



**EUROMED  
JUSTICE**

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# **EUROMED JUSTICE** Handbook on International Cooperation in Criminal Matters in the Southern Partner Countries

**CrimEx**

**EuroMed Justice Group of Experts  
in Criminal Matters**

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

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## ABBREVIATIONS

<b>AML</b>	Anti-Money Laundering
<b>AU</b>	African Union
<b>AUC</b>	African Union Convention on Cyber Security and Personal Data Protection
<b>BC</b>	Budapest Convention on Cybercrime
<b>CITO</b>	Arab League Convention on Combatting Information Technology Offences
<b>CFT</b>	Countering Financing of Terrorism
<b>CSP</b>	Communication Service Provider
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions
<b>EAW</b>	European Arrest Warrant
<b>EJN</b>	European Judicial Network
<b>FIU</b>	Financial Intelligence Unit
<b>FTF</b>	Foreign Terrorist Fighters
<b>GPEN</b>	Global Prosecutors E-crime Network
<b>GDPR</b>	General Data Protection Regulation (EU)
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICMEC</b>	International Centre for Missing and Exploited Children
<b>INTERPOL</b>	The International Police Organization
<b>JIT</b>	Joint Investigation Team
<b>MLA</b>	Mutual Legal Assistance
<b>LOR</b>	Letter of Request
<b>SITs</b>	Special Investigation Techniques
<b>SPC</b>	Southern Partner Countries: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine and Tunisia
<b>UCO</b>	Undercover Officer
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNSCR</b>	United Nations Security Council Resolution
<b>UNTOC</b>	United Nations Convention Against Transnational Organized Crime

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## GLOSSARY

### Accession

Where a State accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other States. It has the same legal effect as ratification. A treaty might provide for the accession of all other States or for a limited and defined number of States. In the absence of such a provision, accession can only occur where the negotiating States were agreed or subsequently agree on it in the case of the State in question (Articles 2 (1) (b) and 15 Vienna Convention on the Law of Treaties 1969).

### Active Personality Principle

Jurisdiction by a State over crimes committed by its nationals

### Aut Dedere Aut Judicare

The legal principle under which the host State is contractually obligated either to extradite a fugitive to a pursuing State or to undertake good faith measures toward adjudicating the fugitive under its own judicial system

### Central Authority

Refers to the organization or department receiving and transmitting, and may also execute a Letter of Request from a requesting State

### Comity

In the context of extradition this refers to situations where extradition is granted despite a lack of an extradition treaty, on the basis of courtesy

### Competent Authority



Refers to the organization, agency or department that executes a Letter of Request in the requested State at the instruction of the Central Authority

## Dual Criminality

Requires the particular acts alleged are a crime in both the Requesting and requested State. The elements of the analogous offences need not be the same, but sufficiently familiar so that the conduct is criminal in both States.

## European Judicial Network

The European Judicial Network in criminal matters (EJN) is a network of national contact points for the facilitation of bilateral judicial cooperation in the EU Member States

## EuroMed Fiches

A comparative tool of the SPCs' systems of cooperation in criminal matters detailing the legislation, procedural requirements and thresholds for investigative methods for each SPC created following the EJM Fiches Belges.

## Investigator

Includes a police officer or other law enforcement official

## Joint Investigation Team

An agreement between competent authorities – both judicial (judges, prosecutors, investigative judges) and law enforcement – of two or more States, established for a limited duration and for a specific purpose, to carry out criminal investigations in one or more of the involved States

## Letter of Request (LOR)

Term used for the formal written document by which an MLA request is made (in French, a '*commission rogatoire*') a term widely understood internationally

## Monism

A State where international law has effect automatically in national or domestic laws. In its most pure form, monism dictates that national law that contradicts international law is null and void, even if it post-dates international law, and even if it is constitutional in nature

## Mutual Legal Assistance (MLA)

The provision of assistance, usually in the gathering and transmission of evidence by a competent authority of one country to that of another; in response to a written request for assistance

## Mutual Recognition (MR)

The principle would seek to facilitate the recognition by each EU Member State of decisions of courts from other Member States with a minimum of procedure and formality

## Ne bis in idem

This refers to the principle that no one shall be tried twice for the same offence, i.e. when an individual has been tried by a tribunal in the last resort, either convicted or acquitted, he/she shall not be tried again. The principle is a standard threshold requirement for extradition.

## Other forms of co-operation

This refers to all forms of co-operation other than MLA via which evidence

and information can be obtained from another country and used during both the investigation and prosecution phases. For example, by liaison between investigators often using networks built up through co-operation

between police forces - often referred to as 'police-to-police enquires'

## Passive Personality Principle

This refers to jurisdiction claimed by a State to try a foreign national for offences committed abroad that

affect its citizens

## Protective Principle

This refers to jurisdiction claimed by a State to try the national of any country for offences committed against its national security interests

## Ratification

This defines the international act whereby a State indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all States, keeping all parties informed of the situation. The institution of ratification grants States the necessary timeframe to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty. (Articles 2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969)

## Reciprocity

Also known as mutuality, reciprocity in this context means the requested State recognizes the same investigative and court processes that the requesting State can use. In the context of extradition, reciprocity means the principle of identity or equivalence of rights and duties in extradition treaties and it can also mean a self-sufficient basis for extradition without a treaty when the requesting State gives a promise of equal treatment to the requested State paving the way for extradition without a treaty

## requested State

Refers to a State who provides Mutual Legal Assistance and transmits evidence gathered for a requesting State. In the context of request for extradition or provisional arrest it is the State which is asked to extradite the person sought or to arrest him/her

## requesting State

Refers to a State requesting Mutual Legal Assistance in the gathering and transmission of evidence by a competent authority of one State. In the context of a request for extradition or provisional arrest, it is the State which seeks the person via extradition or his/her arrest

## Special Investigation Technique (SIT)

Techniques applied by competent authorities for the purpose of detecting and investigating serious crimes and suspects, aimed at gathering information in such a way as not to alert the target persons. Article 20 of the United Nations Convention on Transnational Organized Crime (UNTOC) refers to special investigation techniques, including '*electronic or other forms of surveillance and undercover operations*', as well as '*controlled delivery*'. Article 50 of the United Nations Convention Against Corruption (UNCAC) also provides for the use of SITs to combat corruption. Article 11 of the United Nations Convention Against Illicit Traffic and Narcotic Drugs and Psychotropic Substances (Vienna Convention) also refers to the use of a '*controlled delivery*' of illegal goods, monitored through cooperation between law enforcement of two or more States, to determine those involved in the smuggling activity

## Specialty

The rule of specialty demands that the extradited person be tried only for the offences listed in the extradition request and not any prior offences

## 1. Introduction

### In this chapter you will find:

- Application of international conventions
- Legal basis for international cooperation
- Tools available in the Handbook

### 1.1. Purpose

To effectively investigate and prosecute trans-border crime, close cooperation is required between States. Mutual Legal Assistance (MLA) and extradition can be complex and bureaucratic, resulting in lengthy delays. This does not resonate with the quick paced nature of organized crime, terrorism and cybercrime.

To enhance SPC international cooperation, this Handbook will provide guidance on the following:

- Mutual Legal Assistance (MLA) – Chapters 2 and 3
- Extradition, Transfer of Sentenced Persons, Conflict of Jurisdiction and Transfer of Proceedings – Chapter 4

As a tool to assist international enquiries this Handbook includes the following:

- Links to other Guides (**Annex A**)
- EU Member State contact points (**Annex C**)
- Precedent Letter of Request for MLA (**Annex D**)
- Checklist for preparation of MLA requests (**Annex E**)
- Precedent JIT agreement (**Annex I**)
- Precedent Request for extradition (**Annex J**)

### 1.2. Context

The fight against new and emerging forms of transnational crime has transformed in recent years – due to:

- Globalization
- Growth in the volume of international trade
- Larger freedom of movement of goods and persons;
- New forms of international terrorism
- New links between groups engaged in previously separate criminal activities
- Highly sophisticated money-laundering schemes
- The development of information and communications technology leading (digitalization) to a growing number of crimes being committed in various jurisdictions simultaneously

The need for assistance of other States for the successful investigation, prosecution and punishment of offenders, particularly those who have committed transnational offences, is vital.

The international mobility of offenders and the use of advanced technology make it more necessary than ever that law enforcement, prosecutors and judicial authorities collaborate and assist the State that has assumed jurisdiction over the matter.

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.*'<sup>1</sup> States relied on these modalities in order to tackle international, transnational and domestic crimes and although independent from each other they are nevertheless inter-related 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 challenges to effective law enforcement across borders.

## 1.3. Legal Basis for International Cooperation

International cooperation can be formal and informal. Some States do not require a treaty basis for judicial cooperation, and many are able to provide assistance on the basis of reciprocity or comity.

However, there is an essential difference between reciprocity or domestic legislation and the rules laid down in bilateral and multilateral agreements. Bilateral and multilateral treaties, conventions, protocols and covenants contain rules for cooperation in the form of a legal relationship providing legal certainty and security.

In addition, the existence of legal rights and obligations within a bilateral or multilateral agreement provide a clear framework governing the manner in which the requested State should respond. Those rights and obligations are subject to a range of conditions, procedures or grounds for refusal, which are recognized within each agreement.

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1. M. Cherif Bassiouni, *Foreword* in Rodrigo Yepes-Enríquez 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.

With regard to bilateral legal agreements, applicable between each EU Member State and SPC, a table is provided in **Annex F** for the following:

- Mutual legal assistance
- Extradition
- Transfer of criminal proceedings
- Transfer of sentenced persons

With regard to multilateral legal agreements, applicable between the EU Member States and SPCs in these areas of judicial cooperation, an overview is provided below, albeit not exhaustive, of the applicable multilateral legal instruments (see **Annex G**).

## Council of Europe Conventions

- European Convention on Extradition (Paris, 13 December 1957);
- European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20 April 1959);
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8 November 2001);
- Convention on the Transfer of Sentenced Persons (Strasbourg, 21 March 1983);
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 18 December 1997).

## United Nations Conventions

- Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (acceded/ratified/signed by Algeria, Israel, Jordan, Morocco and Tunisia)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (acceded/ratified/signed by Algeria, Israel, Tunisia, and Jordan).
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (acceded/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, the State of Palestine, Egypt, and Lebanon).
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (acceded/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, and Lebanon).
- Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980. (2005 Amendment to the Convention on the Physical Protection of Nuclear Material (Article 11, acceded/ratified/signed by Algeria, Israel, Jordan, Morocco, and Tunisia).
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (acceded/ratified/signed by Algeria, Israel, Jordan, Morocco, Egypt, and Lebanon).
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (acceded/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, and Lebanon).
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988. (complement to the 1988 Convention, Article 3, acceded/ratified/signed by Algeria, Tunisia, Egypt, and Lebanon).

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 20 December 1988);
- International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997);
- International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999);
- United Nations Convention against Transnational Organized Crime (*Palermo Convention*) (New York, 15 November 2000);
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000);
- United Nations Convention against Corruption (New York, 31 October 2003)

## Regional Conventions

- Arab Convention for the Suppression of Terrorism (Cairo 1998)
- Arab Convention against Transnational Organized Crime (2010)
- Arab Convention against Corruption (Cairo 2010)
- Arab Convention against Money Laundering and the Financing of Terrorism (Cairo 2010)
- Riyadh Arab Agreement for Judicial Cooperation (Riyadh)
- The Organization of African Unity Convention on the Prevention and Combating of Terrorism
- Protocol to the OAU Convention on Preventing and Combating Terrorism (Addis Ababa 2004)
- Convention of the Organization of the Islamic Conference to Combat International Terrorism (Ouagadougou 1999)

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.

## 1.4. UN Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organized Crime (UNTOC) is the broadest instrument for international cooperation that EU Member States and SPCs have in common. UNSCR 2322 of 12 December 2016 urges Member States to support international cooperation in criminal matters, applying international agreements, such as UNTOC.

The main purpose of UNTOC is to achieve effective international cooperation against transnational organized crime. The transnational character of organized crime, where offenders, victims and proceeds of crime are located or pass through several jurisdictions, means a traditional law enforcement approach focusing on the local level can be frustrating. UNTOC is the international community's response to the need for international cooperation and effective enforcement to combat serious organized crime, while recognising that different States have different legislative and law enforcement regimes.



The Resolution 55/25 of the UN General Assembly of 15 November 2000, containing the adopted text of UNTOC and of two of its Protocols, expresses that the Convention would *'constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, illicit trafficking in endangered species of wild flora and fauna, offences against cultural heritage and the growing links between transnational organized crime and terrorist crimes'*.

UNTOC contains a number of provisions that can apply between States, in the absence of a bilateral or multilateral agreement:

- Article 16: Extradition
- Article 18: MLA
- Article 19: Joint Investigation Teams
- Article 20: Special Investigation Techniques

## 1.5. UNCAC

This legally binding universal international instrument promotes, facilitates, and supports international co-operation and technical assistance in the prevention of corruption.<sup>2</sup>

UNCAC contains a number of provisions that can apply between States, in the absence of a bilateral or multilateral agreement:

- Article 44: Extradition
- Article 46: MLA
- Article 49: Joint Investigation Teams

Article 48(1) UNCAC provides for the sharing of spontaneous information with other States. On the basis of the fast-moving nature of trans-border crime, spontaneous sharing is an effective way to cooperate with other States to either commence their own investigation or to prevent the dissipation of assets.

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2. Article 1(b).

## 1.6. Case Study

These facts will be used in Chapters 2 & 3 for examples of best practice:



A proscribed terrorist group in Tunisia has been infiltrated by an undercover officer (UCO) who has obtained intelligence that an attack will be carried out by members of the terrorist group in Jordan. The terrorist group is known to use encrypted messaging apps to communicate and coded messages on mobile telephones obtained from Algeria. It is believed that the terrorist group has secured funds from the sale of high end vehicles stolen in Italy. These vehicles are shipped to Israel, where they are sold and the proceeds sent to banks in Lebanon. The banks are used to transmit funds to purchase weapons in Tunisia. The intelligence from the UCO confirms the weapons will be sent by air via Morocco, Egypt and Palestine to Jordan, in a concealed compartment of a legitimate container carrying televisions.

## 2. Mutual Legal Assistance

### In this chapter you will know:

- When a Letter of Request should be sent for evidence
- Complete informal or formal Mutual Legal Assistance requests
- How to draft a Letter of Request

### 2.1. Introduction

MLA requests or Letters of Request (LORs) fall into three broad categories:

- Requests for evidence;
- Investigative procedures - such as SITs; and
- Requests relating to the proceeds of crime.

Domestic legislation stipulates the processes involved, including the routes to be used when sending a LOR. In addition to the domestic legislation, the LOR must also cite relevant international instruments such as treaties and conventions under which SPCs agree to provide Mutual Legal Assistance. The law of the requested State must be respected and, where necessary, prior authority obtained from the relevant Central or Competent Authority for any actions undertaken there.

Failure to comply with the requirements of domestic legislation or any applicable international instrument, could lead to the inadmissibility of the evidence in the requesting State and a legal challenge in the requested State to the process to secure any evidence.

### 2.2. Enquiries that require an MLA request

It is not necessary to issue an LOR every time evidence is required from another State.

Whether to send an LOR or seek another form of co-operation will depend upon the requirements of the requested State where the evidence is located and of any applicable international instrument.

As a general rule, requests for evidence which require a judicial oversight and / or involve a degree of coercion or invasion of privacy usually require a LOR.

Each State may assert its own particular requirements, as can any given treaty or convention. As a consequence, it is not possible to give a definitive list of enquiries which will always require a LOR. The following list, though not exhaustive, notes classes of evidence that usually do require a LOR:

- Banking evidence - obtaining account information and documentary evidence from banks;
- Computer evidence - obtaining internet records, content of messaging applications, social media accounts and e-mails
- Criminal records - obtaining detailed and authenticated information on foreign convictions that can be adduced at court;
- Coercive measures - requests for search and seizure and other requests that would require a court order in a domestic case;
- Special Investigation Techniques – requesting the use of covert investigations to monitor and locate offenders
- Video conferences - requesting a video link for a witness to give live evidence from another State; and
- Confiscation and freezing (or restraint) of the proceeds of crime.

## 2.3. Using other forms of co-operation

Prior to sending an LOR, the Competent or Central Authority in the requesting State, should consider the following:

- International diplomatic relationship between the requesting State and the requested State
- Is the request one that would be permissible under domestic law of the requested State
- Will the requested State object to using any information provided as evidence in the requesting State?
- Discussion and agreement about the purpose of the request, including whether evidence may be adduced in court
- The relevance of the information being sought by the investigator in the requesting State and if it is crucial to the investigation, prosecution and trial
- Provision of information spontaneously to allow the requested State to commence their own investigation
- Human rights of the subject of the LOR in the requesting State

It is essential that the Central Authority in the requested State consents to the provision of the information and is aware of the proposed use of that information in the requesting State. The worst-case scenario is where evidence is obtained from a requested State in circumstances where either this State did not consent to its being obtained or would have refused consent had it been asked. If for example, the investigator envisages that material may be wanted for a subsequent trial, it is essential that the requested State is aware of this from the outset, as it may affect the way the evidence is gathered.

Whenever there has been contact with the requested State prior to issuing a LOR this must be referenced in the LOR, including names and contact details of the relevant investigators or Competent Authority in the requested State. This enables the Central Authority that receives the LOR to order enquiries appropriately and to avoid duplication of work.

Further, the requesting State should consider if one or more of the enquiries could be undertaken by a less formal, and often speedier, route. This could include obtaining a witness statement or affidavit without the

need for a LOR. For example, contacting the witness directly and taking a statement by telephone. Domestic provisions in the requested State must be considered by the requesting State before any informal route is taken. Please refer to the EuroMed Fiches to confirm if informal assistance can be used in each SPC.



The police in Tunisia liaise with their Central Authority and provide information spontaneously to Jordan applying Article 18(4) of UNTOC confirming a terrorist attack is imminent. The Tunisian Central Authority do not disclose the source due to the risk of harm to the undercover officer (UCO), who is still infiltrated within the terrorist group. The Jordanian authorities commence their own investigation.

## 2.4 Joint investigation Teams

According to comparative expertise, two joint investigation models could be considered:

- **Coordinated investigations:** This model consists of parallel and coordinated investigations, with a common goal assisted by a liaison investigator network or through personal contacts and supplemented by LORs in order to obtain evidence. The officials involved are not co-located and are able to work jointly on the basis of long standing cooperative practices and/or existing MLA legislation depending on the nature of the legal system involved.
- **Integrated investigations:** This model consists of integrated joint investigation teams with investigators from at least two jurisdictions. Integrated teams are usually co-located. These teams can be further divided and characterized either as passive or active.
  - An integrated/passive team includes a foreign law enforcement officer integrated with investigators from the host state in an advisory or consultancy role or, in a supportive role based on the provision of technical assistance to the host state.
  - An integrated/active team would include investigators from at least two jurisdictions and exercise operational powers under host state control in the territory or jurisdiction where the team is operating. This model is a specially created infrastructure enabling officials from at least two States to work in one jurisdiction with at least some equivalent operational powers.

### 2.4.1. Legal Basis for Joint Investigative Teams

The legal basis for establishing joint investigation teams depends on the domestic context in each State and on the nature of the legal system. It can range from MLA legislation, legislation on international co-operation, including cross border use of SITs, the Code of Criminal Procedure, specific legislation on joint inves-

tigations (EU only), administrative guidance, standard operating procedures and long standing co-operative practices. The extent of legislation required depends on the joint investigation model used.

Integrated/passive teams are co-located on the basis of either national legislation enabling a foreign investigator to be appointed/designated or on the basis of a model agreement (see **Annex I**). In the case of the integrated/active team, foreign investigators may also be designated based on existing national legislation. Relevant legislation in EU Member States is based on the concept of a seconded – foreign – investigator with the ability, subject to statutory discretion, to exercise powers under control of a team leader of the host state where the operational activity is taking place.

**! IMPORTANT NOTE:** The EU Council Framework Decision of 13 June 2002 on joint investigation teams establishes that representatives of the authorities of non-EU member States may take part in the activities of EU joint investigation teams.

Article 19 of the UNTOC establishes that joint investigative bodies may be created by the competent authorities concerned in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States. In such situations, UNTOC encourages, but does not require, States to enter into agreements or arrangements to conduct joint investigations, prosecutions and proceedings in more than one State. In the absence of a treaty basis, the second sentence of Article 19 grants legal authority to conduct joint investigations, prosecutions and proceedings on a case-by-case basis. The domestic laws of most countries already permit such joint activities and for those few countries whose laws do not so permit, this provision will be a sufficient source of legal authority for case-by-case cooperation of this sort.

## 2.4.2. Legal Impediments

The main legal impediments relating to the establishment of joint investigations generally are:

- Lack of a clear legal framework or specific (enabling) legislation dealing with the establishment of joint investigations
- Lack of clarity regarding operational control e.g. in relation to undercover officers
- Liability for costs of the joint investigation

The establishment of integrated/active teams should consider additional legislation to cover the following issues:

- The equivalence of powers (in the host state) for foreign law enforcement officers
- Operational control over the joint investigation and where this should lie
- Evidence gathering by foreign law enforcement officers (especially with the use of coercive means) to facilitate admissibility in any subsequent proceedings
- Evidence gathering by a team member in their home jurisdiction without the necessity for a LOR
- The civil and criminal liabilities of foreign law enforcement officers;
- Exchange of operational information and control over such information once exchanged

## 2.5. International instruments

**! IMPORTANT NOTE:** Where there is any conflict between a treaty, convention on one part, and domestic legislation on the other, domestic legislation has primacy. The courts are likely to interpret the international instrument as far as possible in light of domestic legislation, i.e. attempting to minimize any contradiction - but if this is not possible, domestic legislation must be followed.

### International Conventions

The SPCs have ratified or acceded to a number of treaties, conventions and other instruments that relate to Mutual Legal Assistance (see **Annex G**) and bilateral treaties (See **Annex F**).

Such instruments note the terms upon which one State will give legal assistance to another. These terms may include the procedure for making requests, grounds for refusing assistance and restrictions on the use to which the assistance may be put. A State may opt out of some terms by entering reservations and declarations, usually due to requirements of a State's domestic law. If it is alleged that evidence obtained pursuant to a LOR was obtained contrary to the requirements of a relevant treaty or convention, a court may be asked to determine the point. However, if the court finds that this was the case, such a finding does not automatically mean that the evidence will be ruled inadmissible.

A request for assistance can still be made to a State when there are no formal MLA arrangements. It is simply that such requests do not have the benefit of being pursuant to an international instrument that requires the requested State to comply.

The basis of a LOR will usually be Reciprocity or Mutuality – in other words, if a request was sent by the requested State, the requesting State would execute it. LORs, however, cannot be sent to a State that is not recognized or with whom there are no diplomatic relations.

### 2.5.1. United Nations Convention against Transnational Organized Crime (UNTOC)

Article 18(1) of UNTOC establishes the scope of the obligation of States to provide MLA.

Each State party must ensure that its MLA treaties and laws provide for cooperation with respect to investigations, prosecutions, and judicial proceedings in relation to the offences covered by Article 3 of the Convention, namely:

- Transnational offences that are defined in Article 3(2) as those:
  - Committed in more than one State;
  - Committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
  - Committed in one State but involves an organized criminal group that engages in criminal

- activities in more than one State; or
  - Committed in one State but has substantial effects in another State.
- Offences that involve an organized criminal group - defined in Article 2.a as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit
  - Serious crime - defined in Article 2.b as an offence that is transnational, involves an organized criminal group and conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;
  - Serious crime which involves an organized criminal group, where there are reasonable grounds to suspect that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State party (Article 18(1) and (3)).



UNTOC can be the basis for MLA for terrorism investigations for those States who have ratified or acceded it - as the planning and preparation is in more than one State and involves serious criminal activity by the terrorist group (of more than three subjects)

## 2.5.2. Mutual Legal Assistance pursuant to UNTOC

Article 18(3) of UNTOC lists the specific types of MLA that a State party must be able to provide:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;
- Executing searches and seizures, and freezing;
- Examining objects and sites;
- Providing information, evidentiary items and expert evaluations;
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- Facilitating the voluntary appearance of persons in the requesting State party;
- Any other type of assistance that is not contrary to the domestic law of the requested State party.

States party to UNTOC should ensure their current MLA treaties are broad enough to cover each form of cooperation listed above. In most cases, domestic law already provides powers to take the measures



necessary to deliver the types of assistance above. If there is no provision in domestic law, such powers cannot be requested in a LOR. The EuroMed Fiches should be reviewed by the requested State, before sending a LOR, to confirm if the specific type of MLA is compliant in the domestic law of the requested State.



The Jordanian Central Authority contacts the European Judicial Network (EJN) Contact Point (available on the EJN website at [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_Home.aspx](https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx)) who confirms any LOR should be addressed to the Italian Ministry of Justice. The Fiches Belges (also available on the EJN website - see Italy - Hearing Witnesses: Standard Procedure (702)) confirm the examination of a witness will be conducted by a judge. This means the LOR should include any questions to be asked.

## 2.6. Using the evidence obtained

Evidence will not usually be admitted in criminal proceedings without the consent of a requested State's Central Authority. Additionally, when the evidence is no longer required for the purpose requested (or for any other purpose for which such consent has been obtained), it must be returned to the requested State's Central Authority, unless that Authority indicates that it need not be returned. Therefore, if a LOR is sent in relation to persons A and B, and the '*purpose of the request*' is expressed narrowly as solely for use in proceedings against A and B, then it cannot be used against a third accused, unless prior consent is obtained from the requested State's Central Authority.

Similarly, if the LOR refers to a specific offence under investigation, and is narrowly drafted, then the evidence could not be used in the prosecution of a different offence. Nor, unless permission was requested in the original LOR, or subsequent consent obtained, could evidence be passed to other domestic or overseas investigators. It is therefore important, when drafting the LOR, not to unnecessarily limit the purposes to which the evidence obtained may be put. It is also prudent to include a paragraph noting your intention to keep the evidence obtained upon conclusion of the investigation / proceedings unless the requested State's Central Authority request otherwise when responding to the LOR.

## 2.7. Letter of Request

The following paragraphs provide guidance on the format of a LOR.

### 2.7.1. Language

A LOR is a formal, written legal document that must comply with both domestic statutory requirements and also any relevant international instruments. It is a stand-alone document and must be easily understood and capable of execution by the requested State without further consultation and the need for a domestic Competent Authority or investigators to attend the other State. This means the requested State must be given all the information it will need to decide whether assistance should be given and how to do so.

The language used should be formal and courteous. When used, acronyms must always be spelt in full when referred to for the first time.

Colloquialisms and jargon should be avoided, as should unnecessary use of technical language. The aim is to produce an easy to read document which immediately conveys to the reader what is required, why, when, and the form that it is required in. Clarity is essential.

**The checklist in Annex E should assist with the preparation or review of a draft LOR**

## 2.7.2. Letterhead

Most States will enter the LOR on a domestic database by the name included in the title. Chasing up a LOR is easier when both the Requesting and requested State (including their administrative offices that may have access to a database but not to the letter itself) know to whom the request relates. This means there should be a clear reference and information on the subject (accused or suspect) and any operation name.

To avoid possible confusion the month should be written in full, i.e. **12 June 2010** rather than **12/6/10**.

## 2.7.3. Introduction

The opening paragraph confirms who is sending the LOR and the authority to make the request: e.g.

*'I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General]'*

The next paragraph should indicate why the request is being made; e.g.

*'I have the honour to request your assistance in relation to a criminal investigation being conducted by ... into the following alleged offences: ...'*

or,

Specify whether the case is pre or post-charge, and if charged note the court stage reached.

If prior liaison has already taken place with authorities in the requested State, e.g. 'police-to-police' enquiries, include details of what the liaison entailed and who it was with.

If the LOR is a supplementary one, give the date and details of the previous LOR and annex a copy. If references from the requested State relating to the execution of the previous LOR are available, include those references and details of the Competent Authority who dealt with the LOR.

Additionally, where there has been prior liaison with an agency in the requested State, include this information. This will assist the requested State when allocating the LOR for execution.

Do not mark the LOR as urgent unless this is genuinely the case. If marked as urgent, the LOR should explain why this is the case. Do not impose a deadline for the receipt of evidence unless it is a genuine deadline. There is a risk that once the deadline is reached the requested authority will stop all enquiries and archive the LOR. If the requested State believes the deadline is unrealistic at the outset, it is possible that no enquiries will be undertaken at all.

## 2.7.4. Basis of the Request

List the relevant treaties and conventions pursuant to which the request is being made. These can be found in **Annex F** and **G** for each SPC.



Annex F confirms Jordan has a bilateral MLA treaty with Algeria. Jordan ratified UNTOC on 22 May 2009, which will be the basis for MLA with the other SPCs and Italy.

## 2.7.5. Purpose of the Request

The Competent Authority drafting the LOR should briefly note here the following information:

- Subjects - full details of each suspect / accused in the case, including full name, date and place of birth, nationality, address and passport number; also note whether they are pre or post charge, and bail status if charged.
- Offences - the offences under investigation or prosecution; a very brief note is sufficient.
- Assistance requested – in general terms note the evidence or investigative method requested.

