ma/production/Guides_Manuels/fr/MANUEL%20PROCEDURAL%20PENAL%20DE%20COOPERATION.pdf

174. The Basic Law was passed by the Palestinian Legislative Council in 1997 and ratified by President Yasser Arafat in 2002. It has subsequently been amended twice; in 2003 the political system was changed to introduce a prime minister. In 2005 it was amended to conform to the new Election Law. The 2003 reform was comprehensive and affected the whole nature of the Palestinian political system, whereas the 2005 amendment was only minor and affected only a few paragraphs. A parallel effort has been made to draft a permanent Palestinian constitution for an independent state, but this was shelved in favour of amending the existing Basic Law; see <http://www.palestinianbasiclaw.org/basic-law/2005-amendments>.

The biggest obstacle to an orderly legal system nevertheless continues to be the Israeli occupation which hinders the national sovereignty on the Palestinian territories, and which controls the crossings and borders. This weakens the ability of Palestinian law enforcement parties to enforce the orders of arrest and summons, as well as to implement judgments.

The status of Palestinian partition, between the West Bank and Gaza Strip, together with the impact of this partition, further creates obstacles related to implementing the content of mutual legal assistance requests and the extradition of criminals.

8.7.2. Multilateral Agreements

The Arab Convention against Corruption, the Arab Convention for the Suppression of Terrorism, the Arab Convention against Money Laundering and the Financing of Terrorism, the Arab Convention against Transnational Organised Crime, the Arab Convention on Combatting Information Technology Offences, the Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences within the framework of the implementation of penal provisions, the Riyadh Agreement on for Judicial Cooperation of 1983, in addition to the United Nations Convention against Transnational Organized Crime.

Bilateral agreements: Annex IV to the Interim Palestinian-Israeli Agreement signed in Washington, DC, 1995 (Protocol Concerning Legal Affairs: Criminal Jurisdiction, Legal Assistance in Criminal Matters, Civil Jurisdiction, Legal Assistance in Civil Matters)

8.7.3. Threshold Requirements for Extradition

The threshold requirements for extradition are double criminality and the existence of an extradition treaty. Extraditable acts are enumerated in Table I Annexed to the Extradition of Fugitive Criminals Act of 1927 and in the Extradition Act of 1926 applicable in the Gaza Strip.

8.7.4. Reasons for Refusal

Based on Art. 6 of the 1927 Act, the following limitations to extradition will apply:

- a. The fugitive shall not be extradited if the offense for which extradition is requested was of a political nature or if it was proven to the Magistrate judge or to the Court of Appeal that the purpose of the extradition request is to prosecute this criminal or punish him or her for a political crime.
- b. The fugitive shall not be extradited to the foreign State unless its law or the agreement concluded with it stipulate that (s)he will not be arrested or prosecuted for an offence committed in that State prior to the extradition other than the offence for which extradition was requested and agreed upon, except if (s)he was returned to Palestinian territory or was able to get there.
- c. The fugitive shall not be extradited if (s)he is accused of committing a crime in the Palestinian territory other than the crime for which extradition is requested or if (s)he has been imprisoned based on a judgment issued by the Palestinian courts except after his or her release upon expiration of the mentioned judgment, after proving his or her innocence or by any other means.

- d. The fugitive shall not be extradited except after the lapse of 15 days from the date of his or her arrest awaiting his or her extradition.¹⁷⁵

8.7.5. The Limited Territorial and Personal Jurisdiction of the Palestinian National Authority

In terms of the Penal Code, the Palestinian territories still apply the Penal Code No. (16) of 1960 from the time of the Hashemite Kingdom. The Code thus describes in Art. 7 the jurisdiction in terms of the 'Kingdom', its air layers, five kilometres of territorial sea, its vessels and air vehicles as well as foreign territories occupied by the Jordanian Army when the offence committed harms the safety of the army or its interests. The application of Art. 7 to Palestinian territories is therefore not reasonable.

According to Article I of Annex II of the 1995 Israeli-Palestinian Interim Agreement ('Oslo' II), the Palestinian criminal jurisdiction is limited to 'offences committed by Palestinians and/or non-Israelis in the Territory'. 'Territory' refers to the West Bank and the Gaza Strip, in principle including East Jerusalem. Indeed, this is the Palestinian territory internationally recognized as a 'single territorial unit' (Art. IV Declaration of Principles 1993 [Oslo I]; Art. XI(1) Oslo II). Of course, on the one hand, Palestinian jurisdiction does not extend to the Area C in the West Bank (including Israeli settlements and military installations). On the other hand, while Israel does not, in principle, claim sovereignty over the West Bank and Gaza, it does so with regard to East Jerusalem. Thus, on the basis of Oslo, Palestinian criminal jurisdiction is severely limited both *ratione personae* and *ratione loci*.¹⁷⁶ The question of where Palestinian criminal jurisdiction begins and where it ends was also important when Palestine sought to recognize the jurisdiction of the International Criminal Court (ICC) 'for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002.' As Professor Kai Ambos has argued, pursuant to Oslo II, the Palestinian National Authority must not exercise jurisdiction over Israelis but it may nevertheless delegate this jurisdiction to an international court.¹⁷⁷

8.7.6. Nationals – Extradition and Jurisdiction

According to the Palestinian draft constitution, i.e. the Basic Law of 2003, a Palestinian may not be deported or prevented from returning to his or her country. No Palestinian may be extradited to a foreign State.¹⁷⁸ Nationals cannot be extradited, however Palestinian courts have personal jurisdiction over them and can thus prosecute the crime.¹⁷⁹ The principle of *aut dedere aut iudicare* is not established in any legislative provision, however there are international agreements signed by the Palestinian National Authority which require it and are considered internally binding. The measures set forth in Security Council resolution 2322 (2016) are furthermore being implemented. Palestinian courts are able to enforce a sentence that has been imposed on the person sought under the domestic law of the requesting State.

175. Article 6 Law on the Extradition of fugitives and its Amendments of the year 1927 published in the Official Gazette no. 160 dated 1/7/1927 https://www.unodc.org/res/cld/document/jor/1927/law_on_the_extradition_of_fugitives_and_its_amendments.html/Jordan_Law_on_the_Extradition_of_fugitives_and_its_Amendments.pdf

176. Kai Ambos, 'Palestine UN non-Member Observer Status and ICC Jurisdiction', *EJIL: Talk!* (6 May 2014), <https://www.ejiltalk.org/palestine-un-non-member-observer-status-and-icc-jurisdiction/>.

177. Ibid.

178. 2003 Permanent Constitution Draft <http://www.palestinianbasiclaw.org/basic-law/2003-permanent-constitution-draft>, Article 31.

179. Penal Code No. 16 of 1960.

The State has established jurisdiction over terrorist offences committed by its nationals, regardless of the location of the offences committed in laws such as the Decree Law No. 20 of 2015 on combatting money laundering and financing of terrorism.¹⁸⁰

8.7.7. Universal Jurisdiction

With regard to some offences related to money laundering and terrorism financing, the State is obliged to submit the case without exception and undue delay to its competent authorities, regardless of where the offense was committed.