## 2.7.6. The Law

In this section, a summary of the relevant law should be noted, i.e. the offences under investigation /prosecution. If a description of the law is unavoidably lengthy, place it in an annex. Always be aware that LORs place an increased burden on Central Authorities who will already have a substantial domestic workload. The more concise the body of the LOR, the more likely that it will be considered quickly

Some States may only be able to assist if dual criminality is found; another relevant consideration may be the penalty that can be imposed – use the Country Guides in **Annex C** to assist on these specific requirements.

## 2.7.7. Summary of the Facts

Most, if not all international instruments, require a statement of the relevant facts. A summary only is required, not a lengthy recitation of all the details. Remember that the LOR is a stand-alone document and the requested State will have no other information on your case. The facts should be set out clearly, concisely and accurately. Ideally, the facts should demonstrate a *prima facie* case that each named accused has committed the identified criminal offences, or that a criminal offence has been committed.

### Nexus

Establishing the nexus between the facts of the case and the enquiries to be made is vital. For example, if you want a judicial authority in the requested State to issue an order to a bank to provide information relating to a particular account, then the summary of facts must not only include full details of the account and account holder, but must also clearly indicate why such evidence is relevant to the investigation or prosecution.

The nexus is particularly important if coercive measures are requested. A requested State's Central Authority is unlikely to authorize a coercive measure unless persuaded by the text that the measure is both necessary and proportionate. The Competent Authority drafting the LOR may find it useful to include a subheading in the 'Summary of the facts' section, headed 'How the request arises' and briefly note issues relevant to nexus.



In order to complete any LOR the Jordanian Central Authority requires more information about the facts of the source of the spontaneous information (i.e. the infiltration by the UCO). An informal approach is made by the Jordanian Central Authority to the Tunisian Central Authority to confirm they have commenced an investigation and they will be making international enquiries to investigate the planned terrorist attack. Jordan request the sharing of any evidence lawfully obtained in Tunisia on a *police-to-police* basis and referred to confidentially in LORs sent to the other SPCs.

## 2.7.8. Assistance Requested

This is the most crucial section of a LOR where the drafter details both the specific evidence that is requested, e.g. taking a witness statement; and assistance that is sought, e.g. requesting that named investigators be invited to attend whilst the statement is taken.

It must always be remembered that the purpose of a LOR is to obtain specific evidence. It is not a request that the requested State conduct an investigation on a requesting State's behalf.

It is vital that these paragraphs are clear and unambiguous. The reason for each enquiry should be evident having read the summary of facts, i.e. the nexus must have been established. Each request should be sequentially numbered for ease of reference.

## Use of evidence obtained

It is very important to state clearly the purposes for which the assistance is sought and to cover all reasonably foreseeable purposes. The following paragraph, adapted to the circumstances of the case, should be included in this section:

*'Unless you indicate otherwise, any evidence obtained pursuant to this request may be used in any criminal prosecution and related ancillary proceedings (including trials, restraint, confiscation and enforcement hearings) arising in whole or in part from the above noted investigation / prosecution, whether relating to the above-named subject(s) or to any other persons who may become a subject of this investigation / prosecution.'*

If, having received the requested evidence, the requesting State wants to use it for an additional purpose to that stated in the original LOR then it will be necessary to obtain the consent of the requested State. Failure to do so may lead to the evidence being inadmissible in the requesting State. An attempt to use evidence obtained without the requisite consent of the requested State may also jeopardise future co-operation.

A request to obtain consent to use material already in the requesting State's possession can usually be made by any means acceptable to the requested State, including email and telephone. A written record of the request and the consent should be kept. A LOR purely for this purpose would be inappropriate.

In order to clarify what happens to the evidence at the conclusion of a prosecution, it is advisable to include a paragraph in the LOR to the effect that, *'unless otherwise informed we understand that you have no objection to the evidence obtained being kept at the conclusion of proceedings'*.



The Italian Central Authority contacts the Jordanian Central Authority to discuss if they will consent to disclosing the evidence they receive in any LOR for possible proceedings in their jurisdiction. The Jordanian Central Authority contact the Tunisian Central Authority by email to request consent to disclose to other States.

## Attendance abroad

The drafter of the LOR should consider if attendance abroad of the investigator, prosecutor or judicial authority would assist in the undertaking of the enquiries. It must always be remembered that a request to attend the requested State is a request to 'assist' that State in their undertaking of the enquiries specified in the LOR; it is not a request that domestic officials attend in order to 'carry out' those enquiries themselves.

Where a request for attendance abroad is made, do not assume they will be invited to be present when enquiries are undertaken. Often, attendance abroad is not deemed necessary by the requested State and no invitation is made. For many enquiries, especially if the requests are clear and all relevant information has been provided, the requested State can undertake the requests without further liaison. This means a request to attend the requested State should only be included where necessary.

If attendance in the requested State is granted, full contact details should be listed in the LOR, including, name, rank / position, direct telephone number, mobile telephone number, email and details of languages spoken of those travelling. The numbers of those attending the requested State should always be kept to a minimum.

Investigators should be asked to inform the Central Authority of the requesting State when they are granted permission to travel, and immediately on their return so they know when the LOR has been executed. The Central Authority should confirm with the investigator:

- If the LOR has been executed in full or if part of the request is outstanding
- Whether the officers have returned with all or part of the material
- If any material is outstanding, what that is and how that material will be delivered
- Whether they anticipate that follow up enquiries may be necessary, how they will be carried out and if any further evidence is anticipated



The Police in Jordan need to attend Tunisia to assist with the removal of the weapons from the container to take photos and forensic samples – this is deemed necessary to ensure samples for use in the investigation can be taken to laboratories in Jordan for analysis. This request will be included in the LOR.

It is important that the investigators keep the requesting State's Central Authority informed about any further enquiries that might be made, particularly if they are invited to travel without a further LOR.

Additionally, a detailed, contemporaneous note should be taken by those attending abroad. Such a note will counter any challenge by the defence to admissibility or chain of custody when undertaking of the request.

## **2.7.9. Preferred form of evidence**

It is best to include this information under the heading '*Assistance requested and preferred form of evidence*' as this is often the first section of the request that the Central Authority of the requesting State looks at. If the '*preferred form of evidence*' is not listed in the same section as the '*assistance requested*', then your requirements may be overlooked.

Executing Competent Authorities will generally do what they can to provide the assistance sought in the format requested. Some international MLA arrangements require the executing Competent Authority to execute the request in the manner requested, provided that to do so is not inconsistent with the law of the requesting State.

## **2.7.10. Confidentiality**

In some jurisdictions, the judicial authorities in a requested State may have an obligation to inform the affected person after intrusive measures have been taken against that person. In these circumstances, the requested State must address this issue and determine if confidentiality, to protect sensitive sources or intelligence, is required.



Jordan will include a confidentiality section in the LORs they send as the investigation still remains covert and to disclose would hinder collection of evidence and possibly lead to those involved evading justice.

## 2.7.11. Transmission of Evidence

If a LOR is routed via a Central Authority in the requesting State, after being drafted by a Competent Authority, it should include the full name and contact details of that Competent Authority. Where documents are sensitive, a method of delivery that requires a signature on receipt should be requested. Where appropriate a request should be made for the material to be protectively marked by the requested State. In all cases, request in the LOR that the requested State email the requesting State's Central Authority when they dispatch the evidence. For example: *'When you send the evidence, please also email firstname.surname@gov to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.'*

## 2.7.12. Reciprocity

The SPCs will only provide MLA if the requesting State would be able to undertake the requested enquiries itself under its domestic law. The LOR should include an appropriate assurance to this effect. Chapter 3 confirms the investigative powers available in each SPC. Where the requesting State is unable to reciprocate any request, this should be made clear.

## 2.7.13. Contacts

It is important to provide full contact details of the letter writer, and of investigators whom the requested State is invited to contact. This should include addresses, personal telephone numbers and emails, and where appropriate details of languages spoken.

## 2.7.14. Translation

Once the LOR is completed it may be necessary to obtain a translation into an official language of the requested State. Only suitably qualified translators should be used. If the requested State translates the letter, there is no guarantee as to the quality of the translation. This may lead to problems in the execution of the request. It is preferable either to send the request translated, or obtain prior confirmation from the requested State that the proposed request can be actioned fully if sent in the language of the requesting State. Please check the EuroMed Fiches to confirm the required language for a LOR for each SPC.



## 2.8. Refusal of Assistance

The decision to refuse a LOR, either in totality or certain aspects only, will be for the requested State's Central Authority to make, applying their domestic law or an international convention. If assistance is refused, there is usually little, if any, scope for negotiation.

Common grounds for refusing a request include the following:

- The offence under investigation is deemed a political offence
- The legal principle '*ne bis in idem*' (double jeopardy) may be offended
- The offence concerned is covered by an amnesty in the requested State
- The age of the offender is under the age of legal responsibility in the requested State
- The requested measure cannot be legally authorized in the requested State
- If undertaking the request could compromise an investigation or proceedings in the requested State
- The basis of request is made for the purpose of punishing a person on account of race, sex, religion and nationality
- The request would be prejudicial to the sovereignty, security and the national interest
- The request would prejudice the safety of a person whether in or outside an SPC

If the LOR is complex, vague, too wide in its scope, or imposes unreasonable deadlines, these factors could all have a negative effect on the successful completion of the request.



The Jordanian Central Authority discuss with the Tunisian Central Authority when a LOR can be executed to secure any further evidence from the UCO. It is expected that the UCO will be extracted when the container arrives in Jordan and any individuals are arrested there. The Tunisian Central Authority advises that a LOR should be sent by Jordan for any further evidence from the UCO at that point. Both Central Authorities agree to keep the other informed about progress of their investigations and ensure that any LOR sent is prioritised.

## 2.9. MLA Process in each SPC

This section will summarise the process in the requested State for executing an LOR. The EuroMed Fiches should be referred to for more detailed information on requirements for specific requests.

The links for Central and Competent Authorities are provided in **Annex H**.

## Algeria

### Sending the LOR

The Ministry of Justice is the Central Authority that receives all LORs and decides on grounds for approval or refusal. When a LOR is compliant and possible for execution, the Ministry of Justice sends it to the competent local Prosecutor General so it can be executed.

### Execute the LOR

As a rule, local jurisdictions are in charge of executing LORs and the Ministry of Justice directs them to the competent Prosecutor General. When a LOR involves several tasks to be carried out in different jurisdictional areas, the Ministry of Justice sends the request to these areas at the same time. Once the tasks have been executed by the competent jurisdictions, the answers are returned to the Ministry of Justice, which, after verifying all materials, will send the documents back to the requesting State.

### Accepted languages for the LOR

Translation into Arabic of the LOR is required and should always be accompanied by the original version of the LOR in the official language of the requesting State.

## Egypt

### Receive the LOR

The Ministry of Justice is the Central Authority that receives all LORs and decides on grounds for approval or refusal. When a LOR is compliant and possible for execution, the Ministry of Justice sends it to the competent local authority according to the tasks assigned in the LOR, so it can be executed.

### Execute the LOR

Where there is no treaty between the requesting State and Egypt, the Egyptian Ministry of Foreign Affairs sends the LOR directly to the Egyptian Public Prosecution International Cooperation Office and the LOR is studied and if approved will be sent to a competent authority for execution.

The National Coordinating Committee for International Cooperation in combating terrorism coordinates between the relevant competent authorities, cooperates with foreign entities regarding combating terrorism and the execution of LORs and extradition requests to/from Egypt.

The National Coordinating Committee for combating Illegal Migration, Smuggling of Migrants and Human Trafficking coordinates between the relevant competent authorities and cooperates with foreign entities regarding combating the pre-mentioned crimes; it also develops the national strategy on combating these crimes.

The National Coordinating Committee for combating corruption is specialized with coordinating between the relevant competent authorities and cooperating with foreign entities regarding combating corruption; as well as to follow-up the commitment of Egypt according to UNCAC.

The National Committee for the recovery of Stolen and Smuggled Antiquities abroad, is mandated to undergo the legal and diplomatic procedures, as well as provide all the means to return back to Egypt its stolen and illegally smuggled antiquities.

## Accepted languages for the LOR

Translation into Arabic of the LOR is required and should always be accompanied by the original version of the LOR in the official language of the requesting State.

In cases when there is no bilateral treaty with the requesting State the language used is English and the LOR, when received by Egypt, will be translated into Arabic.

**! IMPORTANT NOTE:** The provisions stipulated in the general instructions for Prosecutors are considered the framework to regulate LORs in accordance with bilateral, multilateral treaties, Conventions, executive regulations, and the periodical publications of the General Prosecutor.

### EGYPTIAN COURT OF CASSATION RULINGS

1. The Court ruled that a witness resident abroad could be heard through the execution of a LOR where it was decided that the adjudication of the case might require action to be taken abroad, such as a declaration of a pleadings or hearing of an accused witness or interrogation.  
Judgement of the court of Cassation on October 13, 1969, Group of Judgements of Cassation of the year 20, Page 1069, No.210.
2. It was adjudicated that the law did not require the transmission of the LOR by a specific route - even if this is usually done by the Ministry of Foreign Affairs. The handing over of the relevant documentation by the Military Judge in Syria directly without the mediation of the Ministry of Justice or the Ministry of Foreign Affairs is not a breach of any rights of the accused.

## Israel

### Receive the LOR

The relevant domestic MLA legislation is the International Legal Assistance Law 5758-1998 (ILA). The ILA

law allows Israel to offer full and effective cooperation to authorities in requesting States in both the investigative and judicial stages.

The Central Authority competent to receive LORs is the Minister of Justice (ILA section 3) who may delegate authority in this area. However, the authority to refuse a LOR is exclusive to the Minister of Justice.

## Execute the LOR

In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs of the State Attorney's Office regarding the execution of a LOR.

## Accepted languages for the LOR

As a rule, a translation into Hebrew of the LOR is required – although - a translation into English can be accepted.

## Jordan

### Receive the LOR

The Ministry of Justice receives LORs and the requests are then forwarded to the Attorney General's Department.

### Execute the LOR

The Attorney General's Department or the Public Prosecutor execute LORs.

### Accepted languages for the LOR

Translation into Arabic of the LOR is required.

## Lebanon

### Receive the LOR and execution

The Ministry of Justice is the Central Authority that receives LORs and if compliant and possible for execution, will send it to the competent local authority for execution.

### Accepted languages for the LOR

Translation into Arabic of the LOR is required and should always be accompanied by the original version

of the LOR in the official language of the requesting State.

## **Morocco**

### **Receive the LOR**

The Ministry of Justice is the Central Authority that receives LORs and if compliant and possible for execution, will send it to the relevant Competent Authority for execution.

Morocco has extensively regulated international judicial cooperation at internal level. The Code of Criminal Procedure dedicates a whole Title (Title III: On judicial relations with foreign authorities) to this matter, and is divided into the 6 following chapters:

- Chapter I: General provisions
- Chapter II: Letters rogatory
- Chapter III: Recognition of certain foreign criminal judgments
- Chapter IV: Extradition
- Chapter V: Hearing of witnesses
- Chapter VI: Denunciation

### **Execute the LOR**

The Investigating Judge at the Court of first instance or the Court of Appeal; The President of the Court of Appeal or the Prosecutor General of the King at the Court of Appeal will execute the LOR.

### **Accepted languages for the LOR**

Translation into (Moroccan) Arabic of the LOR is required.

## **Palestine**

### **Receive the LOR**

LORs 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.

### **Execute the LOR**

The Ministry of Justice sends the LOR to a specialized Public Prosecution Department to execute.

### **Accepted languages for the LOR**

Translation into Arabic of the LOR is required and should always be accompanied by the original version of the LOR in the official language of the requesting State.

## Tunisia

### Receive the LOR

The LOR must be sent through diplomatic channels and the decision to cooperate is the responsibility of the Directorate-General of Criminal Affairs at the Ministry of Justice. In all cases, the LOR must contain all useful information regarding the facts of the case and the tasks entrusted to the requested authority (see Guide prepared by the Ministry of Justice)

Mutual legal assistance is covered in Articles 331 to 335 of the Code of Criminal Procedure. Article 331 of this Code constitutes the general framework organizing mutual legal assistance. It stipulates that, *“with respect to non-political prosecutions in a foreign country, letters rogatory issued by a foreign authority shall be received through diplomatic channels and transmitted to the State Secretariat for Justice in the forms described in Article 317 [...]. In cases of emergency, they may be exchanged directly between the legal authorities of the two States, as provided for in Article 325.”*

### Execute LORs

The competent authority can be the Investigating Judge or the Prosecution in the case of flagrant crimes (crimes or misdemeanours that have just been or are being committed and where a rapid response is required).

The Investigating Judge is tasked with preparing a case for criminal proceedings, diligently seeking the truth and establishing all the facts that the adjudicating Court can use to reach a decision pursuant to article 50 of the Code of Criminal Procedure.

LORs are then also further processed by the intermediary of two bodies:

- The legal police officers from the Ministry of Interior;
- The technical telecommunications agency.

### Accepted languages for the LOR

Translation into Arabic of the LOR is required, but French may also be accepted.

## 3. Specific Types of MLA Request

**In this chapter you will find:**

- Applicable Special Investigation Technique provisions in the SPCs
- How to conduct cyber investigations with the SPCs
- Powers to freeze and confiscate assets in the SPCs

### 3.1. Covert investigations

#### Reciprocity or Mutuality

If a LOR is sent for covert investigations in another State, using Special Investigation Techniques (SITs), such as interception of communications, a controlled delivery or surveillance, the Central Authority of the requesting State and the requesting judicial authority should check the EuroMed Fiches to confirm the lawful basis and procedure.

The requesting State should consider application of international conventions, such as Article 11 of the of the United Nations Convention Against Illicit Traffic and Narcotic Drugs and Psychotropic Substances (Vienna Convention) re a controlled delivery and Article 20 of UNTOC re SITs, as a basis for any LOR.

The spontaneous information provisions (see UNTOC Article 18(4)) could also be used by one State to allow another State to commence their own investigation and use SITs domestically.

The table below provides the legal basis for the use of special investigation techniques (SITs) used for covert investigations in the SPCs.

ALGERIA		
SIT	National Legislation	Comments
Observation	Code of Criminal Procedure Article 16 bis	<p>This SIT is available for investigations for the following in Algeria:</p> <ol style="list-style-type: none"> <li>1. Drug trafficking</li> <li>2. Organized cross-border crime</li> <li>3. Attacks of the automated data system</li> <li>4. Money laundering</li> <li>5. Terrorism</li> <li>6. Offences connected with exchange legislation.</li> </ol> <p>Cross-border surveillance is not possible. Hot-pursuit may be available in relation to a controlled delivery applying Law No. 05-06 of 23 August 2005 on the fight against smuggling (Article 40) and pursuant to the Law No. 06-01 on the prevention of and fight against corruption (Article 56) <b>subject to specific agreement</b> with the State concerned, applying UNTOC and the Vienna Convention.</p>

ALGERIA		
SIT	National Legislation	Comments
Interception of communications (computer)	<p><b>Law No. 09-04 of 14 Chaâbane 1430 corresponding to 5 August 2009</b></p> <p><b>Article 3</b></p> <p><b>Article 10</b></p> <p><b>Presidential Decree No. 15-261 of 08-10-2015</b></p>	<p>Content and traffic data can be intercepted pursuant to Article 3 for all offences using a computer. Article 10 of Act No. 09-04 of 05-08-2009 allows for Communication Service Providers (CSPs) to be compelled to collect or record content data in real-time for all offences. This measure must be ordered in compliance with the provisions of the Code of Criminal Procedure upon authorization by the public prosecutor or examining magistrate. The authorization must include all the elements allowing the identification of the communications to be intercepted, the offence justifying the resort to this measure, as well as its length (4 months, renewable).</p> <p>This measure cannot undermine professional secrecy.</p> <p>There is a specific and independent power to collect traffic data real-time as provided by the provisions of Presidential Decree No. 15-261 of 08-10-2015 on the composition, organization and functioning of the national body for the prevention and the fight against ICT-related offences (Official journal No. 53 of 08-10-2015).</p>
Interception of Communications	<p><b>Code of Criminal Procedure</b></p> <p><b>Articles 65a 5 to 65a 10</b></p>	<p>This SIT is available for investigations for the following in Algeria:</p> <ol style="list-style-type: none"> <li>1. Drug trafficking</li> <li>2. Organized cross-border crime</li> <li>3. Attacks of the automated data system</li> <li>4. Money laundering</li> <li>5. Smuggling</li> <li>6. Terrorism</li> <li>7. Offences connected with exchange legislation</li> <li>8. Corruption</li> </ol> <p>The authorisations are given in writing for a maximum duration of four months, which may be renewed depending on the needs of the investigation or the requirements, in terms of form and duration, applying Article 65 bis of the Code of Criminal Procedure.</p> <p>Interception must be authorized by the public prosecutor or examining magistrate and any LOR must include the identification of the communications to be intercepted, the offence justifying this SIT and length of the interception required.</p>



ALGERIA		
SIT	National Legislation	Comments
Covert audio or visual devices	<p><b>Code of Criminal Procedure</b></p> <p><b>Articles 65a 5 to 65a 10</b></p>	<p>This SIT is available for investigations for the following in Algeria:</p> <ol style="list-style-type: none"> <li>1. Drug trafficking</li> <li>2. Organized cross-border crime</li> <li>3. Attacks of the automated data system</li> <li>4. Money laundering</li> <li>5. Smuggling</li> <li>6. Terrorism</li> <li>7. Offences connected with exchange legislation</li> <li>8. Corruption</li> </ol> <p>This SIT must be authorized by the public prosecutor or examining magistrate and any LOR must include the identification of the communications to be intercepted, the offence justifying resort to this SIT, as well as the length of the interception required.</p> <p>Article 65a bis 5 of the Code of Criminal Procedure authorizes:</p> <ol style="list-style-type: none"> <li>1. The installation of the covert device</li> <li>2. The entry on any dwelling or similar property, including outside of the hours authorized for searches, and</li> <li>3. Without the knowledge and consent of the owners of the property.</li> </ol>
Tracking devices	<p><b>Law No. 06-01 on the prevention of and fight against corruption</b></p> <p><b>Article 56</b></p>	<p>Law No. 06-01 enables tracking or electronic surveillance (Article 56).</p> <p>The Code of Criminal Procedure, in the chapter entitled, 'interception of correspondences of sounds and image freezing' provides that tracking can be used cross-border, subject to specific agreement with the requested State concerned, under the scope of multilateral conventions such as UNTOC, UNCAC and the Vienna Convention.</p>
Controlled deliveries	<p><b>Law No. 05-06 on the fight against smuggling</b></p> <p><b>Article 40</b></p> <p><b>Law No. 06-01 on the prevention of and fight against corruption</b></p> <p><b>Article 56</b></p>	<p>Law No. 05-06 permits controlled delivery operations, but does not allow the full or partial substitution of smuggled goods.</p> <p>It is possible to have a controlled delivery in accordance with a specific agreement with the State/s concerned, applying UNTOC, Vienna Convention, UNCAC or in application of the principle of reciprocity.</p>

ALGERIA		
SIT	National Legislation	Comments
<b>Informants</b>	<b>Code of Criminal Procedure, Article 65 bis 12</b>	Algerian law only allows for infiltration measures by a police officer (see Undercover Agents below) acting under the responsibility of a police officer in charge of coordinating the operation and only on the written authorisation of the public prosecutor or examining magistrate. It is possible, to receive LORs in order to use the declarations made by informants and make specific operational requests, whilst taking preventive measures (such as confidentiality and safety).
<b>Undercover Agents</b>	<b>Code of Criminal Procedure Articles 65a 5 to 65a 10</b>	<p>This SIT is available for investigations for the following in Algeria:</p> <ol style="list-style-type: none"> <li>1. Drug trafficking</li> <li>2. Organized cross-border crime</li> <li>3. Attacks of the automated data system</li> <li>4. Money laundering</li> <li>5. Smuggling</li> <li>6. Terrorism</li> <li>7. Offences related to foreign currency legislation</li> <li>8. Corruption</li> <li>9. Money laundering</li> </ol> <p>These operations are authorized for a renewable period of four months.</p> <p>Infiltration is a measure that can only be undertaken by police officers, and only in specific circumstances (Articles 65 bis 11 to 65 bis 18 of the Code of Criminal Procedure). The law does not allow foreign agents to carry out infiltration on Algerian territory. However, it is possible to allow the presence of foreign agents in Algerian territory under a LOR, when an infiltration mission is carried out by Algerian agents.</p> <p>Article 65 bis 1 of the Code of Criminal Procedure protects the identity of the police officer who conducts the infiltration. The Code of Criminal Procedure grants immunity to police officers involved in an infiltration operation who commit offences foreseen in Article 65 bis 14 of the Code of Criminal Procedure.</p>



Interception of telephones connected to an Algerian service provider is requested to determine the actions of the terrorist network and their possible whereabouts. Before the LOR is sent by the Jordanian Central Authority the EuroMed Fiches are reviewed and informal contact is made with the Algerian Central Authority to confirm exactly what must be included to ensure authorisation pursuant to the Code of Criminal Procedure Articles 65a 5 to 65a 10. Confirming this information before sending an LOR will prevent delay, by ensuring all the correct technical information is provided from the outset.

EGYPT		
SIT	National Legislation	Comments
Observation	No legislation	<p>This is a preventive measure taken by the police to follow individuals for crimes prepared outside the Egyptian territory or to follow suspects leaving Egypt's borders.</p> <p>Cross-border hot pursuit starting in the territorial water of Egypt may continue outside this territorial water. This requires coordination with the neighbouring State or with the State through which such pursuit is made, in order to respect the principle of State sovereignty over its territory. This measure may be executed under the UN Convention on the Law of the Sea, without prejudice to the domestic laws of the requested State.</p>
Interception of Communications	<p><b>Criminal Procedure Code</b></p> <p><b>Articles 95, 206 and 206 bis</b></p> <p><b>Communications Act 10/2003</b></p> <p><b>Articles 19 and 64</b></p>	<p>Once an LOR is received by the central authority and it is approved by the Attorney General, it is sent to the Department of information and the Egyptian Ministry of Interior, which proceeds with interception through trained police officers at the Department of Computer and Network Crimes. These officers will prepare a report about the outcome - without giving any details about the steps and technicalities of the interception.</p>
Interception of Communications (computer)	<p><b>Criminal Procedure Code</b></p> <p><b>Articles 95, 206 and 206 bis</b></p> <p><b>Communications Act 10/2003</b></p> <p><b>Articles 19 and 64</b></p>	<p>The Criminal Procedure Code does not refer to conversations made through the internet or computers and the issue has not been adjudicated upon by the Egyptian Court of Cassation. As Article 19 of the Communications Act requires all information subject to interception to be provided - this could include content and traffic data.</p> <p>The investigative judge/or the public prosecutor (through a judicial decree issued by a judge) can issue an order to record wired and unwired conversations in certain circumstances – pursuant to Articles 95, 206 and 206 bis of the Criminal Procedure Code.</p> <p>The same procedure for interception of communications (see above) will apply upon receipt of an LOR.</p>

<b>Covert audio or visual devices</b>	<b>Criminal Procedure Code</b> <b>Articles 95, 206 and 206 bis</b> <b>Communications Act 10/2003</b> <b>Articles 19 and 64</b>	As above for interception of communications.
<b>Controlled deliveries</b>	<b>No legislation</b>	As the UNTOC, the Vienna Convention and UNCAC have been ratified by Egypt, they can be the basis for any ad hoc arrangement with another State.
<b>Informants and Undercover Agents</b>	<b>No legislation</b>	Egyptian law does not allow for infiltration measures to be carried out by informants or domestic/foreign undercover agents. However, the Court of Cassation case law accepted the use of this SIT when an informant was used by a police officer, without disclosing his identity for his/her safety.
<b>Undercover Agents Online</b>	<b>Communication Act 10/2003</b> <b>Article 19</b>	Article 19 of the Communications Act allows for all types of assistance to be provided by CSPs – this could include an undercover agent online – but is yet to be used.

## ISRAEL

<b>SIT</b>	<b>National Legislation</b>	<b>Comments</b>
<b>Observation</b>		Observation in the public domain with or without technical means, is permitted by the police if conducted in a reasonable manner in the framework of, and in the fulfilment of, their duties.

ISRAEL		
SIT	National Legislation	Comments
Interception of Communications	<p><b>Wiretapping Law 1979 (telephone)</b></p> <p><b>Criminal Procedure (Arrest and Search) Ordinance, 1969 (mail)</b></p>	<p>The Wiretapping Law 1979 permits monitoring, recording or copying of conversations of others without the consent of any of the participants. The Wiretapping Law 1979 was amended in 1995 to allow the balancing of interests and rights, with the right to privacy through judicially authorized wiretapping.</p> <p>A '<i>conversation</i>' is defined in law as speech, telephone, mobile phone, radio waves, fax, telex and teleprinter. The measure may be used when necessary for the discovery, investigation, or prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such offences, or in an investigation for purposes of confiscating property connected to these offences.</p> <p>The President of the District Court or his authorized deputy is the body authorized to permit interception of telecommunications by a warrant.</p> <p>An application for a warrant can only be filed by a police officer with a rank of commander (Nitzav Mishneh) and above, using a standard form confirming (inter alia) the factual foundation upon which the application is based, the reasons for the application, and the details of the action requested.</p> <p>The permit in the warrant shall be issued ex parte, after the competent body has considered the severity of the infringement of privacy, and if the measure is necessary for the discovery, investigation, and prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such crimes, or in an investigation for purposes of confiscating property connected to such offences.</p> <p>The permit shall specify the identity of the person, the identity of the line or the installation, place or type of conversations and the methods of wiretapping. The duration of the permit shall be for a period of up to three months, and it may be extended.</p> <p>Once a month, the Police Commissioner will report on the permits issued. The Police Commissioner is authorized to issue an urgent permit for 48 hours when there is no time to obtain a permit and it is necessary for the prevention of a felony and the discovery of its perpetrator. The Commissioner shall report to the Attorney General immediately upon issuing the permit and the latter has the authority to revoke it.</p> <p>The Criminal Procedure (Arrest and Search) Ordinance, 1969 permits the seizing of objects, including postal items, when it is necessary in order to ensure the presentation of the object for purposes of investigation, trial or other proceeding. The police may apply to the court to issue a search warrant. The application shall include (inter alia) the details of the offence in respect of which the search warrant is requested, the details of object requested and the place where the search is to be conducted. The warrant is issued ex parte, specifying the place where the search will be conducted, the details of the object looked for and its effective date.</p>

ISRAEL		
SIT	National Legislation	Comments
<b>Interception of communications (computer)</b>	<b>Wiretapping Law 1979</b>	<p>The Wiretapping Law, 1979 permits monitoring, recording or copying of communications between computers without the consent of any of the participants. The measure may be used when necessary for the discovery, investigation, or prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such offences, or in an investigation for purposes of confiscating property connected to these offences.</p> <p>The procedure for applications is outlined above for interception of communications</p>
<b>Covert audio or visual devices</b>	<b>Wiretapping Law 1979</b>	<p>The Wiretapping Law, 1979 permits monitoring a conversation, its recording or copying by way of an appliance without the consent of any of the participants, when it is necessary for the discovery, investigation, or the prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such crimes, or in an investigation for purposes of confiscating property connected to such offences.</p> <p>The body authorized to permit monitoring, is also permitted to allow intrusion into a private place to install the covert audio or visual device.</p>
<b>Tracking devices</b>	<b>No legislation</b>	<p>There is no specific legislation on this topic - but the Israeli legislation to prevent violations of individual privacy makes clear that actions taken by law enforcement authorities in pursuit of legitimate and lawful enforcement of the law are excepted from privacy prohibitions. This means legitimate use of SITs (such as tracking devices) by law enforcement are permitted in appropriate circumstances.</p>
<b>Controlled deliveries</b>	<b>No legislation</b>	<p>As the UNTOC, the Vienna Convention and UNCAC have been ratified by Israel, they can be the basis for an <i>ad hoc</i> arrangement with another State.</p>
<b>Informants</b>	<b>No legislation</b>	<p>An 'Informer' may be activated on a long term or one-time basis, and a privilege is imposed on his/her identity. In accordance with the Evidence Ordinance, 1971, the court, at the request of the accused, may order the disclosure of the identity of the informer if it is crucial to the defence of the accused. In that situation, the prosecution has the choice of either revealing the identity of the informer or withdrawing the proceedings.</p>

ISRAEL		
SIT	National Legislation	Comments
<b>Undercover Agents</b>	<b>No legislation</b>	<p>An 'agent' may be a policeman or a citizen (who may also be a criminal who is prepared to cooperate with the police). A 'police-agent' is an agent who is secretly activated in order to gather information, and once completing this activity, continues to serve as a police officer.</p> <p>A 'source', or a 'citizen agent', is a criminal, intelligence source or other person secretly activated by the Police in the gathering of evidence. His or her activation is managed within the framework of a 'Activation Agreement'.</p> <p>The activation of an agent is dependent upon the fact there is a basis for the suspicion that the target against whom the agent is activated is involved in the commission of criminal offences, generally in the category of felony (offences punishable by at least 3 years of imprisonment).</p> <p>The police execute the measures requested and the investigating unit escorts the activities of the agent by way of 'activators' (police officers trained for that purpose), and reports on his activities to the District Attorney's Office. The agent is obligated to give a report to his activators concerning every act that he does. This includes agents of the requesting State who are appropriately authorized under Israeli law.</p>

JORDAN		
SIT	National Legislation	Comments
<b>Interception of Communications</b>	<b>Jordanian Constitution</b> <b>Article 18</b> <b>Communications Act, as amended, No. 13 of 1995</b> <b>Articles 56, 65 and 71</b> <b>Code of Criminal Procedure</b> <b>Article 88</b>	The national law refers to the privacy of communications (Jordanian Constitution Article 18 and Communications Act Article 56) prohibitions to prevent breaches of privacy (Communications Act Article 65 and Article 71). Article 88 of the Criminal Procedure Code allows for the monitoring of telecommunications and interception of mail.
<b>Interception of communications (computer)</b>	<b>Cybercrime Law No. 27 of 2015</b> <b>Article 13</b>	Article 13 only allows for interception for cybercrimes within the Cybercrime Law and not for other offences.
<b>Controlled deliveries</b>		A controlled delivery may happen when a neighbouring State is aware that there is smuggling or drug supply. As the UNTOC, the Vienna Convention and UNCAC have been ratified by Jordan, they can be the basis for any <i>ad hoc</i> arrangement with another State.
<b>Surveillance, Covert audio or visual devices, informants and Undercover Agents</b>	<b>No legislation</b>	There is no proscribed procedure - but these measures can be applied for on an ad hoc basis - ensuring there is no prohibited breach of privacy.

LEBANON		
SIT	National Legislation	Comments
<b>Interception of Communications</b>	<b>Law 140/99, amended by the Law 158/99.</b> <b>Articles 2, 3 and 9</b>	<p>Law 140/99 (as amended by Law 158/99) allows for interception, listening, and surveillance of all means of communication (telephones, mobiles, fax).</p> <p>Interception can only take place after a judicial or an administrative decision has been taken as prescribed by Articles 2 and 3 of Law 140/99 for a maximum period of two months - which is renewable.</p> <p>Article 2 allows for interception in very urgent cases, for offences that are sanctioned for a duration of imprisonment not less than a year.</p> <p>Article 9 allows the Minister of Defense and the Minister of Interior to order interception, after the approval of the Prime Minister to collect information for terrorist and organized crime offences.</p>
<b>Interception of communications (computer)</b>	<b>Law 140/99, amended by the Law 158/99.</b> <b>Articles 2, 3 and 9</b>	<p>Law 140/99 (as amended by Law 158/99) allows for interception, listening, and surveillance of all means of communication including e-mails.</p>
<b>Controlled deliveries</b>	<b>Law No. 673/1998</b>	<p>Law No. 673/1998 allows for controlled delivery in Articles 2, 73, and 220 for narcotics - these provisions do not include any other contraband (such as money) and does not allow substitution.</p> <p>Lebanon has acceded to the Vienna Convention and UNCAC and ratified UNTOC, which can be the basis for any ad hoc arrangement with another State.</p>
<b>Surveillance, Covert audio or visual devices, Informants and Undercover Agents</b>	<b>No legislation</b>	<p>The Criminal Procedure Law allows the General Prosecutor of the Court of Cassation (or in cases of urgency a public prosecutor) to allow these SITs on an ad hoc basis.</p> <p>There is no proscribed procedure but the following basic information is required for a LOR to be executed on the basis of reciprocity: Name of subject of SIT; length of use of SIT and case summary confirming why SIT needed</p>



MOROCCO		
SIT	National Legislation	Comments
Interception of Communications	Code of Criminal Procedure	<p>The law considers interception as an exceptional procedure and an examining magistrate can order where the needs of an investigation require it. In a case that has not been submitted to an examining magistrate, the senior public prosecutor for the Crown (<i>procureur général du Roi</i>, hereinafter the senior public prosecutor) may order this measure following authorisation by the President of the Court of Appeal (Premier Président) in the case of serious crimes undermining the safety and security of the State.</p> <p>The senior public prosecutor may also, if the needs of the investigation require this, refer in writing to the President of the Court of Appeal with a petition to order the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications - if the crime under investigation undermines State security or concerns organized crime, murder, poisoning, abduction and the taking of hostages, counterfeit money or securities, drug trafficking and narcotics, the trade in arms, munitions and explosives or the protection of health. However, the senior public prosecutor may, in an emergency, in writing and on an exceptional basis, order the interception, recording, reproduction seizure of telephone calls and any other long-distance communications whenever the needs of the investigation call for urgent action in order to avoid losing evidence in a case concerning State security, drug trafficking, narcotics, arms, ammunitions and explosives or abduction or the taking of hostages. Within twenty-four hours the President of the Court of Appeal will issue a decision confirming, amending or overruling the decision taken by the senior public prosecutor.</p> <p>The law determines the duration of interception to guarantee protection for the privacy of individuals and to ensure that this measure is not implemented illegally, by providing sanctions in the case of breaches.</p>

MOROCCO		
SIT	National Legislation	Comments
<b>Controlled deliveries</b>	<b>Code of Criminal Procedure Article 82-1</b>	<p>Article 82-1 of the Code of Criminal Procedure defines controlled delivery as <i>'a method, consisting of allowing, under the supervision of the competent authorities, the passage from Moroccan territory of an illicit dispatch or one suspected of being illicit without being seized or after having been removed and replaced in full or in part with a view to identifying the final destination of said dispatch, investigating an offence and identifying and arresting the perpetrators and incriminated parties.'</i></p> <p>Coordination between the Moroccan 'services de lutte' and their foreign equivalents are needed to guarantee the success of a controlled delivery operation. In practice, States through their liaison officer will request authorisation of the passage of an illicit dispatch (drugs) through Moroccan territory without being seized at the border posts. The requests will indicate the probable date of the passage, the make of vehicle used, its registration number and the identity of the party who will be driving it. This request is transmitted to the Ministry of Justice and Liberty, Department of Criminal Matters and Exonerations. The Minister for Justice and Liberty will review and if in agreement will transmit it to the competent public prosecutor who will authorize the execution of the controlled delivery.</p> <p>UNTOC, the Vienna Convention and UNCAC have been ratified by Morocco and can be the basis for any ad hoc arrangement with another State.</p>
<b>Informants</b>	<b>Code of Criminal Procedure Articles 82-9 and 82-10</b>	<p>The domestic law does not allow for infiltration measures to be carried out by informants. Although Articles 82-9 and 82-10 of the Code of Criminal Procedure, guarantee the protection of informants who reveal certain crimes threatening the security and stability of society to the police and judicial authorities. These protections include for his or her identity to be concealed, for him or her to be given a borrowed identity, to have a special telephone number made available to him or her; to have his or her telephone line placed under surveillance, for his or her personal protection and that of family.</p>
<b>Undercover Agents</b>		<p>The domestic law does not provide for the infiltration by undercover agents. The draft Code of Criminal Procedure, has included this procedure, but is yet to be promulgated.</p>

The draft resolution on the Palestinian Police Law, which will grant wide powers to the police in the use of investigative techniques and information exchange, is yet to be promulgated. This Handbook is prepared on the basis of the law presently in force.

PALESTINE		
SIT	National Legislation	Comments
Observation	Decree Law No. 18 of 2015 on Combating Drugs and Psychotropic Substances: Article 10.	This measure is only possible for drug trafficking investigations and when known drug traffickers have entered Palestine
Interception of communications (computer)	Decree Law No. 20 of 2015 on Combating Money Laundering and the Financing of Terrorism Article 33 Law No.16 of 2017 on Electronic Crimes Article 35(2)	This SIT is only available for money laundering and terrorism financing investigations and pursuant to Article 35 of Law No. 16 of 2017 - cybercrime investigations.
Interception of Communications	The Palestinian Penal Procedures Law No. 3 of 2001 Article 51	Article 51 allows the Attorney General to 'monitor' interception authorized by a magistrate and use the product evidentially. Article 51 is subject to the provisions of the Code of Criminal Procedure and is limited to 15 days (renewable).
Covert audio or visual devices	Decree Law No. 20 of 2015 on Combating Money Laundering and the Financing of Terrorism Article 33	This SIT is available for money laundering and terrorism financing offences.

PALESTINE		
SIT	National Legislation	Comments
Controlled deliveries	<b>The Palestinian Penal Procedures Law No. 3 of 2001</b> <b>Articles 43 and 45</b>	<p>There is a definition of controlled delivery in Article 1 of Decree Law No. (20) of 2015 on Combating Money Laundering and the Financing of Terrorism, which states: <i>'Controlled Delivery: The method by which smuggling offenses can be verified and proven by all means of proof. The basis for this shall be the seizure of goods within or outside the customs zone. It shall not preclude the investigation of smuggling offenses in respect of the goods for which customs data have been submitted, to be disclosed and cleared without any notice or reservation from the Chamber referring to the crime of smuggling.'</i></p> <p>Pursuant to Article 5 of Decree Law No. (13) for 2016 on Amending the AML / CFT Law No. 20 of 2015, the Customs Department has the authority to carry out the supervised delivery regarding the combating of smuggling crimes and their detection.</p> <p>Controlled delivery is an exceptional method that can be approved only when it is expected to achieve a clear and sure benefit of detecting and controlling smuggling groups, traffickers, regulators, financiers, leaders and planners.</p> <p>Article 43 does not allow the full or partial substitution of smuggled goods.</p> <p>Palestine has acceded to UNTOC, which can be the basis for any <i>ad hoc</i> arrangement with another State.</p>

TUNISIA		
SIT	National Legislation	Comments
Observation	<b>Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering</b> <b>Article 61</b>	Although, Article 61 is the applicable law allowing for surveillance, there are no provisions allowing hot-pursuit and cross-border surveillance.
Interception of communications	<b>Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering</b> <b>Article 54</b> <b>Organic Law No. 2016-61 of 3 August 2016 on the Prevention and Combating of Trafficking in Persons</b> <b>Article 32</b>	<p>Interception is authorized by a public prosecutor or the judge of instruction only for terrorist or trafficking in persons offences.</p> <p>The decision by the public prosecutor or the judge of instruction will determine:</p> <ol style="list-style-type: none"> <li>1. The identification of the communications</li> <li>2. Object of the request for interception</li> <li>3. Acts which justify the use of the interception</li> </ol> <p>Interception cannot exceed four months and is renewable only once for the same period.</p>

TUNISIA		
SIT	National Legislation	Comments
<b>Covert audio or visual devices</b>	<p><b>Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering</b></p> <p><b>Article 61</b></p> <p><b>Organic Law No. 2016-61 of 3 August 2016 on the Prevention and Combating of Trafficking in Persons</b></p> <p><b>Article 39</b></p>	<p>Use of an audio-visual covert device is authorized by a public prosecutor or the judge of instruction only for terrorist or trafficking in persons offences. The covert device is used to capture, fix, transmit and discretely record the words and photos and locate an accused or suspect, in places, premises or private vehicles, or public.</p> <p>Use of an audio-visual device cannot exceed two months and is renewable only once for the same period.</p> <p>The authority responsible for conducting the installation of the audio-visual must inform the public prosecutor or the judge of instruction of arrangements taken and the conduct of the interception operation.</p> <p>After the use of the covert device, the responsible agency shall draft a report, confirming the operations carried out, their place, date, timetable and result – and the audio-visual recordings must be attached.</p> <p>There is no defined procedure for protecting sensitive techniques, methodology and sources. Article 43 of Organic Law No. 2016-61 of 3 August 2016 prevents the disclosure of how the evidence was collected for human trafficking investigations – but there is not a similar provision for terrorism prosecutions/trial.</p>
<b>Controlled deliveries</b>		<p>There is no national law for controlled deliveries. UNTOC, the Vienna Convention and UNCAC have been ratified by Tunisia and can be the basis for any ad hoc arrangement with another State.</p>
<b>Informants</b>	<p><b>Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering</b></p> <p><b>Article 57</b></p>	<p>Article 57 allows for infiltration by an informant – but only for terrorist offences. There is not a defined procedure for protecting sensitive techniques, methodology and sources. Although, there is an offence contrary to Articles 62-63 of Organic Law No. 2015-26 of 7 August 2015 and Article 43 of Organic Law No. 2016-61 of 3 August 2016 that prevent the disclosure of how the evidence was collected – but there is not a similar provision for terrorist or money laundering prosecutions/trial.</p>
<b>Undercover Agents</b>	<p><b>Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering</b></p> <p><b>Articles 57 and 60</b></p> <p><b>Organic Law No. 2016-61 of 3 August 2016 on the Prevention and Combating of Trafficking in Persons</b></p> <p><b>Article 35</b></p>	<p>The use of undercover agents is authorized by a public prosecutor or the judge of instruction only for terrorist, money laundering or trafficking in persons offences – for a period of four months. The public prosecutor or the judge of instruction will receive a fingerprint and the identity of the undercover agent. It is forbidden to reveal the real identity of the infiltrator, for whatever reason to any other party. The officer of the judicial police in charge must supervise the undercover operation and submit reports to the public prosecutor or the judge of instruction (Article 60) There is no defined procedure for protecting sensitive techniques, methodology and sources. Although, there is an offence contrary to Articles 62-63 of Organic Law No. 2015-26 of 7 August 2015 and Article 43 of Organic Law No. 2016-61 of 3 August 2016 that prevent the disclosure of how the evidence was collected – but there is not a similar provision for terrorist or money laundering prosecutions/trial</p>



In order to investigate the recipient/s of the weapons, a controlled delivery is required. The Attorney drafting the LOR reviews the EuroMed Fiches to confirm Tunisia has no legal provision for controlled deliveries. Through *Police-to-Police* contact it is decided the authorities will obtain a search warrant in Tunisia to remove the weapons on the basis of the intelligence from the UCO and an LOR will be sent by Jordan to insert a tracker and a covert audio probe to monitor its whereabouts and those who enter the container when it arrives. The EuroMed Fiches confirm the relevant law for a tracker and probe is Organic Law No. 2015-26 of 7 August 2015. The Attorney drafting the LOR in Jordan contacts the police to liaise with their counterparts in Tunisia to confirm the technical requirements needed to install a probe and tracker. A draft LOR is sent, in advance of the formal LOR, to the Tunisian Central Authority, confirming the required information for judicial authorization is included. Contact is made *Police-to-Police* with the Moroccan, Egyptian and Palestinian authorities to confirm the container will be transiting.

## 3.2. Communication Service Provider Evidence

In this section, the following terminology will be used:

**‘Basic Subscriber Information’** (BSI) – refers to information that describes who a person is (e.g., the name and address of the subscriber/account holder), and may include basic information about the person’s use of an online service on a specific date and time (for example, times of logging into the account, how long the subscriber has used that specific service, etc.)

**‘Service Provider’** (SP) – refers to a provider that transports information electronically, and encompasses companies in the telecom (landline and wireless), internet, cable, satellite, and social media services

**‘Forensic Image’** – refers to cloning a hard drive or server

**‘Traffic Data’** – refers to information that includes records identifying with whom a subscriber communicated, what websites a subscriber visited, and similar information about a user’s online activity

For obvious reasons the number of LORs for SP evidence has increased in recent years. Such LORs often have to be sent with a request for urgency, either because the investigator needs the evidence quickly to further their investigation (e.g. during a hostage or terrorist case) or because the SP will delete the data in their possession after a certain period of time.

Obtaining this evidence frequently involves a three-step process:

1. A request to 'preserve' the evidence
2. Enquiries to assess what data can be obtained without a LOR – this can include an emergency situation where there is an immediate threat of death or serious harm; and
3. A formal request to obtain that evidence through a LOR

When drafting a LOR asking for evidence from a SP bear in mind that the requested authorities will frequently have to obtain a court or other order before the CSP will supply the required evidence. Therefore, always provide a strong case and nexus for requesting such evidence.

Consider from the outset the evidence required: content, traffic data, BSI or forensic image and any appropriate legal standards – the details are mentioned within the joint EuroMed Justice and Police Digital Evidence Manual – Practical Guide for Service Provider Evidence which is providing all necessary details.

Evidence to establish the nexus in the **Summary Section** and **Assistance Requested** are included in the draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR.

## 3.3. Banking Evidence

### Overview

A range of banking evidence can be requested including the following:

- Confirming if a person has a bank account in the requested State, and if so, details of the accounts
- Copies of past bank transactions
- Monitoring of future bank transactions
- Contents of a safe deposit box

The ability of the requested State to comply with these requests may depend on whether or not the requested State has a central registry of bank account holders. Otherwise, the requesting State will need to provide in an LOR as much detail as possible about the specific account (i.e. name of account holder, bank account number, name of bank and address of bank where account is held) to request disclosure from the bank.

### Information to include in the request

All requests must clearly establish the nexus between the facts of the case and the evidence requested. This is particularly important where coercive measures and those involving access to personal data are requested. Such requests are only likely to be ordered if considered both necessary and proportionate by the requested State. In all requests, where banking evidence is sought, the relevance and potential importance of the requested material should be made clear.

Evidence to establish the nexus in the **Summary Section** and **Assistance Requested** are included in the

draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR

Where particularly sensitive evidence is being requested, consideration should be given to whether a request should be made in an LOR for an investigator to travel and collect the material by hand even if the enquiries themselves do not require such attendance.

## Egmont

Intelligence or information may be shared between the Egmont Group of Financial Intelligence Units (FIU). Information exchanged between FIUs may be used only for the specific purpose for which the information was sought or provided, and may not be used in a prosecutorial or judicial purpose without the prior consent of the disclosing FIU. As this information is usually provided on an intelligence basis only (unless this consent is provided) it should not be referred to in a LOR as the source of the information.



The Jordanian FIU – the Anti Money Laundering and Counter Terrorism Financing Unit (AMLU) as a member of the Egmont Group makes contact with the Lebanese FIU – the Special Investigation Commission (SIC). It is confirmed that suspicious transaction reports (STRs) have been sent by the Lebanese banks receiving funds for the sale of the stolen vehicles from the Israeli banks. The AMLU contacts the Israeli FIU – the Money Laundering and Terror Financing Prohibition Authority (IMPA) who confirm they have also received STRs from their domestic banks. From the information provided by AMLU (with the consent of the Tunisian Central Authority) IMPA advises that they will monitor the bank accounts using domestic provisions and an LOR should be sent when the operation is overt for any banking evidence confirming the receipt and sending of the funds to other financial institutions.

## 3.4. Freezing and Confiscation of the Proceeds of Crime

In this section, the following terminology will be used, applying definitions from UNTOC:

**‘Confiscation’** – refers to the permanent deprivation of property by order of a court or other competent authority.

**‘Freezing or seizure’** – refers to temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority.



**‘Property’** – refers to assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets.

**‘Proceeds of crime’** – refers to any property derived from or obtained, directly or indirectly, through the commission of an offence.

**‘Tracing’** – refers to the methods to locate any property derived from or obtained, directly or indirectly, through the commission of an offence.

To prevent offenders profiting from crime, asset recovery measures encompassing tracing, freezing, confiscation and repatriating property derived from crime, is essential for effective international cooperation.

UNTOC Article 13(1) and UNCAC Article 54(1) require a requested State receiving a LOR for freezing or confiscation, to take one of two actions, as far as possible within their domestic legal systems:

- Submit for enforcement an order issued by the requesting State;
- Submit the LOR to its Competent Authorities in order to obtain a domestic order.

UNCAC Article 54 provides for recovery of property through freezing, identifying and tracing assets and confiscation through international cooperation. Article 54 only applies to asset recovery in criminal proceedings, unless the offender cannot be prosecuted by reason of death, flight or absence or *in other appropriate cases*. The meaning of *other appropriate cases* is not defined, so does not explicitly exclude enforcement of non-conviction based recovery orders in another jurisdiction.

It is best practice to confirm that the assets are located in the requested State before sending a LOR to freeze or confiscate. This could be through intelligence sharing, such as the Egmont Group or CARIN (see **Annex A** for contact details) or through open source material (such as online property registers or other public records available to the general public).

The requesting State should liaise with the requested State to confirm the process for freezing to prevent dissipation and execution of a final order to confiscate criminal assets. For example, the requested State may need an extant order in place in the requesting State before the requested State can execute any freezing request.

Information required for such a LOR are included in the draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR.

The SPCs provisions for asset recovery through MLA are outlined below:

ALGERIA		
Procedural Power	National Legislation	Comments
Freezing and Confiscation	<b>Act No. 05-01 of 6 February 2005 in relation to preventing and combating money laundering and terrorist financing, as amended and supplemented by Order No. 12-02 of 13 February 2012 and Act No. 15-06 of 15 February 2015.</b>	Article 30 of the 2012 law provides for execution of LORs for freezing, seizure, confiscating laundered funds or funds directed to money laundering and their proceeds; funds used or intended to be used for funding terrorism purposes and instrumentalities used in committing such crimes; or funds with corresponding value.
Financial Intelligence	<b>Act No. 05-01 of 6 February 2005 in relation to preventing and combating money laundering and terrorist financing</b>	With regard to financial intelligence, Articles 25 and 26 of Act No. 05-01 require the Algerian Financial Intelligence Unit (FIU), the Financial Intelligence Processing Unit (CTRF), to provide requesting States with the required information. The CTRF is part of the Egmont Group.
UNSCR 1267 and 1373	<b>Act No. 05-01 of 6 February 2005 in relation to preventing and combating money laundering and terrorist financing</b>	<p>Article 18 bis (2) of Act No. 05-01 stipulates the immediate freezing of the funds of persons, groups, and entities registered in the consolidated United Nations Security Council Sanctions List updated by virtue of United Nations Security Council Resolution (UNSCR) 1267. Article 18 bis of the Law sets out the mechanism of freezing funds belonging to terrorists and terrorist organizations according to the requirements of UNSCR 1373.</p> <p>The Executive Decree No. 15-113 dated May 12, 2015 confirms the procedure of seizing and/or freezing funds of persons, groups, and entities registered in UNSCR 1267 and its successor resolutions and UNSCR 1373. The Executive Decree provides for referring the names and entities identified in accordance with UNSCR 1267 and successor resolutions from the Minister of Foreign Affairs to the Minister of Finance in order to take the procedures on freezing their funds and assets.</p> <p>Article 4 of the Executive Decree No. 15-113 and Article 6 of the Order of the Minister of Finance of 31 May 2015 provide for mandating the judicial agency of the treasury to ensure the management of frozen and/or seized funds. Article 7 of the abovementioned decision stipulates transferring the former funds on postal and bank accounts from the financial authorities, institutions, and the relevant Designated Non-Financial Businesses and Professions (DNFBPs) to the central treasurer in order to accurately record them. The same procedure is followed with the frozen/seized funds which are included in the open special fund accounts in the treasury books. Such funds remain deposited in the central treasurer's books until unfreezing the funds and/or lifting the seizure by the Sanction Committee of the United Nations Security Council.</p>



## BEST PRACTICE – ALGERIA

A LOR was sent to the Central Authority of a European State (with which Algeria concluded a bilateral treaty on mutual legal assistance) in the context of a judicial inquiry opened against some Algerian citizens, on the grounds of corruption. The request was based on: **the United Nations Convention against Transnational Organized Crime** (ratified by Algeria by means of presidential decree No. 02/55 of 05 February 2002) and **the United Nations Convention against Corruption** (ratified by Algeria by means of presidential decree No. 04/128 of 19 April 2004). The LOR required banking details, tracing the assets and movable and immovable property, and to freeze accounts and seize property. All requests were executed following successful liaison between the Central Authorities to ensure the content of the LOR was compliant with the laws and procedures of the requested State using the *Fiches Belges* on the European Judicial Network website <https://www.ejn-crimjust.europa.eu/ejn/>.

## EGYPT

Procedural Power	National Legislation	Comments
Freezing and Confiscation	<b>Anti-Money Laundering Law No. 80/2002</b>	Article 19 of the Anti-Money Laundering Law No. 80/2002 ensures that an LOR can be transmitted to trace, freeze or seize funds subject to ML and TF offences, without prejudice to the rights of bona fide third parties. Article 20 provides for the enforcement of confiscation orders arising from money laundering or terrorist financing offences from requesting States. Disposal of the funds will be subject to bilateral or multilateral treaties. Article 208 Bis (A) of the Egyptian Code of Criminal Procedure authorizes the Attorney General to issue an order prohibiting the accused person from disposal or management of his funds or other protective measures. Confiscation is regulated by Article 30 of the Penal Code and by Article 14 of the Anti-Money Laundering Law.
Financial Intelligence		Egypt's FIU, the Egyptian Money Laundering and Terrorist Financing Combating Unit, is a member of the Egmont Group.
UNSCRs 1267 and 1373	<b>Anti-Money Laundering Law No. 80/2002</b>	Article 21 of the Anti-Money Laundering Law No. 80/2002 stipulates the implementation of UNSCRs 1373 and 1267 through the Egyptian FIU (EMLCU) taking the necessary procedures in accordance with international agreements, treaties, and conventions relevant to the financing of terrorism and financing of proliferation of weapons of mass destruction.



## BEST PRACTICE – EGYPT

Two Egyptian Nationals stole artefacts from a museum, which were smuggled and sold in the United Arab Emirates. A LOR was transmitted to the Emirates Central Authority, pursuant to the **Riyadh Arab Agreement for Judicial Cooperation**, requesting freezing of any dealings with the stolen artefacts and their return to Egypt. The LOR also requested evidence confirming who sold the artefacts and copies of the investigation taken by the Emirates authorities. The Emirates Central Authority provided the evidence and the artefacts returned to Egypt.