8.7.8. Cooperation and Reform

The questionnaire indicated that relevant officials do not consult with foreign counterparts in advance of making requests for extradition and no consultations take place with the requesting State prior to the refusal of a request. Furthermore no particular steps have been taken to ensure that other states are aware of the national legal requirements for extradition and the State of Palestine is not an active member of any regional judicial cooperation network that shares good practices.

8.8. Tunisia

8.8.1. Legal basis for Extradition

Tunisia has concluded several bilateral agreements with Arab, African, and European countries. It has further signed the Convention on Mutual Legal and Judicial Assistance concluded by the Arab Maghreb countries (Ras Lanouf, March 9-10, 1991), the Arab Riyadh Agreement for Judicial Cooperation, and the Merida Convention (UN Convention against Corruption).

Extradition in Tunisia is governed by the provisions of chapter VIII of Book IV of the Code of Criminal Procedure (Articles 308 to 330); Organic Law No. 2016-61 of 3 August 2016 on the prevention of and fight against human trafficking (trafficking in persons) (Art 27, 28, and 29);¹⁸¹ Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering (Arts. 87, 88, 89).

180. Anti-Money Laundering and Terrorism Financing Decree Law, No. (20) of 2015, available at: https://bankofpalestine.com/files/Anti_money_laundering_and_terrorism_en.pdf.

181. Loi organique n° 2016-61 du 3 août 2016, relative à la prévention et la lutte contre la traite des personnes, http://www.legislation.tn/fr/detailtexte/Loi-num-2016-61-du-03-08-2016-jort-2016-066_201606600061/?shorten=Dx6o.

8.8.2. Nationals – Extradition and Jurisdiction

A person cannot be extradited if he/she is a Tunisian citizen, with this status being considered at the time of the decision on extradition.¹⁸² Tunisia has active and passive personality jurisdiction over its nationals and follows the principle of *aut dedere aut iudicare*.¹⁸³ Art. 305 of the Code of Criminal Procedure states that “[a]ny Tunisian citizen that, outside the territory of the Republic, is guilty of a felony or misdemeanour punishable by Tunisian law, may be prosecuted and sentenced by Tunisian courts unless it is acknowledged that the foreign law does not punish said offence or if the guilty party can show that a final judgement has been passed on him or her abroad and, if sentenced, that (s)he has completed the sentence or the statute of limitations has expired or pardon has been obtained.” Tunisia has established its jurisdiction over terrorist offences committed by its nationals regardless of where they were committed under Art. 83 of Organic Law No. 2015-26 of 7 August 2015 and will submit any such case without delay to its competent authorities for the purpose of prosecution.

A sentence imposed on a Tunisian national under the domestic law of the requesting State can be enforced in Tunisia.

Whoever committed, as principal or accessory, a felony or misdemeanour outside the territory of Tunisia can be prosecuted or tried before Tunisian courts when the victim is a Tunisian citizen. The proceedings are initiated only at the request of the prosecution or the victim or its family.¹⁸⁴

8.8.3. Jurisdiction over Crimes against the State

Under the protective principle, if a foreigner commits, as principal or accessory, a crime or misdemeanour outside the soil of Tunisia that harms State security or engages in counterfeiting State seals or the national currency, it is for the Tunisian courts to prosecute him or her according to Tunisian law if (s)he was arrested in Tunisia or extradited to Tunisia.¹⁸⁵

8.8.4. Temporary Surrender

In the event that a foreigner is prosecuted or convicted in Tunisia and should there be a request for extradition made to the Tunisian government for a different crime, extradition shall not be granted until completion of prosecution or, in case of conviction, after the sentence has been served. This shall not, however, prevent the temporary handover of a foreign national to stand trial before the courts of the requesting State, provided that (s)he is returned upon completion of trial by the foreign courts.¹⁸⁶

182. Code of Criminal Procedure, (hereinafter CCP), Art. 312(1).

183. Organic Law No. 2015- 26 of 7.8.2015, Art. 83.

184. CCP, Art. 307bis.

185. CCP, Art. 307.

186. CCP, Art. 315.

8.8.5. Conditions for Extradition

When the offence was committed:

- On the territory of the requesting State by a citizen of that State or a foreigner;
- Outside the territory of the requesting State by a citizen of that State;
- Outside the territory of the requesting State by an individual who is foreigner to that State, when the offence is among those that can be prosecuted under Tunisian law within the territory of Tunisia, even when if committed by a foreigner abroad.¹⁸⁷

Extradition shall be granted:

- First: If the offence for which extradition is requested is punishable by Tunisian laws as a felony or misdemeanour;
- Second: If the penalty required by the law of the requesting State is a custodial sentence of at least six months for all offences for which extradition is being requested. In the event of a conviction, the penalty imposed by the court of the requesting State shall be a custodial sentence of at least two months. The acts constituting attempt or complicity shall be subject to the afore-mentioned rules provided that they are punishable under the law of the requesting State and under Tunisian law.¹⁸⁸

8.8.6. Reasons for Refusal

- When the person concerned is at risk of torture,¹⁸⁹ see Article 88 of Organic Law No. 2015-26 of 2015 on the Fight against Terrorism and the Suppression of Money Laundering and Article 29 of Organic Law No. 2016-61.
- Article 312: Extradition shall not be granted in the following situations:
 - First: If the person requested for extradition is a Tunisian national, a status that shall be assessed at the time of the decision on the extradition.
 - Second: If the felonies or misdemeanours are perpetrated in the Tunisian territory. The territorial jurisdiction includes the territorial waters of Tunisia¹⁹⁰, and in compliance with the flag principle, Tunisia has jurisdiction over offences committed on board a boat flying under its flag or an airplane registered under its legislation at the time the offence was committed.
 - Third: If the prosecution has been concluded in Tunisia, even though the crimes or misdemeanours were committed outside Tunisia.
 - Fourth: If the public proceedings or the penalty has run out under Tunisian law or the law of the requesting State.
- **Article 313: Extradition shall also not be granted:**

¹⁸⁷. CCP, Art. 310.

¹⁸⁸. CCP, Art. 311.

¹⁸⁹. CCP, Art. 313(3).

¹⁹⁰. Law No. 73-49 of 2 August 1973.

- First: If the felony or misdemeanour is of a political nature or if the extradition request was designed for political purposes. Assault on the life of the President of the Republic or one of the members of his/her family or one of the members of government does not constitute a political crime.
- Second: If the crime for which the extradition is requested consists in a failure to discharge a military obligation.