ISRAEL		
Procedural Power	National Legislation	Comments
Freezing and Confiscation conviction and non-conviction based forfeiture	International Legal Assistance Law 5758-1998	The International Legal Assistance Law enables the enforcement of a requesting State's orders in Israel.
Financial Intelligence		The Israeli Police is a member of INTERPOL and CARIN and uses this channel to collect and supply financial intelligence. Although requests for investigative acts need to follow the MLA procedure, financial intelligence can be exchanged freely through INTERPOL and CARIN, as long as it is not intended to be used as evidence and it does not entail coercive measures. The Money Laundering and Terror Financing Prohibition Authority (IMPA), the Israeli FIU (website at: <a href="http://www.impa.justice.gov.il">www.impa.justice.gov.il</a> ) is a member of the Egmont Group and has no restriction in law to exchange information with any other FIU. The Israel Tax Authority has a range of measures to facilitate international cooperation in the various areas of operation including on customs issues for criminal and civil matters, the National Anti-Drug and Money Laundering Unit for information exchange and international cooperation pertaining to narcotic trafficking or Money Laundering, Cooperation within the framework of the World Customs Organisation and international cooperation on issues of income tax and for the application of the international conventions regarding double taxation. The Bank of Israel, has established relationships (formally and informally) with its counterparts in the main countries where the Israeli banking sector operates and has signed several agreements for the exchange of information

ISRAEL		
Procedural Power	National Legislation	Comments
UNSCRs 1267 and 1373	Counter Terrorism Law	The CTL establishes the automatic and immediate implementation of UNSCR 1267 and successor resolutions into Israeli law for a temporary period of up to 3-6 months - for a terror organization and 30 days - for an individual - by which time a permanent designation must be determined the Minister of Defence. This will facilitate rapid implementation and freezing actions by the financial institutions and Designated Non-Financial Business and Professions

JORDAN		
Procedural Power	National Legislation	Comments
Freezing and Confiscation	Law No. 46 for the year 2007 Anti Money Laundering Law, published in the Official Gazette in volume No. 4831 dated 17/6/2007 on page (4130) Articles 22 and 23	Article 22 confirms that MLA can be provided through bilateral or multilateral agreements ratified by Jordan and applying the principle of reciprocity.  Article 23 allows for the confiscation of the proceeds of money laundering or terrorist financing crimes.
Financial Intelligence	Law No. 46 for the year 2007 Anti Money Laundering Law	The Jordan FIU, the Anti Money Laundering Unit (AMLU) has the power to exchange financial intelligence with counterpart units based on the principle of reciprocity and provided such information is used for Anti-money laundering/countering financing of terrorism purposes. Jordan joined the Egmont Group on 13 July 2012.
UNSCRs 1267 and 1373	Law No. 46 for the year 2007 Anti Money Laundering Law	A National Committee issues instructions on compliance with UNSCRs 1267 and 1373. Article 6(a)(2) of Law No. 46 established the legal basis for the implementation of these resolutions and Article 37(c) of Law No. 46 stipulates that the Committee prepares instructions to execute the provisions of this law.



AMLU makes contact with the SIC who are in receipt of funds from the Israeli banks. The SIC can monitor the accounts to confirm if funds are withdrawn or transferred. The SIC advise they can administratively freeze the bank accounts - but will need an LOR to continue this for an extended period and any order will have to be served on interested parties. This of course may disclose the covert operation – so a decision will have to be made when an LOR is sent to prevent dissipation of the assets.

LEBANON		
Procedural Power	National Legislation	Comments
Freezing and Confiscation	<b>Anti-Money Laundering and Countering Financing of Terrorism law No. 44 issued on 24/11/2015 (amending law No. 318 of April 20, 2001 on fighting money laundering)</b>	<p>Lebanon can provide MLA to:</p> <ol style="list-style-type: none"> <li>1. Recover funds derived from: <ul style="list-style-type: none"> <li>• Corruption</li> <li>• Money laundering or</li> <li>• Terrorism financing</li> </ul> </li> <li>2. Freeze and confiscate laundered property or property intended to be laundered, and the assets used or intended to be used in financing terrorism</li> <li>3. Freeze and confiscate instrumentalities or substitute assets of a corresponding value.</li> </ol> <p>The Lebanon FIU, the Special Investigations Committee (SIC see website: <a href="http://www.sic.gov.lb">http://www.sic.gov.lb</a>) can administratively freeze accounts, attach an encumbrance on records and entries pertaining to movable and immovable assets - indicating that such funds are under investigation and such encumbrance shall be kept until a final judicial ruling.</p>
Financial Intelligence		The SIC joined the Egmont Group in 2003.
UNSCRs 1267 and 1373	<b>Law No. 53</b>	Law No. 53 which was published in the official Gazette on 26 November 2015 on joining and ratifying the International Convention for the Suppression of Terrorism Financing, adopted mechanisms for implementing UNSCR 1267 and 1373. The Prime Minister issued letter No. 1861/S, dated 11 December 2015, to the effect that the mechanism of implementing UNSCR 1267 and the subsequent resolutions; the mechanism on implementing UNSCR 1373 and the subsequent resolutions, became applicable in Lebanon as of the date they were approved by the National Committee on Suppressing Terrorism Financing on 10 December 2015.

MOROCCO		
Procedural Power	National Legislation	Comments
Freezing and Confiscation	<b>Anti-Money Laundering Law (43-05)</b>	Article 37, allows the Morocco FIU, the Financial Information Processing Unit (UTRF) to receive and process requests for freezing properties linked to a terrorist crime.
Financial Intelligence		The Moroccan FIU - UTRF is a member of the Egmont Group and can exchange financial intelligence connected with money laundering and the financing of terrorism with foreign authorities of similar competence, under the scope of international conventions in application of the principle of reciprocity. The UTRF also exchanges intelligence with its foreign counterparts, based on the principles of the Egmont group, in accordance with a memorandum of understanding or on the basis of the principle of reciprocity.

UNSCR 1267		The UTRF can order freezing of properties and on 16 August 2013, issued decision no. (6) related to the procedures of freezing properties linked to a terrorist crime. The decision aims to determine the procedures of applying the freezing of properties in compliance with UNSCR 1267. UNSCR 1373, has not been implemented.
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PALESTINE		
Procedural Power	National Legislation	Comments
Freezing and Confiscation	<b>Decree No. 20 of 2015 on Countering Money Laundering and Combating Financing of Terrorism</b>	Palestine actively and effectively renders and requests international cooperation in relation to money laundering, associated predicate offences, related financial crime investigations and prosecutions, and asset forfeiture matters. The Decree provides for enforcement of foreign orders.
Financial Intelligence		<p>Palestine provides basic and beneficial ownership intelligence of legal entities and legal arrangements formed or administered in or from the State in a timely manner in response to requests from foreign supervisors and law enforcement authorities, including tax authorities.</p> <p>Palestine utilizes international law enforcement networks, such as Egmont and Interpol, for intelligence sharing.</p>

TUNISIA		
Procedural Power	National Legislation	Comments
Freezing and Confiscation	<b>Code of Criminal Procedure</b> <b>Article 332</b>	<p>Tunisia can execute a LOR for the tracing, freezing, and seizure of assets related to the offences of money laundering and terrorist financing.</p> <p>With regard to the enforcement of a requesting State's confiscation order, Article 332 of the Code of Criminal Procedure allows for the notification of such an order to an individual residing in Tunisia.</p> <p>Article 328 stipulates that the Indictments Chamber decides whether all or some of the securities, assets, money, or other objects seized should be forwarded to a State requesting extradition of an individual. Apart from this procedure, Tunisian law makes no explicit provision for the recognition and execution of a requesting State's LOR regarding the confiscation of assets belonging to persons who do not reside in Tunisia, or for the repatriation of these assets. Confiscation can be decided only in cases where a jurisdictional link is established; in such cases, confiscation is carried out for the benefit of the Tunisian treasury.</p>

TUNISIA		
Procedural Power	National Legislation	Comments
Financial Intelligence	Law no. 2003-75 of December 2003	Article 82 of Law No. 2003-75 authorizes the Tunisian FIU – The Financial Analysis Commission (CTAF) - to share financial intelligence relating to combating money laundering and terrorist financing with the FIUs with which it has signed memoranda of agreement, in order to provide early warnings about these offences and prevent their commission.  CTAF is a member of the Egmont Group.
UNSCRs 1267 and 1373		Tunisia has also adopted a legal mechanism that enables a court or competent authority to designate persons or entities in accordance with UNSCR 1373 and a mechanism for freezing the assets of the persons or organizations listed by the Sanctions Committee. The freezing of the assets of designated persons, or implementation of freezing measures adopted by other States, involves the issuance of an ordinance by the Chief Justice of the Court of First Instance of Tunis, at the request of the Prosecutor General. This system does not establish a general prohibition on providing economic resources to designated persons as required by the resolution and does not allow for immediate freezing.  The mechanism currently in effect for the implementation of UNSCR 1267 requires entities subject to the AML/CFT provisions to consult lists accessible on the Ministry of Finance website and to freeze the assets of listed persons. However, it does not, as required by the resolution, create a general prohibition applicable to all natural and legal persons on the provision of funds or economic resources to the persons included on list 1267.



## BEST PRACTICE – TUNISIA

Following the Tunisian revolution of 2011 against the former President of the Republic, the chief investigating judge obtained evidence from European Member States, by sending LORs for freezing and recovery of funds. This made it possible to uncover new facts that were the starting point for the prosecution of new cases.

### 3.5. Search and seizure



## Searches - general

LORs for searches of premises must include as much information about the location of the premises as possible, including, if known, the occupier or owner.

Again, this type of information should ideally be obtained by the investigator prior to drafting the LOR. If asking for premises to be searched, consider whether to include a request for the search to take place whether or not the occupier is present (applying the law of the relevant SPC). The necessity for a search should be justified, including details of how the place to be searched is connected with the suspect or accused.

## Search and Seizure - drafting

When considering a request for search and seizure always assume that the requested State will only be able to execute the request if reasonable grounds to believe, that an offence has been committed, and relevant evidence will be found on the premises or person concerned.

For all requests, it is good practice to have regard to the principles of necessity and proportionality. Interference with property and privacy is frequently only justified if reasonable taking into account the seriousness of the criminality, and necessary (i.e. could the information be obtained by less coercive means?) and proportionate (i.e. with regard to the alleged offence and the evidence likely to be found).

What can be requested will depend on the laws of the requested State. As a general rule a LOR should request anything that the police could do in the requested State under the powers currently available to them. This may include the time of day of the search and who should be present.

Where the purpose of the search is to obtain specific material, the request must also be specific. A LOR should not ask for material 'relevant' to the investigation to be seized. For example:

- Clearly describe the material sought
- Give details of its assumed location and reasons for believing so
- Note its known or suspected ownership or provenance
- State what should be done with the items seized
- Explain why the material requested is considered both relevant and important evidence to the investigation or proceedings
- Indicate why the material could not be produced by less coercive measures such as with consent.
- The LOR should include any other information, which would be of operational use to the Competent Authority executing the request. Including for example, the likelihood that the occupants of the premises may try to use force to prevent the entry and search

**Please note** searching the person, or taking fingerprints, DNA or other samples, have less chance of success (unless the person consents) but can still be requested. The more coercive and intrusive the measure, the more need there will be for liaison with the requested State before sending an LOR to see what can be done and the process.

Evidence to establish the nexus in the **Summary Section** and **Assistance Requested** are included in the draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR.



## BEST PRACTICE – ALGERIA

The Algerian Ministry of Justice received a LOR from a European Member State, with which a bilateral treaty on mutual legal assistance was in force. The LOR concerned an Algerian citizen (arrested in Europe) suspected of having ties with the terrorist group DAESH. The European Member State requested their Algerian counterparts to search **urgently** the home of the individual and to interview members of his family. Due to the urgency, the LOR was executed in **one week** and the minutes on the execution were sent to the relevant authorities through diplomatic channels and INTERPOL.

## 3.6. Ships at sea

A LOR may be required to obtain evidence from a ship at sea. Whether this is necessary will depend on where the ship is registered, where it is when the investigations are to take place, and the nature of the crime that is alleged to have been committed.

All ships should be registered to a State, which is sometimes referred to as the flag State or registration State. The basic rule is that the flag State exercises exclusive criminal jurisdiction over the ship on the high seas (i.e. outside territorial waters). Where the ship is in the territorial waters of a State, that State has criminal jurisdiction in most circumstances. When considering an apparent offence on a ship at sea, jurisdiction to try the offence must also be determined.

### Jurisdiction

If the enquiries to be conducted on the ship relate to an offence that took place domestically then jurisdictional issues will clearly not arise. Where the alleged offence itself, however, took place on board the ship, jurisdiction must be considered.

Before sending a LOR regarding an incident on a ship at sea or in a foreign port or harbour consider if the alleged act constitutes an offence within the jurisdiction of a requested State. If not, a LOR may not be issued as no offence has been committed or there are no reasonable grounds for suspecting that an offence has been committed

## Drug offences

In drug trafficking matters, wide-ranging extra-territorial jurisdiction is conferred by the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988 (the 'Vienna Convention').

## Investigations on a domestic ship

Investigators may carry out enquiries on a domestically registered ship in domestic territorial waters. They can also do so when a domestic registered ship is on the high seas. A LOR is not necessary as jurisdiction over the ship will rest with the flag State. See Article 6 of the United Nations High Seas Convention 1958; Article 92 of the United Nations Law of the Sea Convention 1982; and Article 17 of the Vienna Convention 1988.

## Investigations on a foreign ship

International instruments also permit investigators to carry out enquiries on a foreign ship in domestic territorial waters (i.e. within twelve miles of the coast) **without** a LOR. This will include the following situations:

- The consequences of the crime alleged to have been committed extend to the domestic State.
- The master of the ship, a diplomatic agent or consular officer of the flag state has requested assistance from the domestic authorities.
- The measures are necessary to suppress the traffic in illicit drugs or psychotropic substances.

The ship has just left domestic territorial waters - see Article 27(1) of the Law of the Sea Convention 1982; Article 19(1) of the Geneva Convention on the Territorial Sea and Contiguous Zone 1958 (the Territorial Sea Convention); Although a LOR is not required, the diplomatic agent or consular officer of the flag State must be informed before the investigations are carried out if the master of the ship so requests: Article 19(3) of the Territorial Sea Convention, and Article 27(3) of Law of the Sea Convention. If the foreign ship is on the high seas, then a LOR must be sent to the flag State. See Article 6 of the High Seas Convention 1958, and Article 92 of the Law of the Sea Convention 1982.

## 3.7. Telephone evidence

A LOR can be sent for

- Telephone subscriber information (i.e. to whom a particular phone is registered and any payment details)
- Call log information (i.e. a print out of other telephone numbers from and to which calls were made from a particular phone, including the duration of the calls)
- Cell site of the location of the caller

Requests for call log information should be limited to a relevant period. According to the law of the requested State, the provision of telephone subscriber and call log information may be dependant, on the requested State believing that the provision of such evidence is both necessary and proportionate, given the circumstances of the case. Therefore, the nexus between the facts of the case and the evidence requested must be clearly established.

Precedent paragraphs and tips to establish the nexus in the **Summary Section and Assistance Requested** are included in the draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR.



## BEST PRACTICE – ITALY AND EGYPT

An Italian LOR was transmitted to the Egyptian Assistant Minister of the Department for International Cooperation at the Ministry of Justice, following the arrest of Egyptian nationals suspected of being part of an organized criminal network smuggling 199 illegal migrants across the Mediterranean Sea towards Sicily. The Italian LOR requested the assistance of Egypt to confirm the identity of the Egyptian suspects, the phone calls made and received by them from June to September 2013 during the smuggling, whether they used their own fishing boats or any other kinds of boats and any relevant banking transactions. The Prosecutor General of Egypt confirmed the identity of the Egyptian suspects and the phone calls made and received by them from June to September 2013. Also, it confirmed all the banking transactions from the defendants to Italy and that one of the suspects owned a fishing boat. This evidence was then used by the Italian authorities in the prosecution of the Egyptian nationals.

## 3.8. Witnesses (including prisoners)

If the requested State is required to interview a witness or suspect the LOR must include all known relevant contact details including: name, address, date and place of birth, nationality, passport number, languages spoken, parents' names (if a child and where known). If the person is a foreign national, include any national identity numbers known. The investigator should obtain as much information as they can in advance and should not expect the requested State to make these basic enquiries on the requesting State's behalf.

### Witnesses

A requested State should be contacted to confirm if a witness evidence can be obtained directly from a willing witness - without sending an LOR. However, in many States a direct approach is not permitted. An

INTERPOL enquiry should reveal the position in the State where the witness resides. Reciprocity should also be considered – **always confirm** if a requesting State can approach a witness without the need of a LOR.

Always make clear to the requested State that the person to be interviewed is a witness in the investigation or proceedings and is not a suspect or accused.

It is important in the LOR to make clear the form in which the testimony of the witness is taken. If not, the requested State may, after much time and effort, provide an unsuitable product for the requesting State.

Indicate if the evidence to be taken should be in the presence of a notary public under oath, a magistrate or if it is sufficient for the local police or prosecutor to obtain it. If this is not specified, the requested State will decide which option to take.

A list of questions to be asked should be annexed to the LOR. Remember that the LOR is a stand-alone document and apart from the information contained in it, the requested State knows nothing about the case.

If the questions to be asked are straightforward and it is not envisaged that any difficulties will arise, it is unlikely that the requested State will benefit when undertaking the request from the attendance of investigators. If, however, the questions are not straightforward or it is possible that difficulties may arise, then the requested State, should consider a request that judicial authorities be invited to attend the interview in order to assist the requesting State. If included, state the reasons for this request and confirm who take statements from witnesses domestically; otherwise a requested State may not appreciate the possible benefits of their attendance. If any exhibits are to be shown to the witness, this is another reason to consider a request for judicial authorities to attend.

## Admissibility

Consider annexing the format of the evidence to the LOR so that the evidence is an admissible format for the requesting State. This could be referred to in the **Assistance Requested** section or as a separate heading.

## Prisoners

UNTOC, Article 18(10) allows for a person who is being detained or is serving a sentence in the territory of one State Party, whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings, may be transferred if the following conditions are met:

- The person freely gives his or her informed consent
- Both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

If evidence is required at trial from a serving prisoner overseas the following options should be considered:

- Agreeing their evidence with the defence
- Starting the trial after their release date

- Taking their evidence by video conference (where possible – see below at 3.10) from the State where they are imprisoned
- Prisoner transfer - this should only be considered after the other options have been explored and ruled out.

If a prisoner request is made, preliminary enquiries should be made by the requesting State including whether the requested State will co-operate to transfer the prisoner and within the relevant period and whether the prisoner will consent to the transfer, which is essential.

**! IMPORTANT NOTE:** Care must be taken to avoid housing the prisoner with any persons with links to the case.

Evidence to establish the nexus in the **Summary Section** and **Assistance Requested** are included in the draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR

## 3.9. Suspects

When requesting in a LOR that an individual, who may have involvement in any criminal offence in the requesting State, answer questions - consider '*Reciprocity*' and the procedure undertaken in the requested State.

If a LOR is sent for an individual suspected of involvement in a criminal offence to be questioned, the LOR must make it clear that why he or she is suspected of involvement and detailing under what terms the questioning should be conducted. Pursuant to a LOR, the requested State will often be guided by its own systems, although it will obviously take into account specific requests from the requesting State in the LOR. The possible options can usually be explored by contact with the requested State before drafting the LOR.

It is unrealistic to expect a requested State to replicate every aspect of domestic practice and procedure when conducting such questioning. The legal principle '*locus regit actum*' asserts that the validity of an act depends on the law of the place where it was done.

Therefore, when requesting questioning, it is prudent to ensure that the rights that would be accorded in the requesting State are respected when undertaking the request.

If this is done, and certain specific requirements are met, then a challenge to the admissibility of evidence obtained should be opposed successfully. It is often prudent to request that the interrogation of a suspect be conducted before a magistrate (or other competent judicial authority) and filmed, in the presence of an attorney for the suspect.

However, if you have made sure through prior contact that the questioning can be taken by the police instead of the judicial authorities, you must ask at least:

- That the suspect have access to a translator if necessary (i.e. that his/her answers are not simply translated for the magistrate, but also that the interventions of the court officials are translated to him/her);

- That the suspect is entitled to legal assistance by an attorney
- In the LOR, the questions to be asked and a brief summary of the main topics to be addressed must be included.

## Salduz v Turkey, 2008

The European Court of Human Rights held the appellant's Article 6 Right to Fair Trial under the European Convention of Human Rights had been violated as he was denied access to an attorney when interviewed by the police following arrest.

As with a LOR to interview a witness, the questions to be asked should be annexed with a brief summary of key topics to be covered.

**! IMPORTANT NOTE:** A request to question a suspect must not be made by means of a LOR if an extradition request has already been issued.

Evidence to establish the nexus in the **Summary Section** and **Assistance Requested** are included in the draft LOR at **Annex D**. Also see the checklist at **Annex E** to assist the preparation or review of a LOR.

## 3.10. Video conference

Requesting States should consider if an applicable convention or bilateral treaty specifically references evidence via video conference and procedures to be followed in a requested State - prior to sending an LOR.

Video-conferencing is referenced in Article 18(18) of UNTOC and also within the context of witness protection at Article 24(2). This procedure can ensure that those witnesses who refuse or cannot travel to give evidence or are in fear, can still give testimony.

The law of the requested State will determine whether such assistance may be given, and if judicial supervision is required. Purely practical considerations include whether or not the requested State has the technical facilities to arrange a video conference and who will pay. Video conferencing can be costly and could incur more expenditure than funding a willing witness to give live testimony in a requesting State. Consideration should, therefore, be given as to whether a video conference is appropriate on a case-by-case basis.

Where facilities are lacking it is possible that the requested State will allow the requesting State to supply the necessary equipment and expertise. Some States may be content for a video-conference to be established with a willing witness without a LOR, i.e. via police-to-police channels or simply via direct contact with the witness and a company that can provide the necessary equipment and facility. In these circumstances, the video conference is not made from a foreign court under judicial supervision, but can be made from other premises. It is essential that States liaise to confirm if informal contact can be made in order that sovereignty is not breached.

**! IMPORTANT NOTE:** Some States will rarely if ever make use of video conferences at criminal proceedings and will not have the necessary equipment. In these cases, it is vital that the requesting State consider these issues at an early stage, as it is probable that a request to set up a video conference in such cases will take many months of planning, if it is possible at all. Again, it is essential that the requesting State liaise at an early stage to identify any issues to ensure that the witness testimony can be taken appropriately. The table below confirms video conferencing in the SPCs:

<b>Algeria</b>	Video conferencing is possible to hear witnesses, suspects and victims, as well as for confrontation under the Law no. 15-03 of 1 February 2015 on the modernisation of the justice system, the principle of reciprocity, and some bilateral conventions (ex: Algeria-USA).
<b>Egypt</b>	There is no domestic legislation for video conferencing.
<b>Israel</b>	Video conferencing is available for witnesses and possible for a suspect or the defendant if they agree. Please note for suspects and defendants this can be problematic due to aspects of due process and appropriate rights.
<b>Jordan</b>	Video conferencing of witnesses is possible pursuant to Article 158 of the Code of Criminal Procedure. Video conferencing of suspects is also possible.
<b>Lebanon</b>	Video conferencing with witnesses and suspects is not possible.
<b>Morocco</b>	Video conferencing with witnesses and suspects is not possible.
<b>Palestine</b>	Video conferencing with witnesses and suspects is not possible.
<b>Tunisia</b>	Video conferencing of witnesses and suspects is possible.



## BEST PRACTICE – ALGERIA

On January 21, 2007, a 10-year-old child, was abducted close to the family home in Algeria. Two days later, the child was found dead in a plastic bag in a forest 65 kilometres from home. At the time of his disappearance, his family received several messages by SMS claiming his abduction while demanding the payment of a ransom. Very quickly, suspicions led to a family member who had fled to France. The investigations carried out by the police and judicial authorities of the two countries quickly produced evidence against the suspect, through monitoring of his electronic devices. An international arrest warrant was issued and the suspect was arrested in France. As the suspect had French nationality he could not be extradited. As a result of coordination through their respective liaison magistrates, evidence was secured for the trial of the suspect in France and accomplices in Algeria. Further, through coordinated judicial cooperation, video conference testimony was heard between 20 and 24 March 2017 by the president of the French Criminal Court of witnesses in Algeria.



# 4. Extradition and Transfer of Sentenced Persons, Conflicts of Jurisdiction and Transfer of Proceedings

**In this chapter you will find:**

- The general theory and main concepts regarding extradition, transfer of sentenced persons, conflicts of jurisdiction and transfer of proceedings
- The relevant legal provisions of the SPCs, including threshold requirements for extradition and the scope of jurisdiction
- How to draft a Request for Extradition

## 4.1. Introduction

Extradition is the surrender by one State to another of an individual accused or convicted of an offence which falls under the jurisdiction of the other State, which is competent to try and punish the individual. To avoid impunity for perpetrators of trans-border crime, effective extradition arrangements need to exist between States, as there is no duty to surrender a fugitive in the absence of a treaty.

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, in order to enforce a custodial sentence following the conviction of an individual.

Extradition treaties may specify certain offences for which extradition will be granted, excluding the possibility of extradition for other crimes. More recently however, such lists have been replaced with general threshold requirements such as the minimum penalty and double criminality requirements.

Where extradition is not permitted according to the domestic laws of a State or due to a lack of bilateral or multilateral agreements and a reluctance to extradite based on reciprocity or comity alone, adequate jurisdiction needs to exist over the persons which have been charged with a crime abroad, so that they can nevertheless be prosecuted and brought to justice or that a sentence may be carried out against them. The principle “extradite or prosecute” (*aut dedere aut iudicare*) is clearly established in several multilateral instruments, for example in Art. 7(1) of the UN Convention against Torture or Art. 11(1) International Convention for the Protection of All Persons from Enforced Disappearance. It is likewise included in the negotiated universal instruments against terrorism and is also a binding rule, since it is embodied in Security Council resolutions 1373, 1456 and 1566.

## IMPORTANT NOTE:

A request for extradition does not however constitute a presumption of guilt. The obligation to prosecute does not mean that an allegation which proves 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.

In cases where there are concurrent extradition requests and several States claim jurisdiction over the crime, the requesting States need to make a case in their requests as to why they would be the most appropriate forum for the prosecution of the individual. The requested State will then decide, based on particular rules in its domestic legislation or any bilateral agreements with the requesting States or without such rules, which of the jurisdictions should prevail. Based on the same criteria, the requested State may decide that it is itself the most appropriate forum and may deny all the extradition requests. In such cases and where the extradition is not possible due to any of the precluding conditions, a transfer of proceedings may instead take place.

Extradition processes can be complex and confusing, especially since a full spectrum of different legal and technical requirements exists in connection with such requests based on individual domestic laws as well as bilateral agreements. While this is unfortunate from the point of view of efficient and speedy prosecution of trans-border crime and presents a major challenge in this respect, human rights as well as sovereignty considerations many times prevent stronger unification of rules or simplification based on the removal of certain safeguards. UNTOC provides for a certain degree of unification in terms of the offences themselves and double criminality as well as procedure. Nevertheless, differences continue to exist in domestic law and bilateral treaties.

This chapter 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.

## 4.2. Extradition

### 4.2.1. Some Characteristics of Extradition: Definition, Nature, Scope and Significance

Extradition is the oldest and most firmly established form of international cooperation in criminal matters as well as 'the most challenging and complex form of co-operation, particularly as between States of a different legal tradition'<sup>3</sup>. It is a critical component in relation to any treaty or scheme involving individual criminal liability.

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3. Kimberly Prost, 'Extradition: The Practical Challenges' in Rodrigo Yepes-Enriques and Lisa Tabassi (eds.), *Treaty Enforcement and International Cooperation in Criminal Matters* (T.M.C. Asser Press, 2002), 202.



## CASE STUDY – LACK OF AN EFFECTIVE TREATY

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 law therefore it leaves no room for flexibility in this regard.

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<sup>4</sup>. 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.

### IMPORTANT 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'<sup>5</sup>.

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<sup>6</sup>. 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<sup>7</sup>.

### IMPORTANT NOTE:

An extradition request can be made by the authorities of any State with subject matter jurisdiction wishing to prosecute, and/or punish the subject individual<sup>8</sup>.

4. David A. Sadoff, *Bringing International Fugitives to Justice: Extradition and its Alternatives*, (Cambridge University Press, 2016).

5. *Ibid.*, 47, fn. 75. 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.

6. Sadoff, *supra* note 9, 48.

7. *Ibid.*, 46-7.

8. *Ibid.*, 47-8.

## 4.2.2. Legal Basis for Extradition

The possibility of extradition will usually depend on the existence of a bilateral or multilateral agreement on extradition between the concerned states. 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. In the answers provided to the questionnaires, Morocco indicated that comity can constitute a legal basis for extradition under their legal systems, in cases of a lack of a formal agreement, while all SPCs, except Jordan and Palestine, said that at least reciprocity could provide such a basis.