8.8.7. What is not Considered a Political Crime

The taking or attempted taking of the life of a head of State or a member of his or her family, or of a member of the government is not considered as a political offence.¹⁹¹ Terrorist offenses are not considered political offenses that do not give rise to extradition.”¹⁹²

8.8.8. Proceedings

The extradition request must be sent to the Tunisian Government through diplomatic channels and accompanied by the original or authenticated arrest warrant or any other document having the same legal effect and issued in accordance with the law of the requesting State.¹⁹³ The factual circumstances prompting the request for extradition, the date and place where the offenses were committed, the legal qualification, and the references to the applicable legal provisions must be indicated as accurately as possible. A copy of the laws applicable to the incriminating act must also be attached thereto.

The examination of extradition requests falls under the remit of the Indictment Chamber of the Court of Appeal of Tunisia. The foreigner appears before it within 15 days starting from the notification of the arrest. (S)he is then interrogated at a hearing of which a report is prepared. The public prosecutor and the party concerned are heard. The latter may be assisted by a lawyer. The foreigner may be released provisionally at any stage of the proceedings, in accordance with the provisions of the Code of Criminal Procedure.¹⁹⁴ The judicial proceedings culminate in a decision that is not subject to an appeal.¹⁹⁵ A favourable ruling paves the way for the Government to decide whether or not to grant the extradition.

In emergencies and at the direct request of the judicial authorities of the requesting State, prosecutors may, acting on a simple opinion, order the provisional arrest of foreign nationals.

Article 316 of the Code of Criminal Procedure stipulates that “all extradition requests shall be sent to the Tunisian Government through diplomatic channels [...]” In emergencies, Article 325 stipulates that “prosecutors [...] may, acting on a simple opinion, [...] order the provisional arrest of the foreign national.” A formal notification of the request must be submitted at the same time through diplomatic channels.

191. CCP, Art. 313(1).

192. CCP, Arts. 87-88 of Organic Law No. 2015-26 of 7 August 2015 and Arts. 59-60 of Law No. 2003-75 of 10 December 2003.

193. CCP, Art. 316.

194. CCP, Art. 321.

195. CCP, Art. 322 or as agreed in bilateral, regional or multilateral agreements.

8.8.9. Summary Proceedings

If, during the hearing, the foreigner declares that (s)he waives the benefit of the provisions of chapter VIII of the Code of Criminal Procedure and formally consents to being delivered to the authorities of the requesting State, this declaration is acknowledged by the indictment chamber. A copy of this decision is sent, without delay, by the public prosecutor of the Republic to the State Secretary for Justice, which takes the decision (s)he deems to be most appropriate.¹⁹⁶

8.8.10. Temporary Surrender

If a foreigner is prosecuted or has been sentenced in Tunisia, and his or her extradition is requested to the Tunisian government as a result of a different offence, (s)he will be returned only once prosecution has concluded and, if sentenced, after the penalty has been served. However, this provision does not mean that (s)he cannot be sent abroad temporarily to appear before the court of the requesting State, as long as (s)he is returned once the foreign court has ruled.¹⁹⁷

8.8.11. Concurrent Requests

When extradition is being requested by several States at the same time, priority is accorded to the State whose interests were targeted by the offence, or to the State on whose territory the offence was committed.¹⁹⁸ However, if these concurrent requests cite different offences, all factual circumstances shall then be taken into account, in particular the relative seriousness and location of the offences, as well as the respective dates of the requests.¹⁹⁹

8.8.12. Terrorism

Organic Law No. 2015-26 of 7 August on the Fight against Terrorism and the Suppression of Money Laundering states in Art. 87 that terrorist offences are never considered as political offences that do not lead to extradition. Furthermore, offences related to the financing of terrorism are not considered as fiscal offences that do not lead to extradition. Furthermore, according to Art. 88, the terrorist offences set forth in this law provide the basis for extradition according to the provisions of the Code of Criminal Procedure if they are committed outside the territory of Tunisia against a foreigner or against foreign interests by a foreigner or a stateless person who is present on Tunisian territory.

Extradition is granted only if the competent Tunisian authorities receive a legal request by a competent State in accordance with its domestic legislation and provided that the Tunisian courts have not already ruled on the case, in accordance with the rules governing their jurisdiction.

¹⁹⁶. CCP, Art. 322.

¹⁹⁷. CCP, Art. 315.

¹⁹⁸. CCP, Art. 314.

¹⁹⁹. Ibid., para. 2.

Extradition cannot be granted if there are reasonable grounds to believe that the person which is the object of the request is at risk of torture or that the request has as its objective to prosecute or punish the person based on his/her race, colour, origin, religion, sex, nationality, or political beliefs. Art. 89 states that if it is decided not to extradite the person who is subject to prosecution or a trial abroad for one of the offences set forth in this law, the Tunis Court of first instance is obligated initiate criminal prosecution.

Article 13 of the law reads:

“Whoever who commits by any means, individually or jointly with another, one of the enumerated acts contained in articles 13 to 36, when the purpose of such act is, by its nature or context, to spread terror among the population or to unduly compel a State or an international organization to perform or abstain from doing any act.”²⁰⁰

Importantly, the 2015 Organic law provides a very comprehensive list of what is considered a terrorist offence (see arts. 14-36) and, for the first time, the law criminalises the practice of *Takfir* (excommunication) and glorifying or praising terrorist activities. This important development in the fight against radicalisation and terrorism has inspired the EU Directive 2017/541 Directive 2017/541,²⁰¹ which acknowledged the growing trend of online incitement.²⁰² The European Commission has stated that the glorification and justification or terrorism, or the dissemination of messages or images which gather support for terrorist causes or intimidate the population should be punished as it causes a danger that terrorist acts may be committed. Member States must take the necessary measures to ensure that incitement to commit a terrorist offence, whether directly or indirectly, through glorification that advocates the commission of terrorist acts, is punishable as a criminal offence.²⁰³ Turning back to the Tunisian law, the European Union’s statement on glorification and incitement follows the same trend as that set out in the Tunisian counter-terrorism law.

8.8.13. Conflict of Jurisdiction

Potential conflict of jurisdiction is regulated in Art. 83 of Organic Law No. 2015-26 of 7 August 2015 and Arts. 305, 306, 307 and 307bis of the Code of Criminal Procedure.

Tunisia has indicated that the main issues relating to conflict of jurisdiction arise out of public order reasons in national legislations. Furthermore, Tunisia finds the best practice in resolving issues arising from conflict of jurisdiction to be direct contact between relevant actors.

8.8.14. Universal Jurisdiction

For certain conduct, such as the ones stipulated in the resolutions of the United Nations Security Council, universal jurisdiction is established under Art. 307 of the CCP and Art. 83 of Organic Law No. 2015-26 of 7 August 2015.

200. Loi organique N°22/2015 relative à la lutte contre le terrorisme et la répression du blanchiment d’argent, Art 13 http://www.legislation.tn/fr/detailtexte/Loi-num-2015-26-du-07-08-2015-jort-2015-063_2015063000261?shorten=aTEw.

201. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combatting terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

202. Ibid., §4.

203. Ibid., Art 5.

8.8.15. Cooperation

Tunisia assumes that other countries' officials know their legal requirements for extradition, since these are specified in the bilateral agreements signed. Therefore, it has taken no additional steps to further clarify them or to make them more accessible. Officials do not hold informal consultations with their foreign counterparts prior to the extradition request being submitted. Nevertheless, the questionnaire indicates that the informal aspect and direct contact are essential for successful extraditions as well as the trust in the law and legal system of the requesting State.

The 2016 MENA Anti-money Laundering and Counter-terrorism Financial Measures Report noted that Tunisia has an open and collaborative approach to international cooperation. However, its lack of resources can delay or hamper the ability to provide the full support needed by the foreign authorities.²⁰⁴

Before refusing the extradition, the requesting State is consulted and can present information and views on the matter.

The 2016 MENA Report observed that: "The presence of foreign liaison magistrates in Tunisia and vice versa and frequent missions of Tunisian officials and magistrates abroad have made it possible to develop up permanent dialogue with countries that have sent mutual legal assistance requests to Tunisia or have received them from Tunisia. In some cases of extradition, this dialogue allowed for the step-by-step resolution of legal obstacles and movement toward a solution. However, the lack of resources, coordination and/or capacity to set priorities continues to delay or hamper the effectiveness of international cooperation."²⁰⁵

Despite progress, numerous requests for mutual assistance or extradition have not been fulfilled and some requests have been considered insufficiently precise or justified by Tunisia's partners.²⁰⁶

In the 2011-2014 period, Tunisia received 19 requests for extradition and sent 44.²⁰⁷ In 2014 and 2015, it extradited two people to Italy.²⁰⁸

204. Middle East and North Africa Financial Action Task Force, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Tunisia, (May 2016).

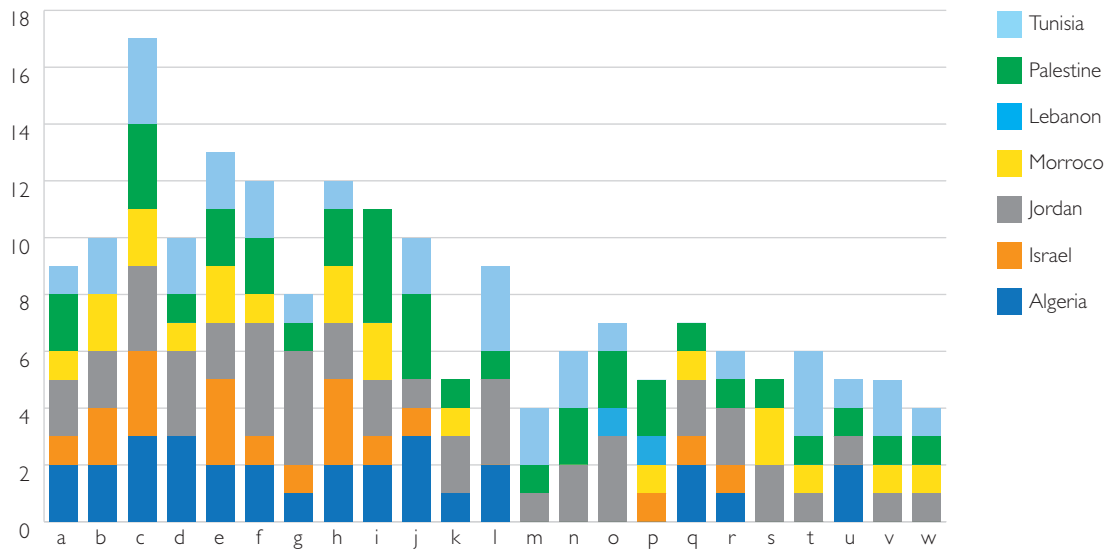
205. Ibid., para. 414.

206. Ibid., para. 375.

207. Ibid., para. 397, table 20.

208. Ibid., para. 398.

9. Most Significant Hurdles to Extradition as Indicated by the SPCs



- Weak or outdated extradition laws and treaties;
- Widely differing preconditions between countries for granting extradition;
- Length, complexity, cost and uncertainty of extradition process;
- Lack of awareness of national or international extradition law and practice, of the grounds for refusing an extradition request, of how extradition could be improved or of what alternatives exist to extradition and how they work;
- Language obstacles, such as interpretation errors arising from translating extradition requests and attached materials under tight deadlines;
- Communication and coordination problems, both between domestic agencies and between States;
- Prejudice to the success of an extradition request arising from premature arrest;
- Burdensome evidentiary requirements of requested States that are not familiar to or not well understood by requesting States, or seemingly more relevant to deciding the person's guilt or innocence (an issue reserved to the courts of the requesting State);
- Non-extradition of nationals (however defined), or those who obtain citizenship by deception, and limitations on their effective prosecution in the refusing State;
- Lack of trust among States about the integrity of each other's justice systems;
- Wide scope being given to the grounds of refusal for political or politically motivated offences or discrimination, and too little attention given to putting in safeguards to build trust, or to alternatives, such as prosecuting the person in the requested State or an acceptable third country in lieu of extradition, where the domestic law of the requested State so allows;
- Delaying tactics, such as frivolous or irrelevant defence requests for further information;

- m. Abuse of privileges and immunities, such as inappropriate grant or maintenance of diplomatic immunity or asylum;
- n. Inflexible prosecution practices in requested States following receipt of an extradition request, including mandatory local investigation and prosecution triggered by the receipt of the request relating to the extraditable offences and local prosecution of offences that are minor compared with the offences for which extradition is sought;
- o. Partial, repeated or uncoordinated appeals throughout the extradition process;
- p. Failure of extradition owing to preventable problems arising in transit States;
- q. Lack of dual criminality;
- r. Lack of reciprocity;
- s. Double jeopardy, *ne bis in idem*;
- t. Persecution;
- u. Refoulement;
- v. Absence of minimum guarantees in criminal proceedings;
- w. Procedures relating to surrender.

Recommendations

Complexity of proceedings is the number one hurdle when it comes to extradition requests. This includes the differences between national laws, errors arising from translating requests, confusion regarding evidentiary requirements and general communication problems. Confusion can also result from the way Arabic names are written in their 'translated' versions. The latter may be shorter with a different part from among the individual's family names considered to be their 'last name'.

Countries must ensure high quality translation services at their respective departments dealing with extradition requests. Morocco has indicated that despite the fact that they have translators, translations still pose a challenge. All relevant laws should be made available online in English or French.

Morocco is a case of good practice in terms of making documents available online in Arabic and French and the extradition process easy to follow on the website of their Ministry of Justice. However, to make it even more accessible for non-Arabic and non-French speakers and to avoid potential translating mistakes, an English version would be welcomed. Algeria also has the necessary national requirements accessible and understandably explained in Arabic and French on the website of their Ministry of Justice. Jordan and the State of Palestine however lack such explanations online and Jordan has indicated that it has not taken any steps to ensure that other States are aware of its national legal requirements. It is recommended that all SPCs prepare practical guides to domestic extradition law and practice and subsequently distribute them by the central authority to States with which there are existing extradition agreements. The availability of such a practical explanatory note would be of value in the preliminary stages of extradition treaty negotiations with States that may have no prior experience of local requirements.