### NOTE

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*.<sup>9,10</sup>

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 ensure 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.<sup>11</sup> 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.<sup>12</sup> 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. In terms of multilateralism in the field of extradition, some believe it is bound to fail. The conclusion of broad multilateral treaties is restrained due to constraints such as the prohibition of extradition of one country’s citizens to another country and on the other hand the reluctance to extradite individuals / fugitives to countries that have disreputable legal or punitive systems.<sup>13</sup> Furthermore, bilateral treaties are easy to monitor and enforce as reciprocity and retaliation are direct.<sup>14</sup> 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 [European Arrest Warrant] may convince other countries that multilateral treaties are more effective... A truly universal extradition system, in which all countries participate, could be more

9. Ibid., 48.

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

11. 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 Younis Arrest’, (1988) 29 *Harvard International Law Journal* 499.

12. William Magnuson, ‘The Domestic Politics of International Extradition’, (2012) 52 *Virginia Journal of International Law*, 868.

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

14. Ibid.

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.<sup>15</sup>

## **IMPORTANT NOTE:**

Several international or regional treaties can serve as basis for extradition with or without the existence of bilateral agreements:

- The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention),
- The UN Convention against Transnational Organized Crime (UNOTC).

With regard to the SPCs under consideration, it is important to note that while most of them have bilateral extradition agreements between themselves and are all parties to the Riyadh Arab Agreement for Judicial Cooperation (hereinafter Riyadh Agreement), 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 extradition 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 1988 Drug 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 1988 Drug 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.'

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15. Magnuson, *supra* note 17, 873-874.



## CASE STUDY – RELIANCE ON SECURITY COUNCIL RESOLUTION AS LEGAL BASIS FOR EXTRADITION

On 29 February 2016 Algeria sent two extradition requests to the authorities of a European State (with which no extradition agreement had been signed), via the diplomatic channel concerning two Algerian nationals (a married couple) involved in acts of association with a terrorist organization, Daesh. The extradition requests were based on UN resolution 1373 (2001) and the principle of reciprocity was guaranteed in the absence of a bilateral extradition convention. The extradition of the husband was granted, but the extradition of the wife was refused for lack of evidence.

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.<sup>16</sup> 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.<sup>17</sup> 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.'<sup>18</sup> As the SPCs under consideration, apart from Israel, all subscribe to the monist approach to international law, where the domestic legislation contradicts international agreements the latter will, at least in theory, have precedence over the former, albeit that is not necessarily the case in practice. Algeria has reported that, in practice, some foreign judicial authorities refuse requests for extradition in the absence of a bilateral convention, neglecting regional conventions or the multilateral framework containing extradition provisions.

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16. Prost, *supra* note 7, 203.

17. *Ibid.*, 203.

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



## CASE STUDY – UNDUE DISREGARD OF REGIONAL CONVENTIONS AS LEGAL BASIS FOR EXTRADITION

An Algerian national subject to an international arrest warrant was charged by the Algerian judicial authorities with bribery. Following the arrest of the person concerned in the territory of an Arab country / PPVS (with which no extradition or mutual legal assistance agreement is signed), an extradition request was sent on 16 June 2011 through the diplomatic channel to the relevant judicial authorities. In the absence of a bilateral extradition convention, the request was based on the Riyadh Agreement (of which Algeria and the requested State are both parties). On 23 March 2012, the requested authorities nevertheless issued a decree rejecting the request for extradition due to the absence of a bilateral extradition convention.



### 4.2.3. Setting the Parameters of Extradition

The following parameters are **internationally accepted**:

- The subject should be a natural person not juridical person such as businesses or organizations.
- 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.<sup>19</sup>
- The subject must be pursued because of his individual actions – not solely as the agent or representative of, or merely because of an affiliation with, a government.<sup>20</sup>
- 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.<sup>21</sup> 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

19. *Ibid.*, 8-9.

20. *Ibid.*, 9.

21. *Ibid.*

participation on hostilities, either as a combatant or through carrying out other military duties.<sup>22</sup>

## 4.2.3.1. 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 and is also covered 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 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.<sup>23</sup> The first was this paragraph should not be interpreted as prejudicing in any way the fundamental legal rights of the defendant.<sup>24</sup> 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.'<sup>25</sup>

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

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22. 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, (1st September 2005), para. 28.

23. *Ibid.*

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

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



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.<sup>26</sup> 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.<sup>27</sup> 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 retains the right to appeal.

### 4.2.3.2. 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. 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. 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. '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. 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.'<sup>28</sup> The UK government eventually enacted a statute allowing the home secretary to veto the extradition of British citizens.<sup>29</sup>

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.<sup>30</sup> Similarly, in June 2016, S, a Georgian and Israeli citizen and O, an Israeli citizen, were extradited to the US. The two individuals were arrested in July 2015 for charges arising out of S's orchestration of massive computer hacking crimes against U.S. financial institutions, brokerage firms, and financial news publishers, including the largest theft of customer data from a U.S. financial

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26. 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.

27. European Commission, Building a European Area of Justice, available online at [http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index\\_en.htm](http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm).

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

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

30. 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>.

institution in history in furtherance of securities market manipulation schemes.<sup>31</sup>

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.<sup>32</sup>

The extradition of the teenage 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.<sup>33</sup> 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. (See below, Conflict of Jurisdiction).

On the other side, the extradition of citizens is highly unlikely to be allowed by any of the other SPCs.

## CASE STUDY – ALTERNATIVES TO EXTRADITION OF NATIONALS

**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.<sup>34</sup>**

The Arab Convention for the Suppression of Terrorism in Article 6 (h) grants 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 person 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 re-

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31. 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>.

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

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

34. 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.

questing State.<sup>35</sup>

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.



## CASE STUDY – EXTRADITION OF NATIONALS

**Iraq issued an extradition request for a Jordanian citizen who committed a crime in Iraq. The request was refused at the Court of first instance due to his 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.**

The European Convention on Extradition states in Article 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 EAW does not permit the exception to extradition based on nationality. However, the courts of sev-

35. The Arab Convention on the Suppression of Terrorism 1988, Art. 6, para. h.

eral member states of the European Union have struck down domestic laws implementing the EAW in relation to the extradition of nationals.<sup>36</sup>

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.

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.

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.<sup>37</sup> In some international agreements, it is additionally mandated that there be no undue delay in proceeding with prosecution. In terms of terrorist offences, the SPCs that 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.<sup>38</sup> Palestine has noted that it does so in relation to money laundering and terrorist financing offences. The success of prosecution at home is however dependant on the successful transfer of evidentiary material from where the crime took place.

Article 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.<sup>39</sup> 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 Matters<sup>40</sup> the States concerned will need to cooperate closely in advance and

36. 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.

37. 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.

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

39. Para. 70.

40. Para. 76.

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.<sup>41</sup> 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).

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.<sup>42</sup> 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.<sup>43</sup> 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.



## CASE STUDY – FAILURE TO TRANSFER EVIDENCE

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.

### 4.2.3.3. Human Rights Considerations

The growing importance placed on human rights in modern times has led to the inclusion of the concern for their protection in the vast area of international cooperation in criminal matters, including extradition, which used to be dominated by considerations deeply rooted in State interest for centuries.<sup>44</sup> 'The human rights movement with its unequivocal emphasis on their protection as such, has changed that perspective.'<sup>45</sup> All modern bilateral and multilateral treaties as well as domestic laws on extradition thus include human

41. Para. 76.

42. Sadoff, *supra* note 9, 384-385.

43. *Ibid.*, 384.

44. Michael Plachta, 'Contemporary Problems of Extradition: Human Rights, Grounds for Refusal and the Principle Aut Dedere Aut Judicare,' 114th International Training Course Visiting Experts' Papers, Respurce Material Series No. 57, 64.

45. *Ibid.*

rights concerns as grounds for refusal of extradition.

However, 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> In the words of Magnuson: '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.'<sup>49</sup>

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.

The death penalty presents a further 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.

## CASE STUDY – HUMAN RIGHTS CONSIDERATIONS

### Case no I

In April 2017, a Tunisian suspect in the 2015 jihadist attack on the Tunis Bardo useum that killed 21 foreign tourists and a police officer requested asylum in Germany citing the threat of torture and the death penalty in 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 deten-

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46. Magnuson, *supra* note 17, 886.

47. *Ibid.*

48. *Ibid.*, 886-887.

49. *Ibid.*, 887.

tion.<sup>50</sup>

## Case no 2

On 29 February 2016 Algeria sent two extradition requests to the authorities of a European State concerning two Algerian nationals (a married couple) involved in acts of association with a terrorist organization, Daesh. Before taking a decision on the application, the requested judicial authorities asked for additional information regarding the applicable sentence and guarantees regarding the conditions of imprisonment of the individuals concerned and human dignity and fundamental rights.

The Algerian authorities transmitted the required guarantees taking into account the ratified conventions in this context:

- The Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 16/05/1989 by Presidential Decree No. 89/66).
- International Charters of Human Rights (which are, according to the Constitution, superior to the law).

The extradition of the husband was granted, but the extradition of the wife was refused for lack of evidence.

## Case no 3

An Algerian national subject to an international arrest warrant was wanted by the Algerian judicial authorities for involvement in terrorist matters.

Following his arrest in a European country (with which Algeria has a bilateral extradition treaty) and the sending of the extradition request via the diplomatic channel, the requested authorities demanded guarantees relating to the death penalty. A reply was sent stating that Algeria has observed a moratorium on the application of the death penalty since 1993. The authorities concerned nevertheless issued a decision rejecting extradition, since the death penalty is contrary to public order, the European Convention on Human Rights, and the Constitution.

### 4.2.3.4. Political Offences Exception

Article 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 certain criminal activities undertaken in a political context that are regarded by the requested State as offenc-

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50. 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>.

es 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.<sup>51</sup> The European Convention on Extradition 1957 likewise 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.'

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.<sup>52</sup> Protection from extradition for such non-violent human rights activists who seek protection abroad is essential to foster positive political change and transparency.<sup>53</sup> 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 between countries and if an effective fight against terrorism is to be established.

The political offence 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.<sup>54</sup> 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 details below.

## 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.<sup>55</sup>

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

52. 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>.

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

54. *Ibid.*

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



## '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.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> Ironically, extremist uprisings in the Arab world thus provide ample background for criminal acts to eventually be considered non-extraditable whereas whistleblowers 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 necessary<sup>59</sup> and it further considers the motives of the accused and of the requesting State when the offence is not part of an uprising.<sup>60</sup> The US however still requires political disturbance to be proven.<sup>61</sup>

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.<sup>62</sup> 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. Article 3(a) of the UN Model Treaty on Extradition stipulates that reference to an offence of a political nature shall not include any

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56. Kielsingard, *supra* note 62.

57. *Ibid.*

58. Sadoff, *supra* note 9, 203-204.

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

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

61. Kielsingard, *supra* note 61.

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

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.

The Arab Convention for the Suppression of Terrorism also excludes from political offences all offences described as terrorist (see details under section 5), as well as all below enumerated offences, even if committed for political motives:

- d. Attacks on the kings, Heads of State or rulers of the contracting States or on their spouses and families;
- e. Attacks on crown princes, vice-presidents, prime ministers or ministers in any of the Contracting States;
- f. Attacks on persons enjoying diplomatic immunity, including ambassadors and diplomats serving in or accredited to the Contracting States;
- g. Premeditated murder or theft accompanied by the use of force directed against individuals, the authorities or means of transport and communications;
- h. Acts of sabotage and destruction of public property and property assigned to a public service, even if owned by another Contracting State;
- i. The manufacture, illicit trade in or possession of weapons, munitions or explosives, or other items that may be used to commit terrorist offences

In the context of the EU, the Council of Europe European Convention on the Suppression of Terrorism<sup>63</sup> lists the offences that Parties undertake not to consider as political offences, or as offences connected with political offences, or as offences inspired by political motives, namely acts of particular gravity, hijacking of aircraft, kidnapping and taking of hostages, the use of bombs, grenades, rockets, letter or parcel bombs, if their use endangers persons. Moreover, 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

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63. ETS No.090 Adopted in Strasbourg 27.1.1977 – Treaty open for signature by the member States of the Council of Europe – 46 Ratifications as of 1 July 2017.

of a person who commits or attempts to commit such an offence.<sup>64</sup>

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

Article 12(2)(b) of the EU Qualification Directive<sup>65</sup> furthermore stipulates that a particularly cruel action, even if it is committed with an alleged political objective, cannot be considered a political crime.

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.<sup>66</sup>

SPCs report that certain EU countries refuse to extradite terrorists based on the political crime exception, even in cases of murder. Several SPCs have thus indicated the importance of the political offences exception not to include terrorism.

#### 4.2.3.5. Evidence requirements

States may have different requirements in terms of the evidence presented in an extradition request. Out of the States under consideration, the *prima facie* evidentiary requirement is only present in Israel. Such a standard is an important safeguard against unwarranted extradition requests, yet it undoubtedly complicates the process of extradition. 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'.<sup>67</sup>

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.

According to Jordanian 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.

64. 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;
- 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.

65. 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

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

67. 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.

## 4.2.3.6. Ne bis in idem

The inclusion of the *ne bis in idem* principle in extradition treaties and domestic legislation is well established. While it essentially means that nobody should be tried twice for the same offence, the principle is not uniformly defined in terms of what is 'the same' or at what stage a subsequent procedure shall be barred.

According to Article 14 (7) of the International Covenant on Civil and Political Rights (ICCPR), '[n]o one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each State'.

In turn, Article 4 Protocol No. 7 to the European Convention on Human Rights of 22 November 1984 states:

'1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.'

Article 9 European Convention on Extradition of 13 December 1957 states that: '[e]xtradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences'.

Within the EU Area of Freedom, Security and Justice, the main legal sources for this principle are Articles 54 to 58 of the Convention Implementing the Schengen Agreement (CISA) and Article 50 of the Charter of Fundamental Rights of the EU, to be interpreted in light of the relevant case law of the Court of Justice of the EU. (For an overview of the case law of the Court of Justice regarding the *ne bis in idem* principle, see the Eurojust document, *The principle of ne bis in idem in criminal matters in the case-law of the Court of Justice of the European Union*.)



## CASE STUDY – CONTROVERSIAL APPLICATION OF THE *NE BIS IN IDEM* PRINCIPLE

A French national against whom an international arrest warrant was issued by the Algerian judicial authorities on the counts of forgery and foreign exchange offenses was arrested in a European country with which Algeria has a bilateral extradition convention. After sending the extradition request, the requested authorities issued a decision rejecting the extradition for:

- lack of double criminality (knowing that certain facts are incriminated in both countries)
- in application of the *ne bis in idem* principle, with reference to a previous arrest of the person concerned in a European country refusing in its turn his extradition due to the absence of double criminality.

In addition, a request for extradition of the same person and for the same acts was sent to an Arab country with which Algeria has a bilateral convention of extradition of criminals / SPC. The extradition was granted by a judicial decision and by virtue of an executive decree dated 25/03/2015, although the extradition proceedings were not executed, without specifying the reasons.

The case study provided by Algeria is an example of an improper application of the *ne bis in idem* principle, since this principle should be applied in the prosecution of persons for the acts committed or at the trial, and not in the decision on extradition requests which can be sent to several countries for the same person and for the same acts.

The fact that a State makes a decision on a request for extradition does not mean that it has already decided the case.

### 4.2.3.7. Non refoulement

The principle of *non-refoulement* has been incorporated in various treaties such as the 1949 Fourth Geneva Convention, and the 1951 Convention relating to the Status of Refugees.<sup>68</sup> It obligates a State not to

68. Convention relating to the Status of Refugees (Geneva, 28 July 1951), United Nations, Treaty Series, vol. 189, No. 2545, 137, art. 33, para. 1; 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3: '1. No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.' See also the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa; the 1969 American Convention on Human Rights; the 1981 African Charter on Human and Peoples' Rights; the 2006 International Convention for the Protection of All Persons from Enforced Disappearance provides that.

return a person to another State where there are substantial grounds for believing that he or she will be in danger of persecution or some other specified harm. The Human Rights Committee<sup>69</sup> and the European Court of Human Rights<sup>70</sup> have construed the prohibition against torture or cruel, inhuman or degrading treatment, contained in Article 7 of the 1966 International Covenant on Civil and Political Rights and Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms respectively, as implicitly imposing an obligation of non-refoulement.<sup>71</sup>

The UN General Assembly resolution 64/168 on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism further stresses the need:

- '(h) To fully respect nonrefoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;
- (i) To refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever such transfer would be contrary to their obligations under international law, in particular international human rights, humanitarian and refugee law, including in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their life or freedom would be threatened in violation of international refugee law on account of their race, religion, nationality, membership of a particular social group or political opinion, bearing in mind obligations that States may have to prosecute individuals not returned;
- (j) Insofar as such an act runs contrary to their obligations under international law, not to expose individuals to cruel, inhuman or degrading treatment or punishment by way of return to another country.'

The principle of non-refoulement is thus often part of extradition treaties, in the sense that there is no obligation to extradite an alleged offender if the requested State has substantial grounds for believing the request has been made to persecute the alleged offender on specified grounds.

One of the SPCs has indicated that due to its position in the middle of several conflict zones and it being the host of a substantive number of refugees it has rejected several extradition requests based on the principle of non-refoulement, even though it refrains from officially indicating this in the stated reasons for refusal.

#### 4.2.3.8. Double Criminality

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

69. See Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 9, Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI, sect. A ("States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement").

70. See, for example, *Chahal v. United Kingdom*, Application No. 22414/93, Judgment of 15 November 1996, Grand Chamber, European Court of Human Rights, ECHR 1996-V, para. 80.

71. Note however that these conventions contain no such express obligation.

provisions elaborate much of the details of the offences differently from the domestic provisions of other member states.<sup>72</sup>

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 Article 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). In the 2009 MENA FAFT Mutual Evaluation Report, it was noted that in terms of money laundering, Lebanon did not adequately criminalize the relevant crimes.<sup>73</sup> 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.<sup>74</sup> 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 mentioned in Article 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.<sup>75</sup>

Whether differences in definitions 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 criminalize the underlying conduct.

The Riyadh Agreement further loosens 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 terms of the Riyadh Agreement, there is an obligation to extradite (Article 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. Even though all SPCs are signatories of the Agreement, some indicated thresholds higher than this,

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72. Rodrigo Yepes-Enriquez 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), 206.

73. 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.

74. Para. 40.

75. Para. 695.

namely two years minimum penalty.

## 4.2.4. Relevant International Treaties

The grounds of jurisdiction (that allows a request for extradition) established by the UN Treaties are:

- Territoriality: the location of the offence is a basis since the 1971 Convention (art. 5).
  - Registration of aircraft or maritime vessels: art. 6 of the 1988 Convention 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, 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 introduced the status or nationality of the victim, and the 1979 Convention introduced the protection of national interests principle in Article 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.<sup>76</sup>
  2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 ('1988 Drug Convention'), Article 6 (Extradition), Article 8 (Transfer of Proceedings);
  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)
  8. Budapest Convention on Cybercrime of 23 November 2001 (ETS No. 185), Article 22(3) (Jurisdiction), Article 24 (Extradition), Article 35(2)(b) (24/7 Network).
  9. United Nations Convention against Transnational Organized Crime of 15 November 2000 ('the Palermo Convention'), Article 16 on (Extradition), Article 17 on (Transfer of Sentenced Persons) and the Protocols thereto;
  10. United Nations Convention against Corruption of 31 October 2003 ('the Merida Convention'), Article 44 (Extradition), Article 45 (Transfer of sentenced persons).
  11. Council Framework Decision of June 2002 (Council of European Union) and the related European Arrest Warrant (EAW)

76. 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.



## Counter-Terrorism Conventions with Provisions about Extradition

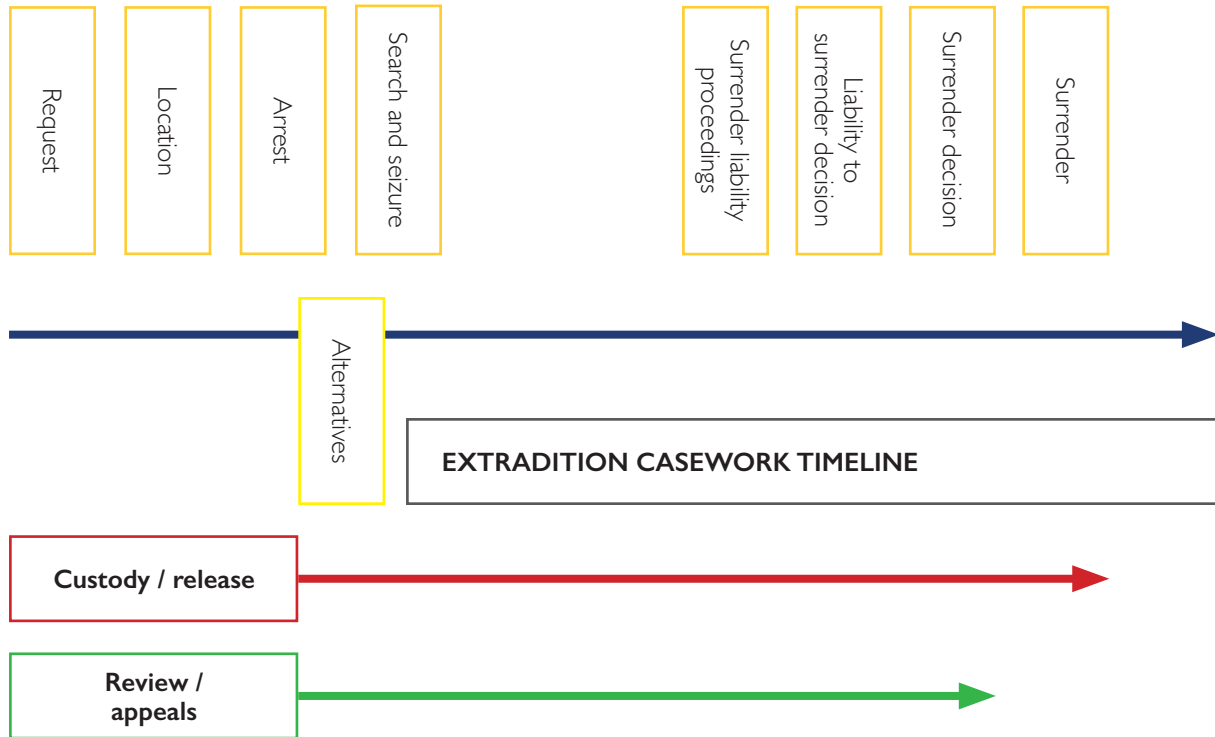
1. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Articles 6-8, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco and Tunisia)
2. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Articles 6-8, accessed/ratified/signed by Algeria, Israel, Tunisia and Jordan)
3. 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Articles 6-8, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia and the State of Palestine, Egypt, Lebanon)
4. 1979 International Convention against the Taking of Hostages (Articles 6-10, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
5. 1980 Convention on the Physical Protection of Nuclear Material (Articles 9-11, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Lebanon)
6. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (supplementary to the 1971 Convention, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Egypt, Lebanon)
7. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Articles 6-7, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon)
8. 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (complement to the 1988 Convention, Article 3, accessed/ratified/signed by Algeria, Tunisia, Egypt, Lebanon)
9. 1997 International Convention for the Suppression of Terrorist Bombings (Articles 6-12, accessed/ratified/signed by Algeria, Israel, Morocco, Tunisia, Egypt)
10. 1999 International Convention for the Suppression of the Financing of Terrorism (Articles 7, 9-15, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt)
11. 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Articles 9-16, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon)
12. 2005 Amendment to the Convention on the Physical Protection of Nuclear Material (Article 11, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia)
13. 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Articles 6-15, accessed/ratified/signed by Algeria)
14. 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Articles 6-15, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia)
15. 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 of 1983 (Articles 38-46),
2. Arab Convention for the Combatting of Terrorism of 2006 (all Members of the Arab League ratified),
3. European Convention on Extradition of 1957,
4. OAU Convention on the Prevention and Combating of Terrorism of 1999.

## 4.2.5. Timeline of a process of extradition

The below timeline is useful for the purpose of understanding the process of extradition. Source: Annex of the Report of the Informal Working Group on Effective Extradition Casework Practice, UNODC, 2004.



## 4.3. Establishing Criminal Jurisdiction

A requesting State needs to be able to exercise jurisdiction over the wanted individual and the alleged crime. On the other hand, as mentioned above, the requested State which refuses to extradite likewise needs to be able to establish such a jurisdiction. 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'.<sup>77</sup> It is a concept that is integral to State sovereignty<sup>78</sup> 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.<sup>79</sup> Enforcement jurisdiction is the capacity of a State to enforce non-compliance with its laws, including breaches that occur abroad.<sup>80</sup> 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'<sup>81</sup> or when the consent of the affected

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

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

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

80. Staker, *supra* note 86, 331-33.

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

State is granted.<sup>82</sup> Conversely, States may wield prescriptive jurisdiction in respect of acts that occur outside of their territory.<sup>83</sup>

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.<sup>84</sup> The latter 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*.<sup>85</sup>

## 4.3.1. 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.<sup>86</sup>

## 4.3.2. 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.'<sup>87</sup>
- '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.'<sup>88</sup> 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.'<sup>89</sup>
  - 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,

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82. Staker, *supra* note 86, 331.

83. *Lotus Case*, *supra* note 90.

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

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

86. Sadoff, *supra* note 9, 69.

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

88. Sadoff, *supra* note 9, 73.

89. *Ibid.*

even in instances where the chief offender never set foot on the prosecuting State's territory.<sup>90</sup>

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.

### 4.3.3. 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:

#### 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).<sup>91</sup>

- 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).

#### 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

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90. *Ibid*, 74-5.

91. *Ibid*, 79-80.

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.<sup>92</sup> 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.<sup>93</sup>

- 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.<sup>94</sup> '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 perpetrated against its nationals when the State with primary responsibility for such prosecution has failed to do so.'<sup>95</sup>

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.

## 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 national abroad from any possible harm.

## Universal Jurisdiction<sup>96</sup>

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 regard-

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92. *Ibid.*, 82.

93. *Ibid.*, 82, fn. 136.

94. *Ibid.*, 82.

95. *Ibid.*, 83.

96. This section on universal jurisdiction was prepared by Dr Amina Adanan, Maynooth University Department of Law, National University of Ireland, Maynooth.

less of where the offence occurred and irrespective of the nationality of the accused person(s) or victims.<sup>97</sup> It is a procedural rule that applies to offences criminalized 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 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 utilized 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 criticized.<sup>98</sup> 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.<sup>99</sup>*

#### 4.3.4. Conflict of Jurisdiction and Concurrent Requests for Extradition

97. 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 the 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 Higaniro et al*, Assize Court of Brussels, 8 June 2001.

98. Luc Reydam's, '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.

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

When the jurisdictions of several States overlap and they all wish to prosecute the individual in question, we speak of a conflict of jurisdiction. In the sphere of transnational crimes, conflicts of jurisdiction and concurrent requests for extradition from different States for the same person are not uncommon. States have to devise criteria based on which they give priority to certain requests over others or refuse extradition altogether. 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.

The Model Treaty on Extradition addresses concurrent requests in Article 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.'<sup>100</sup>

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.'<sup>101</sup>

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 Article 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

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100. UNODC, Revised Manuals, *supra* note 60, para. 254.

101. *Ibid.*, para. 257.

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 (Article 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 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.

In terms of the EU there is no horizontal instrument determining binding rules on deciding which jurisdiction would prosecute and the majority of Member States do not have a set criteria in their domestic legislation. In 2003 Eurojust issued guidelines on the matter which were revised in 2016.<sup>102</sup> The guidelines are meant as a flexible tool for the competent authorities. They take into account the Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, which foresees a mechanism for direct consultations between competent authorities, as well as other legal instruments which include provisions referring to the factors to be taken into account with the aim of centralizing proceedings in a single Member State when more than one can validly prosecute on the basis of the same acts.<sup>103</sup>

Among the key principles, the guidelines enumerate *ne bis in idem* (see above); the principle of mandatory prosecution which should be considered fulfilled when any Member State ensures the criminal prosecution of a particular criminal offence; the interest of justice, which should govern any decision on which jurisdiction should prosecute; fairness and objectivity and the balancing of factors both for and against commencing a prosecution in each jurisdiction.<sup>104</sup>

The guidelines instruct Member States to contact each other as soon as they detect parallel proceedings and start cooperating and coordinating through dialogue and mutual trust with a view to reaching a decision as soon as possible.<sup>105</sup> The main factors to be considered according to the guidelines are:

- Firstly, *territoriality*, whereby a preliminary presumption should be made that, if possible, a prosecution should take place in the jurisdiction in which the majority – or the most important part – of the criminality occurred or in which the majority – or the most important part – of the loss was sustained. Hence, both the quantitative ('the majority') and the qualitative ('the most important part') dimensions should be duly considered.
- Secondly, factors related to the *location of suspect(s)/accused person(s)* should be taken into account such as:

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102. 'Guidelines for deciding 'Which jurisdiction should prosecute?', Revised 2016 in Eurojust Annual Report 2016.

103. See for example, Framework Decision 2002/475/JHA of 13 June 2001 on combating terrorism, Art. 9; Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime (Art. 7).

104. Guidelines, *supra* note 111, 56.

105. *Ibid.*



- the place in which the suspect/accused person was found; the nationality or usual place of residence of the suspect/accused person;
- the possible strong personal connections with one Member State or other significant interests of the suspect/accused person;
- the possibility of securing the surrender or extradition of the suspect/accused person to another jurisdiction;
- the possibility of transferring the proceedings to the jurisdiction in which the suspect/accused person is located.