In terms of evidentiary requirements, Israel poses a high standard to be met, i.e. *prima facie*, however it is thoroughly explained online in English, therefore it constitutes good practice in terms of making requirements understandable. The full translation in English of the Israeli up-to-date Extradition Law is available on the UNODC database: https://www.unodc.org/res/cld/document/isr/extradition_law_5714-1954_html/Israel_Extradition_Law.pdf.

Israel also encourages requesting States to contact their Department of International Affairs when in doubt relating to the preparation or submission of requests for provisional arrest or extradition. Several other countries have indicated that they hold informal talks with requesting States prior to the requests being submitted or before a request is denied. On the contrary, Jordan has indicated that relevant officials do not informally consult with foreign counterparts neither prior to the submission nor before a denial. Nevertheless, the answers to the questionnaire called for direct contact between the attorney general department and the requesting State by phone or e-mail to improve the extradition process. In Europe, it has come to be increasingly accepted that reliance on the diplomatic channel for the communication of extradition requests has given rise to unnecessary delays while direct contact between ministries of justice or through designated central authorities offered more satisfactory alternatives. The use of modern means of communication is paramount for an expedited extradition.

Regardless of the efforts by individual States in explaining the domestic legal and technical requirements, a unification of rules on extradition would undoubtedly remove many of the hurdles associated with the lodging of successful extradition requests. A system of filing requests online in one place would further simplify the procedure. In this regard the implemented initiative on e-extradition from INTERPOL will be a substantive improvement to the *status quo*. It will potentially also fill the gap for tracking and monitoring of outgoing and incoming extradition requests that are not available in individual States (e.g. Jordan and Palestine). Some countries have reported that it is not unheard of for extradition requests to receive no official reply at all. The Riyadh Agreement clearly stipulates that the requested party shall inform the competent authority of the requesting party of its decision regarding the extradition request and a rejection in whole or in part must be justified.²⁰⁹ The existence of one worldwide system of monitoring requests and replies to such requests may facilitate that individual countries do not leave requests unanswered and show willingness to cooperate in these matters.

A worldwide online database of relevant domestic laws and international agreements, with a mechanism that would ensure regular updating, would further improve the practical side of extradition as well as MLA. Signatories to the Riyadh Agreement have already taken on the obligation of regularly exchanging the texts of legislations in force, legal and judicial publications, pamphlets and studies, and journals containing legal statutes and judgments, as well as information pertaining to judicial regulations.²¹⁰ An initiative for a database which would include such documents to exist in terms of the SPCs involved in the current project was warmly welcomed at the third CrimEx session, thus it would be recommended to look at technical options for implementation. The Riyadh Agreement further instructs its Member States to take measures to reconcile legislative texts and coordinate legal systems in the contracting parties, as required by the special circumstances of each party.²¹¹

In December 2016 a Tunisian rejected asylum seeker, AA, committed one of the worst Jihadist attacks in Germany, ploughing a truck through a Berlin Christmas market and killing twelve people. It emerged that his deportation was scheduled months before the attack but got caught up in red tape with Tunisia, which long denied he was a citizen.²¹² This is just one of numerous examples of delayed or rejected extradition requests which have resulted in potential terrorist roaming the streets free to devise their plans for attacks. The removal of unnecessary red tape is thus essential in these matters.

209. Art. 48.

210. Riyadh Agreement, Art. I.

211. Ibid.

212. The Local, Germany Clears Extradition of Suspected Bardo Museum Attacker, (6th April 2017), <https://www.thelocal.de/20170406/germany-clears-extradition-of-tunisia-jihadist-suspect>.

10. General Recommendations on Improving South-South and North-South Cooperation

10.1. Political Considerations

Political considerations are inextricably linked to extradition. For example, a lack of trust and different geopolitical interests between States can result in a lack of bilateral extradition agreements and a general unwillingness to act based on reciprocity or comity in such cases. Out of the answers provided to the questionnaire, only Morocco indicated that comity can constitute a legal basis for extradition. Reciprocity was mentioned as a legal basis by Israel and Tunisia, however it is unclear whether this indicated 'reciprocity' is meant as one which is already part and parcel of bilateral and multilateral agreements, or whether it creates an additional basis for extradition despite a lack of a formal agreement. In Algeria, the extradition process may take place under the provisions of the Algerian Code of Criminal Procedure, even in the absence of any bilateral or multilateral framework (art. 694). In this case, extradition is based on the principle of reciprocity.

Recommendation

States are encouraged to show more flexibility in terms of allowing reciprocity and comity to provide the legal bases for extradition when there is no legally valid bilateral or multilateral agreement. This could lead to formal agreements in the future once trust is established between the States in question.

10.2. Political Offences Exception

Several SPCs have indicated the importance of the political offence exception not to include terrorism.²¹³ Without giving concrete details, several have also indicated that they have experienced refusals of requests for serious crimes on the basis of the political offences exception, mainly by certain EU States. Several international and regional agreements already limit the scope of the exception in this regard. However, for some acts or the membership of certain organisations, these still do not provide clear cut answers as to whether a certain conduct constitutes terrorism or not.

Art. 3(a) of the UN Model Treaty on Extradition states under 'Mandatory grounds for refusal' that extradition shall not be granted if the offence for which extradition is requested is regarded by the requested State as an offence of a political nature. This subparagraph provides protection against extradition for

²¹³ See also SC Resolutions.

certain criminal activities undertaken in a political context that are regarded by the requested State as offences of a political nature. Extradition for a non-violent, 'pure' political offence, such as a prohibited criminal slander of the Head of State by a political opponent or banned political activity, might embroil the requested State in the domestic politics of the State requesting extradition.²¹⁴

It is universally accepted that a political offender is not subject to extradition but rather is eligible for asylum. The political offence exception is naturally an obstacle to extradition, however it is of crucial importance in light of such concerning developments as the ever increasing crack-down on whistleblowers by the United States.²¹⁵ Protection from extradition for such non-violent human rights activists who seek protection abroad is essential to foster positive political change and transparency.²¹⁶ On the other hand, the political offences exception can be used to provide safe haven for dangerous extremists and in this sense it should be limited as much as possible if trust and cooperation is to be expected from SPCs and if an effective fight against terrorism is to be established.