Where several co-defendants can be identified, their number, respective roles in the commission of the crime and respective locations should all be taken into account. The location of the suspect may be of secondary importance if (s)he can, for example, be transferred at a later stage to another State to serve the custodial sentence. This will depend on the existence of applicable illegal instruments between the relevant countries.<sup>106</sup>

Other factors to be considered include:

- The possibility of *obtaining evidence* (questions of travel, receiving evidence in written form or by any other means, e.g. video-conferencing)
- The significant interests of the victims (questions of availability of witness protection programs and whether the witnesses would be prejudiced if prosecution were to take place in one jurisdiction rather than another, for example in terms of possibility to claim compensation)
- The stage of proceedings (when the proceedings are already at an advanced stage in one jurisdiction it might not be appropriate to transfer them elsewhere)

Among the less important factors to be considered are:

- The length of proceedings (important from the point of view of the principle 'justice delayed is justice denied')
- Legal requirements including obligations and requirements imposed in each jurisdiction and the possible effects of a decision to prosecute in one jurisdiction rather than in another and the potential outcome in each jurisdiction

On the other hand, it is specifically stated that the following factors while relevant should not be determining on the matter:

- The penalties available under each jurisdiction or the relative sentencing powers of the courts
- The powers available to restrain, recover, seize and confiscate the proceeds of crime
- Costs and resources
- Member States' priorities

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106. For example within the EU, Framework Decision on mutual recognition of judgments imposing custodial sentences (2008/909/JHA); The Framework Decision on the European Arrest Warrant (2002/584/JHA).

## CASE STUDY – CONFLICT OF JURISDICTIONS

A US-Israeli teenager, operating from Israel, made more than 2,000 intimidating calls and threats to Jewish institutions, malls, schools, airlines and police in the US, Australia, New Zealand and a number of European countries. His crimes furthermore included arms possession and attacking a police officer in Israel. The US issued an informal request for extradition of the individual. The Justice Ministry nevertheless decided against extradition finding Israeli jurisdiction the most appropriate to try the individual, even though a large number of the bomb threats occurred in the US. The factors leading to this decision 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.<sup>107</sup>

### 4.4. General Introduction on the Transfer of Sentenced Persons<sup>108</sup>

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.<sup>109</sup>

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.<sup>110</sup> 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.<sup>111</sup>

#### Framework for Transfer of Sentenced Persons

Transfer regimes are based on bilateral or multilateral agreements that offer a framework for transferring pris-

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

108. 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](https://www.unodc.org/documents/organized-crime/Publications/Transfer_of_Sentenced_Persons_Ebook_E.pdf).

109. *Ibid.*

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

111. *Ibid.*

oners. 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.<sup>112</sup>

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.'*

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.

## 4.4.1. 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.<sup>113</sup>

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:

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<sup>112.</sup> *Ibid.*

<sup>113.</sup> *Ibid.*

*'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.<sup>114</sup> 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).

## 4.4.2. Significance

There are many significant law enforcement benefits to the transfer of sentenced persons. If there is no prisoner transfer program, 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.

## 4.4.3. 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

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<sup>114</sup>. *Ibid.*

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.<sup>115</sup>

#### **4.4.4. 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.

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.<sup>116</sup>

#### **4.4.5. The 1985 European Convention on the Transfer of Sentenced Persons (opened for non-European States)<sup>117</sup>**

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.

#### **4.4.6. Bilateral Agreements**

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.

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<sup>115</sup>. See article 16, paragraph 12, of the Organized Crime Convention; and article 44, paragraph 13, of the Convention against Corruption.

<sup>116</sup>. See articles 16-21.

<sup>117</sup>. Israel is a state party.

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. 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.

## **4.4.7. Requirements that must be fulfilled prior to the transfer of a sentenced person**

### **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.

### **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 - Article 3(1)(c)). Some bilateral agreements, such as those between the United Kingdom and Morocco set a minimum period of a year.

### **Double 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.

## 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 extend 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’.

## 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.

## 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.

## 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."

## 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.



## 4.5. 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, serving the interest of justice and ensuring a more effective trial. The transfer of proceedings has become relatively widespread, particularly among civil law States.

It 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. States 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 European Convention on the Transfer of Proceedings in Criminal Matters for example, 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.<sup>118</sup> According to Article 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

<sup>118</sup> Explanatory Report on the European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, Council of Europe, 1985), 20.

Contracting State for the same offence;<sup>119</sup> 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.<sup>120</sup>

The Vienna Convention in Article 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 interest 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 priority to be afforded to parties in instances involving concurrent jurisdiction.<sup>121</sup> Similarly, UNTOC states that: 'States Parties shall consider the possibility of transferring to 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.'<sup>122</sup>

## Arrest and other related preparations

A well-drafted and complete extradition request is the key to effective extradition practices between States.<sup>123</sup> The following paragraphs provide guidance on the drafting.

### 4.6.1. Checklist for Preparation of an Extradition Request

**The first step** involves checking existing treaties between the two countries in question and establishing what the requirements for extradition are according to those treaties

**The second step** is consulting domestic legislation of the requested State

- To determine threshold requirements for extradition as well as any grounds for refusal
- To determine the recipient authority of the request. Communications may be transmitted through the diplomatic channel, between the ministries of justice or any other authorities designated by the parties. Each State decides the appropriate ministry or agency that is responsible for receiving and transmitting requests. In many States, the designated channel is the Ministry of Justice, court or the office of the Attorney-General or equivalent but not necessarily.
- When there are concurring requests for extradition it is important to consider whether the legal basis establishes any order of priority. Preference may be given to the requesting party where the offence was committed, to the State of which the victim is a national, or of which the offender is a national, according to the chronological order of the requests, according to the severity of the pen-

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

120. Art. 32.

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

122. Art. 21.

123. UNODC, Commentary on the Revised Model Treaty on Extradition, [https://www.unodc.org/pdf/model\\_treaty\\_extradition\\_revised\\_manual.pdf](https://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf).

ality incurred or the instrument may recommend an examination according to the interests that are specified. If there are any concurrent requests, a case for priority should be prepared, communicated and negotiated as soon as possible.

**The third step** is providing information about the designated authority presenting the request and certification of its competence as well as contact information; providing the identity of the person sought; the procedural history of the case; legal provisions applicable, information regarding the statute of limitation; and the legal basis upon which the request is made:

- The contact information of the designated authority should include names, surnames, mailing addresses, telephone and facsimile numbers and e-mail addresses. Languages for contact should also be specified.
- The description of the physical features of the person sought should be supplemented with any other relevant information to help establish his identity, such as nationality and location, fingerprints, identity cards, photographs, DNA material, etc.
- The procedural history of the case should be supplemented by a description of the charges brought against the person sought and a copy of the applicable law both regarding the offence and penalty as well as the statute of limitations. A reference to the basis of jurisdiction has been found to be useful.
- The legal basis for the extradition should be described whether it be national legislation, a bilateral or multilateral agreement. When no such agreement exists, (and even when it does), the requesting State may indicate that in return it is willing to provide the same assistance for requests for extradition received from the requested State in the future on the basis of reciprocity.

**The fourth step** is the inclusion of the following documentation:

- The original or a certified copy of the warrant of arrest issued by the competent authority or another document with the same effect
- A statement of the offences and a detailed description of the acts or omissions constituting the alleged offences including the time and place and the degree of participation in the offence by the person sought. The focus should be on providing only relevant facts about the conduct, and not all facts known about the case. All offences should be identified, even if not extraditable, to avoid later complications in relation to the rule of speciality and respect of said rule should be expressly assured.
- Proof that the person is wanted for the purpose of a trial and proof that the wanted person is indeed the person referred to in the arrest warrant, which may necessitate sworn evidence and the witness to depose that they know the person sought and that the person engaged in the relevant acts or omissions.
- Evidence in support of the suspicion of guilt for every offence for which extradition is sought. This may necessitate sworn evidence of witnesses. Alternatively a sworn or unsworn statement of the case may suffice. If sworn evidence is required, check whether this has to show prima facie evidence of every offence for which extradition is sought and determine based on domestic legislation and relevant guidelines what is required and admissible to meet that or any lesser test.

For an extradition request regarding a person which has already been convicted, the first three steps equally apply, plus the inclusion of the following documents:

- Proof that the person referred in the judgement is the wanted person.

- If the person has already been sentenced - an original or a certified/authenticated copy of the conviction/detention order, or another document with the same effect establishing that the sentence is immediately enforceable and the extent to which the sentence remains to be served.
- If the person has been sentenced in absentia – also a statement indicating that the person was summoned in person or otherwise informed of the hearing or was legally represented through the proceedings against them, and specifying the legal means available to the person to prepare a defense or to have the case retried in their presence with the full benefit of the rights of defense.
- If the person has been convicted but not yet sentenced – a document setting out the conviction and a statement affirming that there is an intention to impose a sentence as well as a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence.

Any request should be concluded with a standard complimentary close, such as:

*'The magistrate is grateful to the competent high authorities for their help and assures them of his/her reciprocity and consideration'* followed by the signature of the issuing authority, date and official seal.

**The sample letter in Annex J should further assist with the preparation of an extradition request.**

**! IMPORTANT NOTE:** The Riyadh Agreement sets out the method of submitting extradition requests and enclosures in Art. 42.<sup>124</sup>

## 4.6.2. Planning the request

- Communicate informally with the requested State prior to making the request in order to determine what their requirements are (including the format, necessary signatures, etc.), if there are any potential grounds for refusal as well as what are their acceptable fast communication/transmission channels. This is particularly advisable when the location of the person sought is known. It is good practice to maintain communication between the relevant authorities throughout the extradition process to identify potential problems, and minimize delays and any interruption of the process.
- When unsure about all the requirements, consider submitting a draft request for the requested State to put comments on and information on what needs to be added/improved.
- Check the domestic legislation of the requested State regarding arrest, search and seizure in order to pre-empt any potential problems
- Make sure the request is issued within the time limits of the requested State after the arrest.
- All the documentation and the request itself have to be translated into one of the languages specified by the requested State and adequate time for this has to be kept in mind. Translation facilities available for extradition requests need to be reliable as accuracy of the translation is crucial.

<sup>124</sup> The extradition request shall be submitted in writing by the competent authority of the requesting party to the competent authority of the requested party, and shall be accompanied by the following:

(a) A detailed statement of the identity of the individual to be extradited, his description, nationality and photograph if possible.

(b) A writ of arrest for the individual to be extradited or any other document having the same force issued by the competent authorities, or the original conviction made in accordance with the modes laid down by the law of the requesting party, or an official copy thereof duly certified by the competent authority of the requesting party.

(c) A submission containing the date and place of the acts for which extradition is requested, their characterization and the shariite or legal provisions applicable thereto, as well as a certified copy of such provisions, and a statement from the investigating authority setting forth the actual evidence against the person whose extradition is requested.

- Check whether police, legal/liaison representatives and consular officials may be present at foreign extradition proceedings to monitor and assist if needed and make arrangements accordingly.

### 4.6.3. Applying for provisional arrest

When there is not sufficient time to compile all the documents required for a full extradition request, yet it is urgent to arrest the person sought, a State can apply for provisional arrest. According to the Revised Manual on the Model Treaty on Extradition domestic legislation should enable provisional arrests and allow for the application for such arrests to be made by any means, as long as there is a record in writing.<sup>125</sup> Conditions for the issue of a provisional arrest warrant will depend upon each individual State and the obligatory elements that the request must contain are specified in a number of multilateral or bilateral treaties on extradition.<sup>126</sup> An application is usually sent through diplomatic channels, via embassies and consular officers. It can also be circulated through INTERPOL's global police communications system, I-24/7, or with the issuance of Interpol's 'red notice', at the request of the national central bureau of the requesting State acting at the request of the competent judicial authority. It should be noted that application by a State for an INTERPOL diffusion or red notice may not always be considered by other States to be the equivalent of a request for provisional arrest, as it may not contain the degree of evidentiary detail or be in a form acceptable to every country to which it may be distributed. Accordingly, in many situations an ICPO/Interpol notice can only serve to locate a person wanted and a separate request for provisional arrest must often follow in order to permit an arrest and initiate the process towards extradition.<sup>127</sup>

A request for provisional arrest should include:

- Information enabling the requested State to locate and identify the person including the wanted person's nationality, date of birth, place of birth, passport number, physical description (race, height, weight, identifying features, photographic evidence, fingerprints, etc.).
- An assurance that extradition is to be requested.
- A statement of the existence of an arrest warrant or other document in relation to the person authorizing the apprehension of the person.
- This list can be expanded or reduced as necessary to meet treaty and domestic law requirements. The information should be set out as simply as possible and include all relevant facts while omitting.
- Unnecessary ones. Direct contact between the authorities responsible for extradition is crucial.

When a national central bureau wishes to issue an INTERPOL red notice, it has to complete a form that

125. Para. 136.

126. The Riyadh Agreement deals in Article 43 with necessary steps for the detention of the person whose extradition is requested. In case of urgency, and on the basis of a request by the competent authority of the requesting party, a person may be arrested and temporarily detained pending the arrival of the extradition request and the documents that need to be submitted with the request. The request for arrest or detention shall be transmitted to the competent authority of the requested party, either directly by post, telegram or any other means verifiable in writing: such request must indicate the existence of one of the following documents: a writ of arrest or any other document having the same force issued by the competent authorities, or the original conviction made in accordance with the modes laid down by the law of the requesting party, or an official copy thereof duly certified by the competent authority of the requested party. Also included needs to be an express statement of intention to forward the extradition request, the record of the crime committed, the penalty prescribed or pronounced, the date and place of the crime, as precise a description of the person to be extradited as possible, pending the arrival of the request duly made out in conformity with the provisions of Article 42 of the Agreement, which set out all the documents that need to be submitted with an extradition request. The requesting party shall be notified of the measures taken in this regard without delay.

127. Para. 140.

contains the elements necessary to constitute a request for provisional arrest in most States. Once the General Secretariat of INTERPOL has examined the information provided in the form, it publishes the required red notice. The red notice must contain:

- Identity particulars of the wanted person (marital status, nationality, physical description, photograph, fingerprints and a DNA profile);
- Judicial information necessary for confirmation of the admissibility of the request by the requested authority (type, date and place of commission of the offence, arrest warrant, authority having issued the warrant and a summary of the details of the offence); Extradition convention on which the request for provisional arrest is based;
- An assurance that extradition will be formally requested by the requesting State in the event of provisional arrest.
- The publication of the red notice entails:
  - Its translation into the four working languages of INTERPOL (Arabic, English, French, and Spanish);
  - Its immediate distribution to all members of through I-24/7.

The red notice is considered valid as a request for provisional arrest in many Interpol member countries without it being necessary for the legal authority of the requested State to obtain confirmation of the validity of the request from the legal authority of the requesting State. In other countries, however, the confirmation of the requesting authority is necessary, but the red notice can still instigate implementation by the requested law enforcement authorities of certain measures, such as location of the wanted person, checks and identification, questioning or placing under surveillance. In practice, the INTERPOL channel is used routinely when the wanted person has not yet been located. When the person's whereabouts are not known, but there is reason to believe that he or she is in the territory of the requested State, the judicial authority may address its request through both channels of transmission. This allows for execution of the request for arrest on the basis of transmission via INTERPOL in case the person is located before receipt through diplomatic channels of the request for provisional arrest.

Direct application to the competent authority. Transmission of the request can be made directly to the foreign judicial authority wherever a convention provides for this. Such direct transmission is used when the precise whereabouts of the wanted person are known.

Transmission deadline of the request. It is recommended, once the wanted person has been taken into custody for the purpose of extradition, that the transmission deadline for the request for extradition be strictly respected, or else the authority that carried out the provisional arrest could set the individual free before receiving the request for extradition.

#### **4.6.4. Preparing for the transfer of the person sought**

If the extradition request has been accepted, the requesting party will usually be informed of the place and time of surrender as well as the length of time for which the wanted person was detained with a view to extradition. If the requesting State cannot receive the person due to circumstances beyond its control, a new date will be agreed upon between the parties.

Despite accepting the request, the requested State may nevertheless decide to postpone surrender, in order to prosecute the person or, in order to enforce a sentence imposed against the person for an offence other than that for which extradition is sought. In this case we speak of postponed surrender.

Another option is conditional surrender, in which case the person sought is only extradited temporarily on conditions to be agreed between the parties.

## 4.6.5. Planning the transit process

- Effectively plan and monitor the transit process. Which authority will secure the necessary transit authorisation needs to be clearly determined.
- When transit through a third State is necessary, authorization needs to be requested and an agreement has to be obtained concerning the guard of the individual during transit through that State. Lack of authorization may result in delays or even failure of extradition if the person is a national of the third State or if he or she requests asylum or refugee status there.
- Based on the date set for the surrender, organize for the entry of escorts into the requested State to remove the person
- If air transport is used, and landing is scheduled in a third State, a transit request should be made normally. When no landing is scheduled, no authorization is required. In the event of an unscheduled landing, however, it is possible to request authorization with a request for an immediate response. A State may require, in order to grant the transit of a person, that all or some of the conditions of extradition be satisfied, in which case, the rule of reciprocity may be applied.
- The transit of the extradited person should not be carried out through a territory in which there is reason to believe that his or her life or liberty could be put in danger owing to his or her race, religion, nationality, membership of a particular social group or political views.

### **IMPORTANT NOTE:**

According to Article 54 of the Riyadh Agreement the contracting parties commit to agreeing to the passage through their territories of the person extradited to any one of them by another State on the basis of a request submitted by the party concerned. The request must be accompanied by the necessary documents demonstrating that the case in question pertains to a crime leading to extradition in accordance with the provisions of the Riyadh Agreement. The article further states the rules regarding transport by air.<sup>128</sup>

## 4.6.6. Covering the costs

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<sup>128</sup> If the aircraft is not landing in the territory of one of the parties but merely crossing its air space, the requesting contracting party shall notify the state concerned of the existence of the documents enumerated in Article 42 of the Riyadh Agreement, i.e. the documents which need to be submitted with an extradition request. In case of an emergency landing, the contracting party concerned may request the detention of the person whose extradition had been decided, pending the submission of a request to the state in whose territory such landing was made for his passage. If the aircraft carrying the person being extradited is scheduled to land, the requesting contracting party must submit a request for the person's passage; but if the state requested to consent to such passage also wishes to have the same person delivered to it, such passage will not occur until the requesting contracting party and the said state have reached an agreement on the matter.

Generally speaking, unless there are special arrangements that provide otherwise, each State covers the costs of extradition incurred in its territory, while the costs of transit are traditionally met by the requesting party. It is advisable to keep the consultations open in terms of who will cover the costs, so as to facilitate assistance by the requesting State if necessary.

## IMPORTANT NOTE:

The Riyadh Agreement sets out the rules regarding extradition costs in Article 56 as follows:

The contracting party requested to extradite shall bear all costs incurred by the extradition procedure carried out in its territory, whereas the requesting State shall bear the costs of the person's passage outside the territory of the requested State.

The requesting State shall also bear all the costs of returning the extradited person to the location (s)he was in at the time of his extradition if (s)he proves to be innocent or is acquitted.

## 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.

Legal Bases for Extradition	
<b>Algeria</b>	<ul style="list-style-type: none"> <li>• Bilateral (most effective)/multilateral/regional agreements based on the principle of reciprocity</li> </ul>
<b>Egypt</b>	<ul style="list-style-type: none"> <li>• Multilateral/bilateral agreement</li> <li>• Reciprocity</li> <li>• 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</li> </ul>
<b>Israel</b>	<ul style="list-style-type: none"> <li>• Multilateral/ bilateral agreements</li> <li>• Reciprocity</li> <li>• <i>Ad hoc</i> agreements</li> </ul>
<b>Jordan</b>	<ul style="list-style-type: none"> <li>• Multilateral/ bilateral agreements</li> </ul>
<b>Lebanon</b>	<ul style="list-style-type: none"> <li>• Multilateral/bilateral agreements</li> <li>• Reciprocity</li> <li>• Comity</li> </ul>
<b>Morocco</b>	<ul style="list-style-type: none"> <li>• Multilateral/bilateral agreements</li> <li>• Reciprocity</li> <li>• Comity</li> <li>• <i>Ad hoc</i> agreements</li> </ul>



<b>Palestine</b>	<ul style="list-style-type: none"> <li>• Multilateral/bilateral agreements</li> </ul>
<b>Tunisia</b>	<ul style="list-style-type: none"> <li>• Multilateral/bilateral agreements</li> <li>• Reciprocity</li> <li>• <i>Ad hoc</i> agreements</li> </ul>

Domestic Laws Governing Extradition	
<b>Algeria</b>	Code of Criminal Procedure
<b>Egypt</b>	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.
<b>Israel</b>	Law of Extradition - 1954 amended 8 times
<b>Jordan</b>	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)
<b>Lebanon</b>	Criminal Code
<b>Morocco</b>	Code of Criminal Procedure
<b>Palestine</b>	Penal Code of 1960  +  Extradition of Fugitive Criminals Act and its Amendments (1927)  +  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
<b>Tunisia</b>	Code of Criminal Procedure  +  Organic Law No. 2016-61, dated 3rd August 2016, pertaining to the prevention and countering of human trafficking (trafficking in persons) (Art 27+28+29) <sup>129</sup>  +  Organic Law No. 2015-26 of 7th August 2015 on the fight against terrorism and the suppression of money laundering (Arts. 87, 88, 89) <sup>130</sup>

## Extradition of Nationals

<b>Algeria</b>	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.
<b>Egypt</b>	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.
<b>Israel</b>	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 requesting State will request that the sentence will be served in Israel.
<b>Jordan</b>	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.
<b>Lebanon</b>	No extradition of nationals; however the person will be prosecuted in Lebanon under the <i>aut dedere aut iudicare</i> principle. Lebanon does not enforce criminal sentences issued abroad (only civil obligations).
<b>Morocco</b>	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.
<b>Palestine</b>	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.
<b>Tunisia</b>	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.

## Transfer of Proceedings

<b>Algeria</b>	<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>
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129. Art. 58.  
130. Art. 61.

## Transfer of Proceedings

<p><b>Egypt</b></p>	<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 LORs 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. 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. 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>
<p><b>Israel</b></p>	<p>Transfer of proceedings is not possible in Israel</p>
<p><b>Jordan</b></p>	<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> <p>- Double criminality is required</p>
<p><b>Lebanon</b></p>	<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>
<p><b>Morocco</b></p>	<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>

## Transfer of Proceedings

### Palestine

Transfer of proceedings to a foreign jurisdiction is possible on the basis of a multilateral/bilateral agreement or reciprocity.

Code of Criminal Procedure stipulates in Article 57 that:

“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”.

LORs 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. 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.

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.

No requests for the transfer of criminal proceedings from foreign jurisdictions are made from Palestine.

## Transfer of Proceedings

### Tunisia

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

As regards extradition, Tunisia, like many States, 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:

- UNCAC;
- International Convention on the Fight against the Financing of Terrorism of 1999;
- the Single Convention on Narcotic Drugs of 1961;
- Vienna Convention;
- UNTOC;
- 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: Requests are processed through the Directorate General of Criminal Affairs

Procedure: LORs 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 a LOR 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).

Given the very sensitive nature of cases related to terrorist crimes, the information relating to this, and in particular those relating to the SITs remains confidential for reasons of national security.

## Transfer of Sentenced Persons

(see Annex F for bilateral treaties and G for applicable Conventions for each SPC)

<b>Algeria</b>	Party to the Riyadh Agreement Domestic legislation <b>does not</b> enable the transfer of sentenced persons to a foreign jurisdiction
<b>Egypt</b>	Party to the Riyadh Agreement With regards 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. With regards to the transfer of a person sentenced for a crime 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
<b>Jordan</b>	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
<b>Morocco</b>	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.
<b>Palestine</b>	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
<b>Tunisia</b>	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

<b>Extradition for Execution of Penalty – Minimum Sentence issued by requesting State</b>	
<b>Algeria</b>	Minimum 2 months imprisonment
<b>Israel</b>	No minimum
<b>Lebanon</b>	Minimum 2 months imprisonment
<b>Morocco</b>	Minimum 4 months imprisonment
<b>Tunisia</b>	Minimum 2 months imprisonment

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.

The Riyadh Agreement, signed by all the SPCs except Israel, furthermore 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 convicted 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.<sup>131</sup> 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 ac-

<sup>131</sup>. Art. 58.

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.<sup>132</sup> 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.<sup>133</sup>

Extraditable Offences	
<b>Algeria</b>	non-political + double criminality – <b>not clear at which point – left to discretion of Supreme Court</b> (does not require identical terminology) + punishable in the requesting State as a felony or misdemeanour ( <i>crime ou délit</i> ) with a minimum sentence of two years or more <sup>134</sup> In the case of a sentenced person, extradition may be granted if the sentence imposed by the court in the requesting State equals to or exceeds two months of imprisonment. Some bilateral treaties stipulate a different period.
<b>Egypt</b>	non-political; not merely military + double criminality at the <b>time of the decision on request</b> (does not require identical terminology) + according to most bilateral treaties: a minimum of one year sentence in both countries ( <b>some bilateral treaties stipulate a different period</b> )
<b>Israel</b>	non-political; not merely military + double criminality at the time of the commission of offence (does not require identical terminology) + minimum one year sentence had it been committed in Israel
<b>Jordan</b>	double criminality at the time of the commission of offence (does not require identical terminology)

<sup>132</sup>. Art. 61.

<sup>133</sup>. Art. 62.

<sup>134</sup>. Code de Procédure Pénale, Arts. 697-691.

## Extraditable Offences


<b>Lebanon</b>	<p>non-political</p> <p>+</p> <p>dual criminality at the <b>time of the receipt of the extradition request</b> (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>
<b>Morocco</b>	<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>
<b>Palestine</b>	<p>non-political</p> <p>+</p> <p>double criminality at the time of the commission of the offence</p> <p>+</p> <p>one of the offences enumerated in Table I, annexed to the Extradition of Fugitive Criminals Act 1927</p>
<b>Tunisia</b>	<p>non-political; not merely military</p> <p>+</p> <p>double criminality at the <b>time of the decision on request</b><sup>135</sup></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 combined<sup>136</sup></p>

<sup>135</sup>. Code de Procédure Pénale, Art. 311.

<sup>136</sup>. Code de Procédure Pénale, Art. 311(2).



## Domestic provisions incorporating treaty provisions in terms of extraditable offences

Algeria	Israel	Jordan	Morocco	Tunisia	Palestine
Yes		No	Yes	Yes	Yes

## Specific Evidentiary Requirements

Algeria	No more than what is admitted as evidence in criminal procedures
Israel	<i>Prima facie</i> 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 <b>for a conviction</b> . 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
Palestine	No
Tunisia	No

## 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 Prosecutor General Office (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	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)
Morocco	Ministry of Justice (Directorate of Criminal Affairs and Grace)
Palestine	Ministry of Justice (Public Prosecution)

<b>Tunisia</b>	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.
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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.

<b>Tracking and Monitoring System for outgoing and incoming Extradition Requests</b>	
<b>Algeria</b>	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
<b>Israel</b>	Exists
<b>Jordan</b>	N/A
<b>Lebanon</b>	N/A
<b>Morocco</b>	Exists
<b>Palestine</b>	N/A
<b>Tunisia</b>	A service within the Directorate General of criminal affairs monitors extradition requests

<b>Time Limits</b>	
<b>Algeria</b>	<p><b>Ordinary proceedings</b></p> <ul style="list-style-type: none"> <li>• 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 <b>24 hours</b></li> <li>• (S)he is transferred to the capital's prison and the relevant documents are sent to the prosecutor general at the Supreme Court - <b>as soon as possible</b></li> <li>• The prosecutor general at the Supreme Court interrogates him or her and submits the report to the Supreme Court - within <b>24 hours</b></li> <li>• All reports and relevant documents are sent to the criminal division of the Supreme Court – <b>immediately</b></li> <li>• The foreigner or the concerned party appears before the criminal division of the Supreme Court – within <b>8 days</b> (an additional 8 days can be granted upon request by the public prosecutor or the foreigner)</li> <li>• The file with the final decision is sent to the Minister of Justice – within <b>8 days</b></li> </ul> <p><b>Summary proceedings</b></p> <p>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 - <b>without delay</b></p>
<b>Egypt</b>	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.
<b>Israel</b>	<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>
<b>Jordan</b>	Generally speaking there are no time limits, however they exist in some bilateral agreements.
<b>Lebanon</b>	No time limits

<b>Morocco</b>	Legal stage: Criminal Chambers of the Court of Cassation shall rule on the request within 5 days of seizure Administrative stage: no time limits
<b>Tunisia</b>	The foreigner appears before the Court of Appeal within 15 days from notification of the arrest

## Options for Appeal

<b>Algeria</b>	None
<b>Egypt</b>	None
<b>Israel</b>	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.
<b>Jordan</b>	Appeal possible in 15 days from the verdict
<b>Morocco</b>	None
<b>Tunisia</b>	None
<b>Palestine</b>	Decision can be appealed within 15 days to the Court of Appeal

## Simplified Extradition Proceedings when a person gives consent to surrender

<b>Algeria</b>	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. <sup>137</sup>
<b>Egypt</b>	No provisions for adopting simplified procedures exist.
<b>Israel</b>	Following the submission of a petition, 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 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. <sup>138</sup>
<b>Jordan</b>	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.
<b>Lebanon</b>	So-called administrative extradition is possible only based on some bilateral treaties, for example: bilateral agreement with Syria
<b>Morocco</b>	Available
<b>Palestine</b>	Available
<b>Tunisia</b>	Available

## Can Requests be Sent to Bodies Specialized in Human Rights issues in order to freeze an extradition request

<b>Algeria</b>	No
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<sup>137</sup>. Arts. 708-711.