The Riyadh Agreement excludes from the political offences exception the following:

1. Assaults on kings and presidents of the contracting parties or their wives or their ascendants or descendants.
2. Assaults on heirs apparent or vice-presidents of the contracting parties
3. Murder and robbery committed against individuals, authorities, or means of transport and communications.²¹⁷

The political offense exception dates back to at least the 19th century and presents a complete reversal of the original purpose of extradition treaties which were aimed exclusively at crimes of a religious or political nature. The shift in attitude began with the French Revolution and, in 1833, Belgium was the first to include the exception in its domestic legislation and in its extradition treaty with France in 1834. Other countries followed suit and it is today almost universally accepted. The exception has several justifications. It is based on a belief in the right to political activism without being subjected to potentially unfair trials and punishments and it furthermore forms part of the principle of self-determination, whereby foreign governments should not intervene in the internal political struggles of other nations.²¹⁸ However, when members of violent extremist groups looking to overthrow governments are given safe haven in foreign States, this can also be seen as a form of interference into the political struggles of other nations and a breach of their sovereignty.

Although there are many different perspectives, no generally acceptable definition of political offences exists. Academics and practitioners have generally divided the approaches into three tests as discussed in detail below.

214. UNODC, Revised Manuals on the Model Treaty on Extradition, para. 41.

215. See John Kiriakou, 'Obama's Abuse of the Espionage Act is Modern-day McCarthyism', *The Guardian*, (6th Aug. 2013), <https://www.theguardian.com/commentisfree/2013/aug/06/obama-abuse-espionage-act-mccarthyism>.

216. Mark D. Kielsgard, 'The Political Offense Exception: Punishing Whistleblowers Abroad', *EJIL: Talk!* (14th Nov. 2013), <https://www.ejiltalk.org/the-political-offense-exception-punishing-whistleblowers-abroad/>.

217. Art. 41.

218. Kielsgard, supra note 242.

10.2.1. Different Approaches to Political Offence

'Political incidents or political disturbance test'

The '*political incidents or political disturbance test*' whereby as long as the act was committed in relation to the struggle of groups of individuals to alter or abolish existing government in their country and the act itself was incidental to or in furtherance to that aim it will be considered a political crime. The political motivation is not decisive under this test, rather the crime must be specifically and immediately related to overthrowing or changing the government of a State or inducing it to change its policy, or escaping from its territory the better to do so.²¹⁹

'Injured rights test'

The '*injured rights test*' whereby a crime will be considered political only if it directly harms the rights of a State's political organization regardless of any underlying political agenda or motive of the perpetrator. Thus, crimes adversely impacting only private, commercial, or minority political party interests will not fall under the exception.

Political predominance and predominant motive test

The '*political predominance and predominant motive test*' whereby the political and criminal aspects of the offense will be weighed, and an offence will be considered political when it was predominantly politically driven, and the act is proximately related and proportionate to the political ends sought.

While the 'political incidence' test can be found in the US and the UK, most continental EU states follow the 'political predominance and predominant motive test' albeit the UK has recently moved closer to the latter. The 'political incidence' test is problematic from two perspectives. Firstly, as in the US, it excludes from protection the perpetrator of a political offence if is not committed in relation to a political disturbance. Thus it excludes acts such as Snowden's disclosure of unconstitutional surveillance of the citizens by the US government.²²⁰ In this context, the offence is usually also denied 'pure' political status despite being directly aimed at the government and not violating the private rights of individuals by classifying it as a different offence such as theft of government property.²²¹ On the other hand, the 'political incidence' test implies that as long as the act was committed in relation to the above mentioned struggle, even cases of murder or terrorism can be considered non-extraditable.²²² Ironically, extremist uprisings in the Arab world thus provide ample background for criminal acts to eventually be considered non-extraditable whereas whistle-blowers would not be considered deserving of the same protection. Since the mid-20th century the British version of the 'incidence' test requires a lesser threshold, whereby merely some political opposition between fugitive and the requesting State is necessary²²³ and it further considers the motives of the accused and of the requesting State when the offence is not part of an uprising.²²⁴ The US however still requires political disturbance to be proven.²²⁵

219. *Cheng v Governor of Pentonville Prison* [1973] A.C. 931, 945 H.L.

220. Kielsingard, supra note 242.

221. Ibid.

222. Sadoff, supra note 6, pp. 203-204.

223. *Schtraks v Government of Israel* [1964] AC 556, 591 H.L.

224. *Quinn v Robinson*, 783, F.2d 776 (9th Cir. 1971).

225. Kielsingard, supra note 242.

An echo of the political exception provisions of extradition treaties is found in the Refugee Convention which stipulates that its provisions do not apply to any person with respect to whom there are serious reasons for considering that (s)he has committed a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee.²²⁶ The UNHCR guidelines on the convention explain that a serious crime should be considered non-political when other motives (such as personal reasons or gain) are the predominant feature of the specific crime committed; non-political motives should be considered predominant where no clear link exists between the crime and its alleged political objective, or when the act in question is disproportionate to the alleged objective.

Nevertheless, certain acts cannot be considered political crimes regardless of the test applied. Art. 3(a) of the UN Model Treaty on Extradition stipulates under 'Mandatory grounds for refusal' that extradition shall not be granted if the offence for which extradition is requested is regarded by the requested State as an offence of a political nature. Reference to an offence of a political nature shall not include any offence in respect of which the parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the parties have agreed is not an offence of a political character for the purposes of extradition. The footnote to subparagraph (a) states that countries may wish to exclude certain conduct, e.g., acts of violence, such as serious offences involving an act of violence against the life, physical integrity or liberty of a person, from the concept of political offence.

For example, since the 1997 Convention for the Suppression of Terrorist Bombing, all the attacks listed in the UN Conventions against terrorism cannot be considered a political offence. Article 11 of this Convention points out that none of the offences set forth shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence, or an offence connected with a political offence or an offence inspired by political motives.

10.2.2. The EU Approach to Political Offence

The European Convention on Extradition 1957 states that: "extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as political offence or as an offence connected with a political offence." Yet within the Member States of the Council of Europe, the scope of the political offence exception was already reduced by the European Convention on the Suppression of Terrorism in 1977, which lists a range of offences associated with terrorism that are precluded from being regarded as political offences. Arts. 1 and 2 state:

"For the purpose of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

- a. an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970;

226. Geneva Convention relating to the Status of Refugees 1951 and New York Protocol 1967, Art. 1F(b).

- b. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal 1971;
- c. a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;
- d. an offence involving kidnapping, taking of hostage or unlawful detention;
- e. an offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;
- f. an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such offence.”

For the purpose of extradition between Contracting States, they may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, such as violence against life, physical integrity or liberty of a person. The same applies to a serious offence involving an act against property and shall apply to an attempt to commit any foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Between Member States, the EAW now abolishes altogether the political offence exception in relation to extradition. This of course does not apply to relations with other States.

The Council Framework decision 2002/475/JHA of 13 June 2002 on combating terrorism harmonises the definition of terrorist offences in all EU countries by introducing a specific and common definition. Its concept of terrorism is a combination of two elements: An objective element, as it refers to a list of instances of serious criminal conduct (murder, bodily injuries, hostage taking, extortion, committing attacks, threatening to commit any of the above); A subjective element, as these acts are deemed to be terrorist offences when committed with the aim of seriously intimidating a population, unduly compelling a government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organization.