<sup>138</sup>. Art. 20(B).

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

## Temporary Surrender

<b>Algeria</b>	Not available
<b>Egypt</b>	Available in some bilateral agreements, for example with Saudi Arabia
<b>Israel</b>	Available
<b>Jordan</b>	Available
<b>Lebanon</b>	Not available
<b>Morocco</b>	Available
<b>Palestine</b>	Available
<b>Tunisia</b>	Available

## Reports/Minutes Required at surrender to agents of requesting State

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

## Capacity

<b>Algeria</b>	An office at the Ministry of Justice is dedicated to dealing with LORs and extradition (the office of mutual legal assistance in criminal matters) with modern means of communication and qualified personnel (magistrates, translators, civil servants, etc.)
<b>Egypt</b>	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.
<b>Israel</b>	Department of International Affairs in the State's Attorney's Office has 17 attorneys specializing in extradition requests, LORs and transfer of convicted persons
<b>Morocco</b>	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.
<b>Palestine</b>	The Department of International Affairs in the State's Attorney's Office has many prosecutors specializing in extradition requests and mutual legal assistance
<b>Tunisia</b>	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.

## 4.8. State by State Legal Frameworks

### 4.8.1. Algeria

#### 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.

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 the follow up procedures have been taken in their regard for a crime (felony or misdemeanour) punished in the Algerian law or has been convicted therein.

#### 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 maximum 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.

#### 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.<sup>139</sup>

<sup>139</sup>. Art. 696.

## 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:

- 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
- 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,
- 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.<sup>140</sup> National territory includes domestic and territorial waters according to Article 3 of the Code of Criminal Procedure and Article 1 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.<sup>141</sup>
- If the crime or misdemeanour is followed up and a final judgment is rendered therein in Algeria even if it is committed outside Algeria,
- 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,<sup>142</sup>
- 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
- 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;

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<sup>140</sup>. Art. 586.

<sup>141</sup>. Arts. 590-591.

<sup>142</sup>. Art. 698 (2-6).

- 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.

## 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.

## 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 citizens 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.<sup>143</sup> 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.<sup>144</sup> 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 (felony or misdemeanour) abroad, regardless of the nationality of the perpetrator, Algerian law is applicable under Article 588 of the Code of Criminal Procedure and Article 3 bis 2 of the Law on Money Laundering and Financing of Terrorism.

## 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.

## Dual criminality

Extradition may not be accepted in any case if the act is non-punishable under Algerian law as a felony or misdemeanour. Article 697 of the Code of Criminal Procedure lists the extraditable offences, whether

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143. Art. 698(1).

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

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 is 2 years or more 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 all crimes is equal to or exceeds 2 years of imprisonment. 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.

## 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.<sup>145</sup> 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.<sup>146</sup> These items must be issued in original or in authenticated copy.

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.<sup>147</sup> The Public Prosecutor shall interrogate the foreigner to verify his 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.<sup>148</sup>

A report shall be made of such procedures.<sup>149</sup> The foreigner shall be transferred as soon as possible and detained in the capital's prison.<sup>150</sup> At the same time, the documents submitted in support of the extradition request shall be referred to the prosecutor general at the Supreme Court (*Procureur général près la Cour suprême*) who in turn interrogates the foreigner and submits a report in this regard within twenty-four hours.<sup>151</sup> The said reports 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 docu-

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145. Art. 702.

146. Art. 702.

147. Art. 703.

148. Art. 704.

149. Art. 704.

150. Art. 705.

151. Art. 706.



ments.<sup>152</sup> At the request of the prosecutor general or the foreigner, an additional period of 8 days can be accorded prior to the hearings.<sup>153</sup> 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 prosecutor general or the foreigner.<sup>154</sup> The statements of the prosecutor general and the concerned party shall be heard and the latter may hire a certified attorney and a translator.<sup>155</sup> The foreigner may be released temporarily any time during the procedures.<sup>156</sup> If the concerned party decides upon trial to waive his or her right to benefit from the previous provisions, and accepts his or her extradition officially to the authorities of the requesting country, then the Supreme Court validates such a declaration. A copy of this declaration is referred without delay, through the prosecutor general, to the Ministry of Justice to take the necessary action.<sup>157</sup> 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 from the day when the documents are sent to the criminal division of the Supreme Court.<sup>158</sup>

Article 712 added that the prosecutor general at the Supreme Court, in case of expedition, and upon direct request by the judicial authorities in the applicant country, may 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 prosecutor general must inform the Ministry of Justice and the prosecutor general at the Supreme Court of such arrest.

## Time Limits in Chronological Order

- 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**
- (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**
- The prosecutor general interrogates him or her and submits the report to the Supreme Court - within **24 hours**
- All reports and relevant documents are sent to the criminal division of the Supreme Court – **immediately**
- (S)he appears before the Supreme Court – within **8 days** (an additional 8 days can be granted upon request by the prosecutor general at the Supreme Court or the foreigner)
- The file with the final decision is sent to the Ministry of Justice – within **8 days**

## 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**.

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152. Art. 707.

153. Art. 707.

154. Art. 707.

155. Art. 707.

156. Art. 707.

157. Art. 708.

158. Art. 709.

## 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 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 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 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 June 25 2001.

## 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.

## 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.

## 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<sup>159</sup> which has been identified as another factor leading to successful extradition practices. Algeria has also participated in the EuroMed Justice project that popularized 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 organized 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.<sup>160</sup>

## 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 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. INTERPOL e-extradition Initiative (2013),<sup>161</sup> calling on member States to provide INTERPOL with the necessary support for the development of the initiative

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

160. AG-2013-RES-09 – 'INTERPOL e-extradition'.

161. AG-2013-RES-09 – 'INTERPOL e-extradition'.

and the INTERPOL e-extradition rules (2014),<sup>162</sup> 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,<sup>163</sup> 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.

## 4.8.2. Egypt

### 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. 1 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 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 execu-

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<sup>162</sup> AG-2014-RES-20 – INTERPOL e-extradition Rules.

<sup>163</sup> 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.

tive 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:

1. United Nations Convention against Organized Transnational Crimes (UNTOC).
2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention).
3. United Nations Convention against Corruption (UNCAC).
4. Convention on the Prevention and Punishment of the Crime of Genocide.
5. International Convention for the Suppression of the Financing of Terrorism.
6. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.
7. International Convention for the Suppression of Terrorist Bombing.
8. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
9. Convention on the Prevention and Punishment of the Crime of Genocide.
10. Convention on the Suppression and Punishment of the Crime of Apartheid.
11. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

## Regional Multilateral Treaties


1. Arab Agreement against Information Technology Crimes.
2. Arab Agreement against Illicit Traffic in Narcotic Drugs.
3. Arab Treaty for the Suppression of Money Laundering and Financing Terrorism.
4. Arab Treaty for the Suppression of Organized Trans-national Crimes.
5. Arab Agreement on Extraditing Criminals- 1952. (Applicable with Arab Countries which did not sign the Riyadh Agreement)
6. Arab Agreement on Judicial Cooperation. (Riyadh Agreement)
7. Arab Agreement for the Enforcement of Judgments.

## Bilateral Treaties

Egypt 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 is 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

Not applicable.

## 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.

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.

## 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.

## 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 report<sup>164</sup> 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.

Fiscal offences are not generally extraditable, however some bilateral agreements (for example Art. 27 of the Convention with France) allow for extradition in cases of tax or tariff evasion and other monetary offences subject to special correspondence between the governments concerned.

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<sup>164</sup> Middle East and North Africa Financial Action Task Force, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Egypt (19th May 2009).

## 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 State 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.<sup>165</sup>

If a foreign State requests the Egyptian judicial authorities to investigate a certain case, a letter rogatory 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 rogatory letter is returned to the State requesting international cooperation, according to bilateral or multilateral agreements, or on the principle of reciprocity.<sup>166</sup>

## 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.

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 or any of the means of transportation, whether 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;

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<sup>165.</sup> *Ibid.*, 177, para. 813.

<sup>166.</sup> *Ibid.*, 177-8, para. 813.



- 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 illegal migration and 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 punishable in the place where it occurs.

## 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.

## 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 inhu-

mane of 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.

## 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.

### 4.8.3. Israel

#### 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.

#### 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. 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.


*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’  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).

## 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 Article 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. *(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)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.*

## 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 Article 2(B)(b) of the Extradition Law, the following shall not be deemed an offence that is political in nature:

*(1) an offense, 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).*

## 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 Offices 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) of the 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.

## 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,<sup>167</sup> it now allows the extradition of its citizens<sup>168</sup> 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.<sup>169</sup>

Israel follows both the active and passive personality principles and thus according to Article 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.

## Jurisdiction over Crimes committed against the State

According to the protection principle, Israel has jurisdiction over 'offences against the State or against the Jewish people.'<sup>170</sup>

## Territorial Jurisdiction and the Flag Principle

Article 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;*

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167. 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.

168. 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)

169. 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.

170. Art. 13 of the Israeli Penal Law

*“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.<sup>171</sup>

## 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.

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

## 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 regards to coordination and timing of the execution of requests in different jurisdictions, different disclosure requirements and admissibility requirements.

## 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,

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171. Israeli Penal Law, Art. 169.

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).

## **4.8.4. Jordan**

### **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.

### **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.

### **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.<sup>172</sup> The jurisprudence has confirmed this stance. Notably in March 2017, the Court of 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

### **Procedure**

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<sup>172</sup> Law of Criminals Extradition for 1927, Arts. 5-6.

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 State 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.

## Cooperation

It is advisable to have direct contact between the attorney general department and the requesting State by phone and e-mail during the extradition process.

Jordan is furthermore not a member of any regional judicial cooperation networks that share 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.

## 4.8.5. Lebanon

### 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. Extradition agreement signed between Lebanon and Bulgaria under Law No. 468 issued on 12/12/2002; and



- Agreements with other EU Members States including Belgium, Italy, UK and Cyprus.

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.<sup>173</sup>

## Threshold requirements for Extradition

The Lebanese Criminal Code<sup>174</sup> (hereinafter LCC) in subarticle 7 sets out the rules for extradition. According to Article 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.<sup>175</sup>

Offences falling within the territorial jurisdiction or the jurisdiction *rationae materiae* or *ratione personae* of Lebanese law,<sup>176</sup> may not give rise to extradition.<sup>177</sup>

## 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.<sup>178</sup>

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;

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173. Middle East and North Africa Financial Action Task Force, Mutual Evaluation of Lebanon, (2009), para. 158.

174. 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](file:///C:/Users/Polona/Downloads/CHATC-150903-2_OAR_T_EN.pdf) (hereinafter LCC).

175. LCC, Art. 31.

176. As stipulated in Arts. 15 to 17, Art. 18.I in fine and Arts. 19 to 21 of the LCC.

177. LCC, Art. 32.

178. LCC, Art. 33.

3. If the penalty applied under the law of the requesting State is contrary to the established social order.<sup>179</sup>

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.

## Extradition Proceedings

Extradition requests are sent to the Ministry of Justice via diplomatic channels. According to Article 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. 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.<sup>180</sup>

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.<sup>181</sup>

## 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. Article 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.<sup>182</sup> 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.<sup>183</sup>

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 and does not extend beyond the interior of the aircraft if a Lebanese national (see below).

## Territorial jurisdiction

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

179. LCC, Art. 34.

180. LCC, Art. 35.

181. LCC, Art. 36.

182. LCC, Art. 21.

183. LCC, Art. 22.

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.<sup>184</sup>

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.
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.<sup>185</sup>

Lebanese territory also includes the atmospheric layer covering its surface, in other words the aerial territory.<sup>186</sup> 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.<sup>187</sup>

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.<sup>188</sup>

Lebanon cannot exercise jurisdiction on the high seas.

## 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

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184. LCC, Art. 15.

185. LCC, Art. 17.

186. LCC, Art. 16.

187. LCC, Art. 18.

188. LCC, Art. 18.

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.

## 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.

## Applicability of foreign law

According to Article 24 Lebanese law shall nevertheless not be applicable to the misdemeanours committed by nationals (Article 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 (Article 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.<sup>189</sup> 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

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<sup>189</sup>. LCC, Art. 25.

from the provisions governing personal status or capacity.

## 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;
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.<sup>190</sup> 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.<sup>191</sup>

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.

## 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.

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<sup>190</sup>. LCC, Art. 28.

<sup>191</sup>. LCC, Art. 28.

## Cooperation



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. There are consultations with the requesting State prior to rejecting a request in order to give it the opportunity to present information and opinions on the question. Good organization of the file and the respect for the legal basis of the request are the most important factors leading to successful extradition.

### 4.8.6. Morocco

#### 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 (Article 713 of the Code of Criminal Procedure (CCP)). 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. Articles 718-745 stipulate rules on extradition.

#### Multilateral Agreements

Morocco has signed several multilateral treaties which concern extradition, amongst them UNTOC and the Vienna Convention 1988 (Drug Convention) (see **Annex G**).

#### 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 (see **Annex F**).<sup>192</sup>

#### 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

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192. 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](http://adala.justice.gov.ma/production/Guides_Manuels/fr/MA-NUEL%20PROCEDURAL%20PENAL%20DE%20COOPERATION.pdf), 9.

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 State's authorities or the authorities where the crime was committed.

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.

## 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 he has been definitively judged abroad for the crime or offence and, if sentenced, that 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.

## Threshold requirements

Extradition is only accepted if the offence covered by the requested State is committed by a national of

that State 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.

## 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.

## 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
- 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.

## 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.”*



## 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

## Universal Jurisdiction

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

As mentioned above, the CCP 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.

## 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 portal<sup>193</sup> 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

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193. 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 (Article 726 of the Code of Criminal Procedure).<sup>194</sup> 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. 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.

## 4.8.7. Palestine

### 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 and the Extradition Act of 1926 applicable in the Gaza Strip which are in need of modernization.

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.<sup>195</sup>

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194. Vade-mecum Procédural Pénal de Coopération Juridique Internationale: [http://adala.justice.gov.ma/production/Guides\\_Manuels/fr/MA-NUEL%20PROCEDURAL%20PENAL%20DE%20COOPERATION.pdf](http://adala.justice.gov.ma/production/Guides_Manuels/fr/MA-NUEL%20PROCEDURAL%20PENAL%20DE%20COOPERATION.pdf).

195. 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 favor 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.

## Multilateral Agreements

1. The Arab Convention for the Suppression of Terrorism
2. The Arab Convention against Money Laundering and the Financing of Terrorism,
3. The Arab convention against Transnational Organised Crime
4. The Arab Convention on Combatting Information Technology Offences
5. The Arab Convention against Corruption
6. The Arab Convention for the Transfer of Inmates of Penal and Reform Institutions for Serving their Sentences
7. The Riyadh Agreement 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).

## 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.

## Reasons for Refusal

Based on Article 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 date of his or her arrest awaiting his or her extradition.”<sup>196</sup>

## 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 Article 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 ‘*offenses 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**.<sup>197</sup> 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.<sup>198</sup>

## 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.<sup>199</sup> Nationals cannot be extradited, however Palestinian courts have personal jurisdiction over them and can thus prosecute the crime.<sup>200</sup> 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

196. 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](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)

197. 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/>

198. *Ibid.*

199. 2003 Permanent Constitution Draft <http://www.palestinianbasiclaw.org/basic-law/2003-permanent-constitution-draft> Article (31)

200. Penal Code No. 16 of 1960.

are able to enforce a sentence that has been imposed on the person sought under the domestic law of the requesting State.

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.<sup>201</sup>

## 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.

## Cooperation and Reform

Generally 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 – although it is advisable to do so. 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.

## 4.8.8. Tunisia

### 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 (CCP) Articles 308 to 330; Organic Law No. 2016-61, of 3 August 2016 on the prevention and fight against human trafficking (trafficking in persons) (Articles 27, 28, and 29);<sup>202</sup> Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering (Articles 87, 88, 89).

### 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.<sup>203</sup> Tunisia has active and passive personality jurisdiction over its nationals and follows the principle of *aut dedere aut iudicare*.<sup>204</sup> Article 305 of the Code of Criminal Procedure states that

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201. 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](https://bankofpalestine.com/files/Anti_money_laundering_and_terrorism_en.pdf).

202. 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/detail-texte/Loi-num-2016-61-du-03-08-2016-jort-2016-066\\_2016066000611?shorten=Dx6o](http://www.legislation.tn/fr/detail-texte/Loi-num-2016-61-du-03-08-2016-jort-2016-066_2016066000611?shorten=Dx6o).

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

204. Art. 83 of Law no. 26 of 7.8.2015.

[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 Article 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.<sup>205</sup>

## 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.<sup>206</sup>

## 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.<sup>207</sup>

## 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.<sup>208</sup>

Extradition shall be granted:

205. CCP, Art. 307 bis.

206. CCP, Art. 307.

207. CCP, Art. 315.

208. CCP, Art. 310.

- **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.<sup>209</sup>

## Reasons for Refusal

- When the person concerned is at risk of torture<sup>210</sup> see Article 88 of Organic Law No. 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 Tunisia<sup>211</sup>, 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:

- **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.

## 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.<sup>212</sup> "Terrorist offenses are not considered political offenses that do not give rise to extradition".<sup>213</sup>

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209. CCP, Art. 311.

210. CCP, Art. 313(3).

211. Law 49, (1973).

212. CCP, Art. 313(1).

213. CCP, Arts. 87-88 of Law No. 26 of 2015 and Arts. 59-60.

## 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.<sup>214</sup> 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 proceedings, in accordance with the provisions of the Code of Criminal Procedure.<sup>215</sup> The judicial proceedings culminate in a decision that is not subject to an appeal.<sup>216</sup> 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 CCP 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.

## Summary Proceedings

If, during the hearing, the foreigner declares that (s)he waives the benefit of the provisions of chapter VIII of the CCP 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.<sup>217</sup>

## 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 is complete 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.<sup>218</sup>

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214. CCP, Art. 316.

215. CCP, Art. 321.

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

217. CCP, Art. 322.

218. Art. 315.



## 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 offense, or to the State on whose territory the offense was committed.<sup>219</sup> However, if these concurrent requests cite different offenses, all factual circumstances shall then be taken into account, in particular the relative seriousness and location of the offenses, as well as the respective dates of the requests.<sup>220</sup>

## Conflict of Jurisdiction

Potential conflict of jurisdiction is regulated in Article 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.

## Universal Jurisdiction

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

## Cooperation

Tunisia assumes that other States' 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.

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.<sup>221</sup>

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 States 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

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219. Art. 314.

220. *Ibid.*, para. 2.

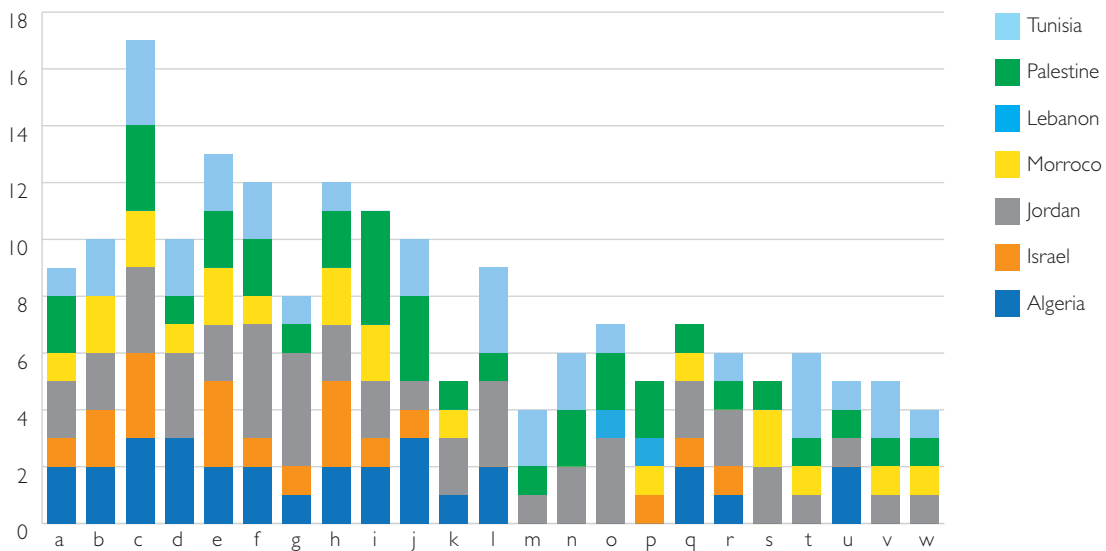
221. Middle East and North Africa Financial Action Task Force, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Tunisia, (May 2016).

capacity to set priorities continues to delay or hamper the effectiveness of international cooperation.<sup>222</sup>

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.<sup>223</sup>

In the 2011-2014 period, Tunisia received 19 requests for extradition and sent 44.<sup>224</sup> In 2014 and 2015 it extradited two people to Italy.<sup>225</sup>

## 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);

222. *Ibid.*, para. 414.

223. *Ibid.*, para. 375.

224. *Ibid.*, para. 397, table 20.

225. *Ibid.*, para. 398.

- i. Non-extradition of nationals (however defined), or those who obtain citizenship by deception, and limitations on their effective prosecution in the refusing State;
- j. Lack of trust among States about the integrity of each other's justice systems;
- k. 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;
- l. Delaying tactics, such as frivolous or irrelevant defense 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.

# 5. Terrorist Offences in the Criminal Legislations of SPCs and their Policy on Countering Violent Extremism

**In this chapter you will find:**

- The policy plans of SPCs for tackling violent extremism
- The scope of terrorist offences in the criminal provisions of SPCs
- Practical examples of terrorism related offences

## 5.1. Introduction

Terrorism lacks a universal definition. Apart from the duty of criminalizing in domestic legislation particular acts which have been internationally accepted as constituting terrorism, the definition of terrorist offences is left to the discretion of individual countries. With the recent rise in violent extremist, one can observe a widening of the scope of terrorist offences in SPCs and more assertive policies in dealing with radicalization, incitement to terrorism, foreign terrorist fighters and terrorist organizations.

## 5.2. Scope of Terrorist Offences

The applicable international legal framework related to counter-terrorism is contained in a range of sources, including resolutions of the General Assembly (GA) and the Security Council (SC), treaties, jurisprudence and customary international law. There is no comprehensive UN treaty on terrorism nor internationally binding definition of the term 'terrorism' however a comprehensive convention is in the process of being drafted with negotiations taking place both within the Sixth Committee of the General Assembly and the Ad Hoc Committee established by GA resolution 51/210. While there has been agreement on the substantive elements of what constitutes an act of terrorism, consensus has not been reached on the scope of application of the instrument.<sup>226</sup> Still under discussion is the interplay between the international criminal law instruments and international humanitarian law, in particular whether the comprehensive convention should explicitly cover acts committed by parties to an armed conflict that are not the 'regular' armed forces of a State.<sup>227</sup>

The current totality of Security Council resolutions and treaties adopted at the global level containing legally binding standards for States to prevent and counter international terrorism is referred to as the 'uni-

226. UNODC, Universal Legal Framework Against Terrorism, Counter-Terrorism Legal Training Curriculum, (UN, 2017), 8.

227. *Ibid.*

versal legal framework against terrorism'.<sup>228</sup> The treaties have been developed by the international community since 1963 and would remain applicable as *lex specialis* in the event of a comprehensive convention on terrorism being adopted.<sup>229</sup> With a strong emphasis on the principle of *aut dedere aut iudicare* these treaties aim to prevent safe havens for terrorists, and for those who finance and support them.<sup>230</sup> The principle further implies the need for a strong criminal justice system.<sup>231</sup> The principle is also incorporated indirectly in SC resolution 1373 (2001) in its paragraph 2 (e) requiring States to “[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice” and by virtue of paragraph 3 (d), calling upon States to “[b]ecome parties as soon as possible to the relevant international conventions and protocols relating to terrorism”. Subsequent resolutions 1456 (2003) and 1566 (2004) explicitly specify that the obligation to bring terrorists to justice shall be carried out “on the basis of the principle to extradite or prosecute,” and resolution 2322 (2016), which focuses on criminal justice relating to terrorism further urges States to follow this principle.

Under the universal counter-terrorism instruments, territoriality, active nationality, quasi universal jurisdiction, or *aut dedere aut iudicare* are compulsory grounds for jurisdiction, whereas other grounds, such as the passive nationality principle, are optional.

## TOOLS

The Legislative Guide to the Universal Legal Regime against Terrorism devotes a whole chapter to the provisions on jurisdiction to be found in the universal counter-terrorism instruments.

Similarly, the UNODC/Terrorism Prevention Branch (TPB) Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments provides an overview of the various grounds for jurisdiction and accompanies them with concrete illustrations taken from national legislation.

The UNODC model legislative provisions against terrorism offer drafting suggestions by listing all grounds for jurisdiction in chapter 3, article 26.

The UNODC electronic legal resources on international terrorism provide excerpts from the penal codes and other criminal statutes of several countries on the subject of jurisdiction in the national legal resources area of the website.

The GA has also adopted a number of resolutions relating to terrorism which provide useful sources of soft law and have high political importance, even though they are not legally binding.

In September 2006, the General Assembly adopted in resolution 60/288 the United Nations Global Counter-Terrorism Strategy, which includes an annexed Plan of Action aimed at enhancing national, regional and international efforts to counter terrorism. The Strategy embodies the first successful attempt by all Member States to agree on a common strategic approach to prevent and suppress terrorism by resolving to

228. *Ibid.*, 1.

229. *Ibid.*, 8.

230. *Ibid.*

231. *Ibid.*

take practical steps both individually and collectively. It contains four pillars of action: (a) measures to address the conditions conducive to the spread of terrorism; (b) measures to prevent and combat terrorism; (c) measures to build State capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; and (d) measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

## A List of Universal Counter-Terrorism Instruments

There are 19 multilateral conventions and protocols related to terrorism requiring States parties to address specific manifestations of terrorism (including through obligations to criminalize certain types of conduct) and serving as bases for international cooperation.

The sectoral approach of these instruments reflects the response of the international community to certain serious manifestations of international terrorism as well as the need to address terrorism and terrorist acts in a pragmatic manner in view of the politically sensitive and still unaccomplished task of agreeing upon a single, globally binding instrument.<sup>232</sup> Modern international conventions on terrorism and organized crime impose a duty on states to legislate against universal definitions of crimes established by them. Its rationale is to ensure the exact fulfilment of the obligation, so that there remains no discrepancy in the laws of cooperating states leading to refusal of law enforcement cooperation based upon the non-satisfaction of dual criminality condition.<sup>233</sup>

### TOOLS

The UNODC website includes the text of all 19 instruments in all the official languages of the UN and provides direct access to the official record of depositaries and information on the number of ratifications for each instrument. It also contains national implementing legislation, jurisprudence and model laws.

The above mentioned 19 instruments can be arranged into the following subgroups:

- **Instruments related to civil aviation** (eight instruments adopted over a timespan of over 50 years: Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)<sup>234</sup> and amending protocol (2014),<sup>235</sup> Convention for the Suppression of Unlawful Seizure of Aircraft,<sup>236</sup>

232. *Ibid.*, 8.

233. Usman Hameed, Mandatory Obligations under International Counter-Terrorism and Organized Crime Conventions to Facilitate State Cooperation in Law Enforcement, p. 86 PhD Thesis, University of Glasgow, 2014, available online at <http://theses.gla.ac.uk/5118/> last assessed 21 November 2017. United Nations, Treaty Series, vol. 704, No. 10106.

234. United Nations, Treaty Series, vol. 704, No. 10106.

235. ICAO is the depositary of both the Convention on Offences and Certain Other Acts Committed on Board Aircraft and its 2014 amending protocol. However, only the former is in force.

236. United Nations, Treaty Series, vol. 860, No. 12325; The Convention for the Suppression of Unlawful Seizure of Aircraft is in force. The depositaries are the Governments of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation<sup>237</sup> and Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;<sup>238</sup> Convention on the Marking of Plastic Explosives for the Purpose of Detection;<sup>239</sup> Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation;The Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft).<sup>240</sup>

- **Instruments related to the status of the victim** (The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;<sup>241</sup> International Convention against the Taking of Hostages)<sup>242</sup>
- **Instruments related to terrorist bombings, financing and nuclear terrorism** (International Convention for the Suppression of Terrorist Bombings;<sup>243</sup> The International Convention for the Suppression of the Financing of Terrorism; <sup>244</sup> The International Convention for the Suppression of Acts of Nuclear Terrorism)<sup>245</sup>
- **Instruments related to maritime navigation and fixed platforms** (The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);<sup>246</sup> The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988);The Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005) and The Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005)<sup>247</sup>
- **Instruments related to the physical protection of nuclear material** (The Convention on the Physical Protection of Nuclear Material and The Amendment to the Convention on the Physical Protection of Nuclear Material)<sup>248</sup>

The International Convention for the Suppression of the Financing of Terrorism which has been widely ratified (187 states, including all the SPCs) sets out in Article 2 the funding of which acts constitutes an offence under the Convention:

237. United Nations, Treaty Series, vol. 974, No. 14118; The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation is in force. The depositaries are the Governments of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

238. United Nations, Treaty Series, vol. 1589, No. 14118; The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation is in force. The depositaries are the Governments of the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

239. S/22393, annex I; see Official Records of the Security Council, Forty-sixth Year, Supplement for January, February and March 1991; The Convention on the Marking of Plastic Explosives for the Purpose of Detection is in force. The depositary is ICAO

240. Neither the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation nor the Protocol are in force. The depositary is ICAO.