Furthermore, EU countries must ensure that certain international acts are punishable as offences linked to terrorist activities even if no terrorist offence is committed. These include: Public provocation to commit a terrorist offence; Recruitment and training for terrorism; Aggravated theft, extortion and falsification of administrative documents with the aim of committing a terrorist offence.

However, despite broad ratification of anti-terrorist treaties, judges still enjoy discretion in deciding on a case-by-case basis the political character of an offence.²²⁷

Art. 12(2)(b) of the EU Qualification Directive²²⁸ stipulates that a particularly cruel action, even if it is committed with an allegedly political objective, cannot be considered a political crime.

227. Ilias Bantekas and Susan Nash, *International Criminal Law* (Routledge-Cavendish Publishers, 2007) 228.

228. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

10.3. Arab States & EU on the Definition of Terrorist Offence

The Arab Convention for the Suppression of Terrorism:

Extradition shall not be permissible if the offence for which extradition is requested is regarded under the laws in force in the requested State as an offence of a political nature. At the same time, none of the terrorist offences indicated in Art. I of the Convention are to be regarded as political offences.

Art. I (para. 2). Terrorism

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger; or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.

Art. I (para. 3) Terrorist offence

Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences:

- a. The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;
- b. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970;
- c. The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984;
- d. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973;
- e. The International Convention against the Taking of Hostages, of 17 December 1979;
- f. The provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas.

Furthermore, none of the following offences shall be regarded as political, even if committed for political motives:

Art. 2:

- c. Attacks on the kings, Heads of State or rulers of the contracting States or on their spouses and families;
- d. Attacks on crown princes, vice-presidents, prime ministers or ministers in any of the Contracting States;
- e. Attacks on persons enjoying diplomatic immunity, including ambassadors and diplomats serving in or accredited to the Contracting States;
- f. Premeditated murder or theft accompanied by the use of force directed against individuals, the authorities or means of transport and communications;
- g. Acts of sabotage

and destruction of public property and property assigned to a public service, even if owned by another Contracting State; h. The manufacture, illicit trade in or possession of weapons, munitions or explosives, or other items that may be used to commit terrorist offences.

Directive (EU) 2017/541²²⁹

Firstly, the Directive compels the Member States to define as terrorist offences a list of acts (art. 3.1):

“Member States shall take the necessary measures to ensure that the following intentional acts, as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation, are defined as terrorist offences where committed with one of the aims listed in paragraph 2:

- a. attacks upon a person's life which may cause death;
- b. attacks upon the physical integrity of a person;
- c. kidnapping or hostage-taking;
- d. causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
- e. seizure of aircraft, ships or other means of public or goods transport;
- f. manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;
- g. release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
- h. interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- i. illegal system interference, as referred to in Article 4 of Directive 2013/40/EU of the European Parliament and of the Council (19) in cases where Article 9(3) or point (b) or (c) of Article 9(4) of that Directive applies, and illegal data interference, as referred to in Article 5 of that Directive in cases where point (c) of Article 9(4) of that Directive applies;
- j. threatening to commit any of the acts listed in points (a) to (i).”

Secondly, the Directive defines the “aim” (art. 3.2):

“The aims referred to in paragraph 1 are:

- a. seriously intimidating a population;
- b. unduly compelling a government or an international organisation to perform or abstain from performing any act;
- c. seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.”

229. Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0541&from=EN>

Comparison Between the EU Framework and the Arab Cooperation Framework on the Definition of Terrorism

- The Arab Convention defines terrorism only for the purpose of transnational cooperation but does not require domestic criminalization of the Convention's definition²³⁰.
- The EU Directive requires the criminalization of the acts enlisted with a terrorist aim.
- The acts in the Arab Convention are those included both in the criminal legislation of the States and the international conventions ratified by them. There is not a specific category of acts included by the Arab Convention itself.
- The EU Directive has its own list of specific acts.
- The Arab Convention focuses on the description of the material act constituting the crime, irrespective of motives or objectives of the criminal²³¹.
- The EU Directive adds to the "intentional act" (general intent) the specific aim of terrorism which includes not only intimidating a population and destroying structures (special intent) but also unduly compelling a government or an international organisation to perform or abstain from performing any act ("special" special intent²³²).

10.4. Lack of Trust

After technical difficulties, such as translation problems, the complexity of proceedings etc. *lack of trust* among States about the integrity of each other's justice system was highlighted in the answers to the questionnaires as one of the biggest problems States face when dealing with extradition requests. Requests by many Arab States are routinely rejected based on concerns relating to torture or biased proceedings against individuals which are requested for extradition. An illustrative case is that of AH at the UK Upper Tribunal.²³³ The fugitive was connected with the *Front Islamique du Salut* in Algeria and was convicted *in absentia*, after he had fled to France, for participating in the bombing of Algiers airport which took place on 26 August 1992.²³⁴ He then fled to the UK where he requested asylum. Neither the Secretary of State, nor the French Cour d'Appel relied on the fact of his Algerian convictions.²³⁵ Rather the question of his asylum revolved merely around acts committed in France and the question of his potential extradition focused on whether his life and liberty would be in jeopardy in Algeria. In France, the appellant was found to be in possession/use of false identity documents and was subsequently convicted by the French Cour d'Appel of '*participation à une association de malfaiteurs en relation avec une entreprise terroriste*'. Considering the threshold of Art. 1 F(b) of the Refugee Convention (see above), the UK Tribunal considered whether his acts in France met the degree of 'serious' independently from the qualification of said acts by the French Cour d'Appel. It considered that the offence of possession/use of false identity documents alone is not sufficiently serious to lead to exclusion from the Refugee Convention, whilst personal participation in a

230. Ben Saul, 'Legislating from a Radical Hague: The United Nations Special Tribunal for Lebanon Invents an International Crime of Transnational Terrorism' (2011) 24 *Leiden Journal of International Law*, 20.

231. Mahmoud Samy, 'The League of Arab States', in Giuseppe Nesi, (ed.) *International Cooperation in Counter-terrorism*, (Ashgate, 2006) 157.

232. Kai Ambos, 'Judicial Creativity at the Special Tribunal for Lebanon: Is There a Crime of Terrorism under International Law?' (2011) 24 *Leiden Journal of International Law*, 674.

233. Immigration and Asylum Chamber 2012 (AH (Article 1F(b) – 'serious') Algeria [2013] UKUT 00382 (IAC).

234. Para. 25.

235. Para. 26.

terrorist conspiracy against the French State probably would be.²³⁶ It concluded that the role the applicant personally played within the organisation that has committed such crimes was sufficiently 'serious' and the UK refused to grant him refugee status on this basis. On the other hand, it held that mere membership of such an organisation would not be sufficient. Furthermore, despite being denied refugee status, he could not be returned to Algeria as it was considered that his life and liberty were in jeopardy and it was recognized that he had a well-founded fear of persecution there.²³⁷

This case exposes several issues for the South-North relationship when it comes to extradition. The most obvious is a distrust of the judicial process in the SPCs. This should be addressed by both sides. On the one hand, SPCs should step up efforts to ensure fair trials and that torture and other human rights abuses do not take place. On the other hand, routinely refusing extradition on such mistrust by European partners cannot lead to effective cooperation.

The death penalty further presents a ground for refusal of extradition, which can turn into a perpetual hurdle when it comes to the North-South relationship especially in terrorism cases. The Israeli Extradition Law states that a wanted person shall not be extradited for an offense, for which the penalty in the requesting State is death, if that is not the penalty for it in Israel, unless the requesting State undertook that the death penalty will not be imposed on him or her and that - if it was or will be imposed - it will be changed to lighter punishment. Since the European Union States have abolished the death penalty altogether, the first part of this formula would not be of much use, the second part however can present good practice for such situations. Still, a question worthy of deeper analysis and consideration would be whether the EU States have the moral right to impose their human rights standards for protecting perpetrators on countries with vastly different cultures and beliefs in cases of serious violent crimes resulting in the deaths of innocent people, such as terrorism. This discussion undoubtedly falls beyond the scope of the current analysis, yet it should be engaged with.

Extradition has long been viewed as a way of promoting friendly relations between countries, whereas denials of extradition requests can lead to international tensions and have serious foreign policy implications.²³⁸ If a State labels the justice system of another as unfair or biased it may be understood that it is repudiating all its extradition commitments to that State.²³⁹ On the other hand, the inclusion of a rule of non-inquiry may increase the credibility of a government's commitments. Furthermore "there are concerns about the wisdom of allowing one state's courts to sit in judgment on another's courts," especially since it is unclear whether they have the ability to fairly assess them.²⁴⁰ "Even if courts were equipped to analyse the fairness of foreign justice systems, and other institutions approved, such an approach could effectively exclude some countries from extradition at all."²⁴¹

However neither the rule of non-inquiry nor the blank refusal to extradite to some States are ideal solutions. Preferably the extraditions should take place, provided that some safeguards are put in place. For example, in April 2017, a Tunisian suspect in the 2015 jihadist attack on a Tunis museum that killed 21 foreign tourists and a police officer requested asylum, citing the threat of torture and the death penalty in

236. Para. 9.

237. Para. 1; note that the leader of the group was tortured and executed in Algeria.

238. Magnuson, *supra* note 92, 886.

239. *Ibid.*

240. *Ibid.*, 886-887.

241. *Ibid.*, 887.

Tunisia. However, the German immigration authorities denied the asylum request as unfounded and the courts ruled that he could be extradited, provided that he would not face the death penalty or ill-treatment in custody and that a lawyer and German consular staff would be guaranteed access to him in detention.²⁴²

Sometimes, human rights or death penalty concerns will also underlie the real reasons for refusal of extradition in South-South relations, albeit an official legal reason will be given each time instead to avoid bad relations with the requesting State. States that experience a large influx of migrants and refugees from conflict zones are particularly reluctant to extradite individuals back to such zones based on the principle of non-refoulement. At times, States also experience pressure from the EU not to do so.



CASE STUDY

ZTC, an Iraqi with dual Polish citizenship and former director general for Iraq's Ministry of Defense's Acquisitions and Logistics Department was accused by Iraq of embezzling one billion dollars. Iraq asked for his extradition via INTERPOL. While he was in Poland, the extradition was denied based on human rights and death penalty concerns. ZTC later came to Jordan, where the judiciary ordered his extradition to Iraq. A decision from the Court of Cassation is still awaited concerning approving or rejecting the ruling.

Half a dozen former Iraqi ministers accused of embezzlement, including the former Minister of Defense have fled Iraq and have not been extradited back to the country.²⁴³

10.5. Different Categorisations of Certain Groups Relating to Terrorism

Another question is why members of organisations committing terrorist acts outside Europe are given asylum or protection from extradition in some European Union Member States in the first place. This leads to considerable mistrust on behalf of Arab partner States and a number of observers as to the motives behind such actions.²⁴⁴ An example of good practice in terms of extradition of members of terrorist organisations is Germany, which extradited to Tunisia a Tunisian national who was connected to the attacker

242. The Local, 'Germany Clears Extradition of Suspected Bardo Museum Attacker' (6th April 2017), <https://www.thelocal.de/20170406/germany-clears-extradition-of-tunisia-jihadist-suspect>.

243. Le Figaro, 'Irak : enquête sur les dessous du cancer de la corruption' (4th October 2017), <http://www.lefigaro.fr/international/2017/10/04/01003-20171004ARTFIG00222-irak-haidar-al-abadi-en-guerre-contre-le-cancer-de-la-corruption.php> <http://www.lefigaro.fr/international/2017/10/04/01003-20171004ARTFIG00222-irak-haidar-al-abadi-en-guerre-contre-le-cancer-de-la-corruption.php>.

244. See for example, John Pilger, 'Terror in Britain: What did the Prime Minister Know?' (31st May 2017), <http://johnpilger.com/articles/terror-in-britain-what-did-the-prime-minister-know> <http://johnpilger.com/articles/terror-in-britain-what-did-the-prime-minister-know>.

who ploughed a truck into a crowded Christmas market in Berlin in 2016.²⁴⁵ The individual in question was not involved in the attack but was to face charges in Tunisia for belonging to a terrorist group based on evidence that he aimed to join a jihadist group in Syria.²⁴⁶

Another issue that needs to be dealt with in the North-South as well as the South-South relationships is the way organisations are classified as either terrorist or not. For example, Egypt, which classifies the Muslim Brotherhood as a terrorist organisation is urging the UK to do the same. The British government however refuses to do so.

The problem of conflicting categorizations also impacts South-South relations. While such categorizations can be too narrow, they can equally be too broad.

245. The Local, 'Germany Extradites Tunisian Linked to Berlin Attacker', (3rd Feb. 2017), <https://www.thelocal.de/20170203/germany-extradites-tunisian-linked-to-berlin-attacker><https://www.thelocal.de/20170203/germany-extradites-tunisian-linked-to-berlin-attacker>.

246. Ibid.

11. Concluding Remarks

There are no important gaps in the domestic legislation of SPCs on extradition. Most obstacles come down to technical issues and political concerns which cannot be resolved through legislation. Nevertheless, a unification and simplification of rules, especially on technical demands, would be welcomed. In this respect, the work on the Riyadh Agreement is a positive step forward. It is also important to note that more extradition is not always a good thing. As long as the *aut dedere aut iudicare* principle is put into practice consistently and the requesting State provides the requested State with the necessary evidence in cases of refusal to extradite that allows the latter to prosecute the individual, lack of extradition should not be seen as necessarily problematic.