241. General Assembly resolution 3166 (XXVIII), annex; The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents is in force. The depositary is the Secretary-General of the United Nations.

242. The International Convention against the Taking of Hostages is in force. The depositary is the Secretary-General of the United Nations.

243. United Nations, Treaty Series, vol. 2149, No. 37517; The International Convention for the Suppression of Terrorist Bombings is in force. The depositary is the Secretary-General of the United Nations.

244. United Nations, Treaty Series, vol. 2178, No. 38349; The International Convention for the Suppression of the Financing of Terrorism is in force. The depositary is the Secretary-General of the United Nations. It incorporates the offences penalized in nine of the universal terrorism-related instruments that pre-date its adoption as types of conduct for which the provision or collection of funds are forbidden.

245. The International Convention for the Suppression of Acts of Nuclear Terrorism is in force. The depositary is the Secretary-General of the United Nations.

246. Both the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf are in force. The depositary is the Secretary-General of IMO.

247. Both Protocols are in force. The depositary for both is the Secretary-General of the IMO.

248. The Convention on the Physical Protection of Nuclear Material and The Amendment to the Convention on the Physical Protection of Nuclear Material are in force and the depositary is the Director General of IAEA.

- “(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex of the Convention; or*
- (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”*

The annex referred to in Article 2(a) above incorporates the offences penalized in nine of the universal terrorism-related instruments that pre-date its adoption as types of conduct for which the provision or collection of funds are forbidden.:

1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco and Tunisia)
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (accessed/ratified/signed by Algeria, Israel, Tunisia and Jordan).
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia and the State of Palestine, Egypt, Lebanon).
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon).
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980. (2005 Amendment to the Convention on the Physical Protection of Nuclear Material (Article 11, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia)
6. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Egypt, Lebanon)
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (accessed/ratified/signed by Algeria, Israel, Jordan, Morocco, Tunisia, Egypt, Lebanon)
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988 (complement to the 1988 Convention, article 3, accessed/ratified/signed by Algeria, Tunisia, Egypt, Lebanon).
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 (accessed/ratified/signed by Algeria, Israel, Morocco, Tunisia, Egypt).<sup>249</sup>

For an act to constitute an offence set forth in the Convention, it is not necessary that the funds are actually used to carry out one of the listed offences.<sup>250</sup> Furthermore attempts,<sup>251</sup> participation as an accomplice,<sup>252</sup> organization or direction of others to commit a listed offence<sup>253</sup> are equally offences under the

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249. On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in said annex.

250. Art. 3.

251. Art. 4.

252. Art. 5 (a).

253. Art. 5 (b).



Convention, as is intentionally contributing to the commission of a listed offence by a group of persons (if done with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a listed offence, or with the knowledge of the intention of the group to commit a listed offence).<sup>254</sup>

## Regional instruments

There are other international documents relevant to the SPCs which define terrorist acts. For example, Algeria, Egypt and Tunisia have ratified the Organization of African Unity's Convention on the Prevention and Combatting of Terrorism, 1999,<sup>255</sup> which defines "terrorist acts" in Article 3 as follows:

- a. 'any act which is a violation of the criminal law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
  - i. intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
  - ii. disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
  - iii. create general insurrection in a State;
- b. any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to paragraph (a)(i) to (iii).'

This definition is notably wider as it does not limit the acts to those that cause death or serious bodily injury but also includes acts that damage private or public property. Furthermore, it considers for example as one of the possible necessary intents the disruption of the delivery of any essential service or even any other public service and is not merely confined to acts which have the purpose of intimidating a population or compelling a government or international organization to do or abstain from doing an act.

As far as the criminalization and sanctions of terrorism are concerned it is significant to refer to the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa,<sup>256</sup> where the African Commission calls upon African States to assure the following principles:

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254. Art. 4 (c).

255. OAU Convention on the Prevention and Combating of Terrorism, 1999, adopted in Algeria on 14 July 1999, entered into force 6 December 2002.

256. Adopted by the African Commission on Human and Peoples' Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015). The Principles and Guidelines were developed on the basis of Article 45(1)(b) of the African Charter, which mandates the Commission to formulate standards, principles, and rules on which African governments can base their legislation. They are based on African regional treaty law; the case law, standards, and resolutions of this Commission; and international human rights treaty law and U.N. Security Council resolutions. The Principles and Guidelines also give consideration to other international and regional human rights decisions and special mechanisms, U.N. General Assembly resolutions, including the U.N. Global Counter-Terrorism Strategy of 2006, and the views of the Office of the United Nations High Commissioner for Human Rights.

- a. **Accountability:** Individuals who engage in terrorism-related criminal activity may be prosecuted under domestic law and must be held criminally liable for serious human rights abuses, in particular, but not limited to, murder, torture, sexual violence, kidnapping and hostage taking, forced recruitment, war crimes, and crimes against humanity, or may be extradited to face trial in another jurisdiction. The criminalization and sanctioning of terrorism-related activities must be done in accordance with international human rights law.
- b. **Clarity and Specificity of Law:** Any criminalization of, or other punishment for, acts of terrorism must abide by the principle of legality. In particular, States must ensure that their laws criminalizing acts of terrorism are accessible to the public, defined by clear and precise provisions in the law, non-discriminatory, and non-retroactive. Any criminalization of, or other punishment for, acts of terrorism must be directed only against acts done knowingly and with intent and in accordance with international law, including human rights law.
- c. **Indirect Criminal Responsibility:** Laws sanctioning indirect criminal responsibility for terrorist acts must be accessible to the public, defined by clear and precise provisions in the law, non-discriminatory, non-retroactive, and targeted at principle acts of terrorism. Such acts must be sanctioned only when there is intent and knowledge to carryout, support, plan, or facilitate a terrorist act.
- d. **Criminalization of Membership/Association:** Criminal responsibility for acts of terrorism shall be individual, not collective. Individuals shall not be criminally responsible solely for membership in an organization, or association with an individual or organization, that is suspected of, or has been banned, sanctioned, accused, or punished for, engaging in acts of terrorism. States shall be prohibited from targeting an individual on the basis of discrimination of any kind, such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability, or any other status.  
[...]
- e. **Proportionality of Punishment:** Punishment shall be proportionate to the seriousness of the crime and individual criminal responsibility. Courts shall be afforded the opportunity to take fully into account the circumstances of the crime and the individual, including mitigating circumstances. In imposing a sentence of imprisonment, Courts shall deduct the time, if any, previously spent in detention in connection with conduct underlying the crime.
- f. **Listing:** States shall respect the principle of legality, non-discrimination, and procedural protection standards when it designates and sanctions an individual or entity as a terrorist.

In turn, the Arab Convention for the Suppression of Terrorism<sup>257</sup> defines terrorism in its Article I (2) as:

'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 national resources.'

Most notably, this definition is even broader, since it makes no requirements as to the motives or purposes of the act at all. The Convention further clarifies in Article I (3) that a terrorist offence is:

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257. League of Arab States, Adopted by the Council of Arab Ministers of the Interior and the Council of the Arab Ministers of Justice, Cairo, April, 1998.

'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.'

Article 2(a) excludes from the list of offences all cases of 'struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law' however this exclusion does not apply to 'any act prejudicing the territorial integrity of any Arab State'.

**The Council of Europe Convention on the Prevention of Terrorism** (CETS 196), which was opened for signature in 2005, did not define new terrorist offences in addition to those included in the existing conventions against terrorism. In Art. 1 it states that for the purposes of this Convention, 'terrorist offence' means any of the offences within the scope of and as defined in one of the international treaties against terrorism listed in the Appendix.<sup>258</sup> It did, however, create three new offences which may lead to the terrorist offences as defined in those conventions. These are:

- **Article 5 Public provocation to commit a terrorist offence**, i.e. the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

## **IMPORTANT NOTE:**

Determining the boundary between public provocation to commit terrorist offences and the mere expression of controversial opinion or views that may offend or disturb is not a straightforward task. When drafting the provision, the Council of Europe Committee of Experts on Terrorism considered the opinions of the Council of Europe and its suggestions that the provision may cover 'the dissemination of messages praising the perpetrator of an attack, the denigration of victims, calls for funding for terrorist organizations

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258. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973; International Convention Against the Taking of Hostages, adopted in New York on 17 December 1979; Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999; 11 International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005.

or other similar behaviours.<sup>259</sup> The Experts nevertheless decided on a generic formula.

## Presenting a terrorist offence as necessary and justified may constitute the offence of public provocation

For example: The release of a video featuring a person talking about the heresy of the Western world when it comes to celebrating New Year's eve, and calling believers to, in the name of God, actively take part in jihad and do everything they can to "teach the Westerners a lesson". In the video, short clips of explosions in cafes and attacks on squares are shown.

Source: UNODC, Foreign Terrorist Fighters: Manual for Judicial Training Institutes South-Eastern Europe, p. 16

- **Article 6 Recruitment for terrorism**, i.e. to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group. The recruiter needs to have intent that the persons they recruit commit or contribute to the commission of a terrorist offence or join an association or group for that purpose.

**Example:** Daesh releasing a video entitled 'Honour is in Jihad', aimed at encouraging potential recruits to come to Iraq and Syria and featuring fighters from other countries.

- **Article 7—Training for terrorism**, i.e. to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose. The person providing the training needs to know that the skills provided are intended to be used for the commission of or the contribution to commit a terrorist offence. What are considered weapons, firearms and explosives, or noxious or hazardous substances is not defined in the offence itself, but the Explanatory Report to the Convention suggests that the term 'explosive' could be defined in line with Article 1(3)(a) of the International Convention for the Suppression of Terrorist Bombings, i.e. 'an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage';<sup>260</sup> 'firearm' could be defined within the meaning of appendix I to the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals;<sup>261</sup> 'other weapon' could be understood in the sense of 'lethal weapon' as defined by the International Convention for the Suppression of Terrorist Bombings, Article 1(3)(b), i.e. a weapon or device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;<sup>262</sup> 'noxious or hazardous substances' could be interpreted in line with the meaning in Article 1(5) of the International Maritime Organization (IMO) Protocol on Preparedness, Re-

259. Council of Europe, Explanatory Report to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series, No. 196, (hereinafter Explanatory Report, 196), para. 95.

260. *Ibid.*, para. 118.

261. *Ibid.*, para. 119.

262. *Ibid.*, para. 120.

sponse and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (2000), i.e. substances included in various IMO conventions and codes, such as oils, liquefied gases, etc.<sup>263</sup>

## IMPORTANT NOTE:

Training can include paramilitary training, such as small unit tactics and techniques of guerrilla warfare but also training in covert communications, document falsification, methods of surveillance, martial arts, employment of disguise, procedures for jamming communications, evaluation of security systems, the vulnerability of various targets, defensive driving and evasion methods to reduce the likelihood of the victim's escape, or any other type of training as long as the person providing the training knows that the skills provided are intended to be used for the commission of or the contribution to commit a terrorist offence.<sup>264</sup>

The above provisions are coupled with a provision on accessory (ancillary) offences (Article 9) providing for the criminalization of complicity (such as aiding and abetting) in the commission of all of the three aforementioned offences and, in addition, of attempts to commit an offence under Articles 6 and 7, i.e. recruiting and training.<sup>265</sup> As in the International Convention for the Suppression of the Financing of Terrorism, Article 8 of the Convention explicitly states that these crimes do not require that a terrorist offence within the meaning of Art. 1 is actually committed.

## 5.2.1. Relevant Security Council Resolutions

Security Council resolutions may impose legally binding obligations on member States or provide 'soft law' sources of political commitments or emerging norms of international law. Most notably, Security Council resolutions adopted under Chapter VII of the Charter of the United Nations are binding on all Member States. Security Council resolution 1373 (2001) establishes a framework for countering terrorism in general and for improved international cooperation against terrorism. It requires States to:

- Criminalize the provision or collection of funds in relation to the commission of terrorist acts
- Freeze the funds of persons who commit, or attempt to commit, terrorist acts and those of entities owned or controlled directly or indirectly by such persons
- Prohibit persons and entities from making funds available for the benefit of others involved in the commission of terrorist acts

Paragraph 2 contains requirements aimed at preventing terrorist acts and bringing terrorists to justice, notably:

- Refraining from the provision of any type of support to individuals or entities involved in terrorist acts, including by suppressing the recruitment of members of terrorist groups.
- Denying safe haven to all those who plan, support or commit terrorist acts and bringing them to justice.
- Establishing terrorist acts as serious criminal offences in domestic laws.

263. *Ibid.*, para. 121.

264. *Ibid.*, para. 122.

265. *Ibid.*, paras. 32 and 33.

- Providing other States with the greatest measure of assistance in connection with terrorism-related criminal investigations.
- Applying effective border controls and controls on the issuance of identity papers and travel documents.

Paragraph 3 deals extensively with international cooperation measures:

- Intensifying the exchange of operational information.
- Cooperating through bilateral and multilateral arrangements and agreements.
- Ratifying and fully implementing the universal conventions and protocols related to terrorism.
- Taking measures to ensure that asylum-seekers have not planned, facilitated or participated in the commission of terrorist acts.
- Ensuring that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts.
- Ensuring that claims of political motivation are not recognized as grounds for refusing requests for the extradition of terrorists.

The Counter-Terrorism Committee has prepared a number of documents highlighting problems, obstacles and trends related to the implementation of the above resolution with a view to identifying regional vulnerabilities, or areas where groups of States facing particular implementation difficulties might benefit from a regional or subregional approach to counter-terrorism.<sup>266</sup>

## TOOLS

Several tools have been developed by the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate which include:

- Directory of international good practices, codes and standards to assist Member States in their implementation of Security Council resolution 1373 (2001). The directory compiles, in a single reference document, the best practices, codes and standards of international and regional organizations of relevance to the various provisions of the resolution.
- Technical guide to the implementation of Security Council resolution 1373 (2001), to serve as a reference tool and to help ensure consistent analysis of State implementation efforts (available from [www.un.org/en/sc/ctc/docs/technical\\_guide\\_2009.pdf](http://www.un.org/en/sc/ctc/docs/technical_guide_2009.pdf)).
- Compendium of border control instruments, standards and recommended practices related to counter-terrorism. The Compendium is a comprehensive compilation of international legal instruments, standards, recommended practices and other guidance material, intended to serve as a single point of reference on the various legal and practical matters relating to counter-terrorism aspects of border management.
- Asset-freezing request contact database is intended to facilitate and accelerate the process of making terrorist asset-freezing requests. The database is accessible only by designated national authorities authorized to receive asset-freezing requests from foreign jurisdictions.

### Other tools developed by UNODC/TPB include

266. See Global Surveys of the implementation of Security Council resolution 1373 (2001) by Member States (see for instance, S/2016/49).

- UNODC model legislative provisions against terrorism, covering numerous aspects of the implementation of Security Council resolution 1373 (2001). The document also deals with the criminalization of preparatory conduct and support of terrorist acts, such as recruitment and supply of weapons. See, in particular; chapter 2, section 2, on terrorist acts and support offences; chapter 4, section 2-1, on preventive measures under Security Council resolution 1373 (2001); and chapter 4, section 2-3 on common provisions to sections 2-1 and 2-2.
- A technical assistance working paper entitled “Preventing terrorist acts: a criminal justice strategy integrating rule of law standards in implementation of United Nations anti- terrorism instruments”. The paper analyses the relevance of criminal justice preventive measures in anti-terrorism efforts. It reviews the substantive and procedural mechanisms that permit effective intervention.

Security Council resolution 1624 (2005) essentially complements the legal framework of resolution 1373 on the issue of incitement of terrorist acts, complementing the International Covenant on Civil and Political Rights in its provision that condemns any incitement to violence. Its effective implementation is furthermore an important aspect of the implementation of resolution 2178 (2014) in which SC seeks to eliminate the threat posed by foreign terrorist fighters.

The Counter-Terrorism Committee entrusted with the task of monitoring the implementation of SC resolution 1624 (2005) prepared reports in 2005 (S/2006/737) and 2008 (S/2008/29) which indicated that most of the reporting States that prohibit incitement do so by expressly criminalizing the making of public statements inciting the commission of a terrorist act. Other States indicated that private communications were included if they amounted to counselling, including or soliciting acts of terrorism.

The Security Council has requested the Counter-Terrorism Committee Executive Directorate to focus increased attention on resolution 1624 (2005) in its dialogue with member States, to develop strategies which include countering incitement of terrorist acts motivated by extremism and intolerance.<sup>267</sup> In that context, the Security Council directed the Counter-Terrorism Committee Executive Directorate to produce a global survey of the implementation of resolution 1624 (2005) by Member States. The first survey was released in 2012 (S/2012/16), followed by an updated one in 2016 (S/2016/50).<sup>268</sup>

## **5.2.2. General Remarks on SPC terrorism legislation**

Looking at the legislations of SPCs, they reflect the particular national circumstances of each country. Poor education levels, poverty and influence from external powers prevalent in many of the SPCs make these societies less stable and the threat of radicalization greater. The legislation dealing with terrorism thus naturally reflects the desire by many SPCs to keep cohesion in the society. Moreover, it is clear that the SPCs under consideration by and large provide multi-faceted approaches to tackling radicalization and do not rely merely on strict legislation, showing their understanding of the root causes of violent extremism. Several good practices can be observed and should be shared among the SPCs where appropriate. In addition, most of the definitions include necessary qualifiers to avoid being overbroad. For example, Morocco limits the definition to acts whose aim is to seriously infringe public order by intimidation, terror or violence.

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267. See SC resolution 1963 (2010).

268. UNODC, Universal Legal Framework against Terrorism, *supra* note 255, 30.

Algeria however does not limit terrorism to violent acts, but includes in the definition *any act* which targets the security of the State, the integrity of its territory, the stability and the normal functioning of the institutions, provided the act has one of the enumerated aims. The aims themselves include for example causing 'moral harm', 'hindering traffic', 'occupying public spaces with gatherings' and even 'violating the symbols of the nation and the Republic'.<sup>269</sup> Also dangerously broad is the definition of the acts prohibited under Article 87 bis 10 which include the undertaking of an activity which is harmful to 'the cohesion of the society', a vague term that could fit too many interpretations to provide for legal certainty. It is thus recommended that Algeria narrows down its definition or makes the terminology more precise in order to avoid a violation of the principle of legality and the unnecessary curtailing of political dissent.

The Egyptian definition of what constitutes a terrorist act has also been criticized as being too general and vague due to the use of wording such as 'for the purpose of disturbing public order, social peace, or endangering... undermining national unity... or security... prevents or impedes public authorities' without providing a clear definition of such terms. Any of the enumerated purposes must be achieved or attempted however by 'use of force, violence or threat to intimidate Egyptians living at home or abroad'<sup>270</sup> which substantially limits the scope of what can constitute a terrorist act.

The Jordanian definition on the other hand has removed the connection to an act of violence with the 2014 amendments while including acts that 'sow discord' or 'disturb public order' or even acts that disturb Jordan's relations with a foreign State. It is thus recommended that a necessary qualifier such as a nexus with 'the aim of intimidation, terror or violence' is included in the definition.

Most SPCs criminalize acts of planning and preparation of terrorist acts as autonomous offences. Most also criminalize all support, such as supply of weapons to, funding, training, harboring or hiding terrorists.

Many have included in their anti-terrorism legislations incitement to and glorification of terrorism. For example, Algeria, Morocco and Tunisia specifically criminalize under terrorist crimes the apology of such crimes. Tunisia has furthermore criminalized the practice of *takfir*, (i.e. accusations of apostasy or disbelief which carry an explicit or implicit call to murder or the overthrow of a government) with the aim of spreading terror amongst the population or compelling a State or international organization to do something relevant to their prerogatives or abstain from doing so.

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269. Algerian Criminal Code, Art. 87 bis.

270. Law 54/2015 on Combatting Terrorism.





## CASE STUDY – MOROCCO

A group of Moroccan nationals, which called themselves the Party of Progress, were glorifying the murder of the Russian ambassador in Turkey on Facebook. Two laws potentially applied to the case:

The general law on terrorism (2003) which sets the punishment as 6 years imprisonment for glorification of terrorism;

Press Law (2016) which sets the punishment for terrorism as a fine only.

Since the individuals in question were not journalists and could not benefit from journalistic status; since the basic law is the general law on terrorism and since there must be exist a trend at the international level to be able to target all those that encourage such actions, the public prosecution decided that the general law on terrorism applied.



## CASE STUDY – MOROCCO

### Case no 1

An individual posted comments on Facebook opposing the regime of the Tunisian state and accusing it of disbelief, while paying tribute to a terrorist organization and its acts. On March 31st 2017, he was convicted at the court of first instance of offences under:

Articles 13 and Art. 14, para. 8 of The Tunisian Organic Law No. 26 of 07 August 2015 on the Fight Against Terrorism and the Repression of Money-Laundering: 'Accusations of apostasy or calling to apostasy, or inciting to hatred, to animosity between the races, the doctrines and religions or giving apologies for this.' Sentence: 1 year imprisonment and 1000 Dinars fine

Articles 31 and of The Tunisian Organic Law No. 26 of 07/08/2015 on the Fight Against Terrorism and the Repression of Money-Laundering: 'whoever inside or outside the Republic, publicly and expressly gives apology for a terrorist offense, its perpetrators, an or

ganization, alliance, its members, its activities or opinions and ideas related to terrorist offenses' Sentence: 1 year imprisonment and 1000 Dinars fine

## Case no 2

A Tunisian downloaded tapes of KZ a senior member of radical Islamist group Ansar al-Sharia's Tunisian branch, killed in Syria and posted on Facebook in relation to him the phrase: 'May God accept you, sheikh'.

The individual was found guilty on 5 October 2016 under Article 31 and of The Tunisian Organic Law No. 26 of 07 August 2015 on the Fight Against Terrorism and the Repression of Money-Laundering by the court of first instance for intentional glorification of terrorist acts conducted by KZ and the praise of his ideas publicly and explicitly. He was sentenced to one year imprisonment and a fine of 1000 Dinars.

## Case no 3

An individual, known for adopting extremist thought, posted on his Facebook page comments opposing the Tunisian State, charging it and the existing regime with *takfir* for failure to apply Sharia law and expressing the desire that it be governed by Daesh. He furthermore posted statements backing foreign terrorist fighters.

On October 28 2016 he was found guilty at the court of first instance under para. 8 of Art. 14 of the Tunisian Organic Law No. 26 of 7 August 2015 on the Fight Against Terrorism and the Repression of Money-Laundering and sentenced to 2 years imprisonment and 2000 Dinars fine.

## Case no 4

An individual was watching terrorist videos on YouTube and comments glorifying such acts were found on his laptop.

Because the individual had not shared his comments publicly, his acts did not meet the requisite legal elements under Art. 31 of the Tunisian Organic Law No. 26. Accordingly, the court of first instance decided not to hear the case on 12 October, 2016.

## IMPORTANT NOTE:

In terms of Article 5 of The Council of Europe Convention on the Prevention of Terrorism there are two elements to the offence of public provocation; first, there has to be a specific intent to incite the commission of a terrorist offence, which is supplemented with the requirements that the provocation be committed unlawfully and intentionally (Article 5 (2)).

Second, the result of such an act must be to cause a danger that such an offence might be committed. When considering whether such danger is caused, the nature of the author and of the recipient of the

message, as well as the context in which the offence is committed shall be taken into account.<sup>271</sup> The significance and the credible nature of the danger should be considered when applying this provision in accordance with the requirements of domestic law.

The purpose of criminalizing public provocation to commit a terrorist offence is to make the provocation punishable even if it is not acted upon by anyone, as long as it created a real risk that the terrorist offence may be committed.<sup>272</sup>

The above-mentioned criminalization of 'accusations of apostasy (*takfir*)' as terrorist acts fits under the context of public provocation. Such accusations imply a call for the murder of the individual accused or *ji-had* against an accused society, thus they create a real risk for the commission of a terrorist offence. The element of intent to incite the commission of a terrorist offence is also implied with the required intention to spread terror. Furthermore, the restriction on freedom of expression here is necessary to protect the right of life of those accused of apostasy.

## Tools

In criminalizing offences related to incitement, States need to fully respect human rights obligations, in particular the rights to freedom of expression, freedom of association and freedom of religion, as set forth in the applicable international instruments. This complex task is dealt with in the UNODC/TPB technical assistance working paper entitled Preventing terrorist acts: a criminal justice strategy integrating rule of law standards in implementation of United Nations anti-terrorism instruments.<sup>273</sup>

A model offence on incitement (with attached commentary) is contained in chapter 2, section 2, article 21 of the UNODC model legislative provisions against terrorism as follows:

Whoever distributes, or otherwise makes a message available to the public, with the intent to incite the commission of a terrorist act, where such conduct, whether or not directly advocating the commission of a terrorist act, causes a danger that one or more such acts may be committed, shall be punished with [penalties which take into account the grave nature of those offences].

Examples of national legislation criminalizing incitement are also available electronically through the UNODC electronic legal resources on international terrorism.

Most SPCs do not limit terrorist acts to acts done by particular enumerated means. For example the wording used in the Algerian Criminal Code defining terrorist acts reads as follows: *any act which targets... by any action which has the aim of...'* The Egyptian law on Combatting Terrorism also does not limit the scope of terrorist acts to particular means used. The Jordanian law specifically states that the act can be 'committed by any means' as does the relevant Tunisian law. On the contrary, the definition in Article 148 of the Penal Code in force in the State of Palestine is limited to acts committed by 'means such as explosive devices, inflammable substances, toxic or incendiary products, and epidemiological or microbial factors that would pose a general danger'. The Lebanese definition similarly limits the means to those 'liable to create

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271. Explanatory Report 196, *supra* note 290, paras. 97-100.

272. UNODC, Foreign Terrorist Fighters: Manual for Judicial Training Institutes South-Eastern Europe, (UN, 2017), 16.

273. See, in particular, part B.1, section (g).

a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents.<sup>274</sup> This has led to interpretations in the past which did not even consider guns, revolvers or even submachine guns as a means of committing a terrorist attack. Such definitions are unnecessarily restrictive, especially in the light of terrorists continuously changing their *modi operandi* to avoid detection and prevention of their attacks. It is important to note, however, that in more recent practice, Lebanese courts no longer interpret the law in such a restrictive manner.

### 5.3 Foreign terrorist fighters (FTFs)

A 'foreign fighter' has been defined as 'an individual who leaves his or her country of origin or habitual residence to join a non-State armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship'.<sup>275</sup> However, the term 'foreign terrorist fighters' is to be found in United Nations Security Council resolution 2178, which defines them as 'individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict'.<sup>276</sup> Such individuals are a major concern for countries of origin, transit and destination.

One of the biggest recent phenomena in this regard has been the so-called Islamic State (also known as ISIS or ISIL) as well as groups such as the al-Nusra Front which managed to attract thousands of individuals from foreign countries to join their fight in Syria and Iraq. There have been several estimates as to the number of such foreign fighters. The figures range from 25.000 all the way up to 40.000.<sup>277</sup> In May of 2016, the United Nations projected that around thirty-eight thousand individuals may have attempted to travel to join ISIS in Iraq and Syria.<sup>278</sup> These individuals did not only pose a significant threat to Syria and Iraq and made a mockery of the claim that the conflicts there were civil wars, but continue to pose a substantial threat to the security of the populations of the countries to which they are returning. In this context we speak of foreign fighter 'returnees' as individuals who fight abroad and then return back to their country-of-origin. Returnees participating in combat and training abroad may commit terrorist attacks upon returning to their home countries, a phenomenon known as 'blowback'.<sup>279</sup> According to the analysis of one dataset, out of 27 attacks and 19 plots linked to ISIS in Western Europe alone, between January 2014 and July 2016, 18 are known to have involved returnees either as operatives or logisticians.<sup>280</sup> More often than not, returnees are presented as distinct from 'lone wolves' or 'lone actors' which exist separately from a structured terrorist or insurgent group. However as pointed out by the Executive Director of the Counter-Terrorism Committee Executive Directorate (CTED) in a number of cases which were initially regarded as lone terrorist attacks, subsequent investigations showed that they had been supported, resourced or guided from abroad or inspired by groups such as ISIS, often via internet.<sup>281</sup>

274. Lebanese Penal Code, Art. 314.

275. Geneva Academy of International Humanitarian Law and Human Rights, *Academy Briefing No. 7 – Foreign Fighter under International Law* (Geneva, 2014), 6.

276. SC Res. 2178(2014), preamble para. 9.

277. Russia Today, 'Over 40,000 foreign militants from 100 countries fighting in Syria – US State Department', (3 June 2016) <https://www.rt.com/usa/345269-40000-foreign-terrorists-syria/>.

278. U.N. Secretary-General, *Report of the Secretary General on the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat*, 11 18, U.N. Doc. S/2016/501 (May 31, 2016)

279. Cory Kopitzke, Security Council Resolution 2178(2014): An Ineffective Response to the Foreign Terrorist Fighter Phenomenon, (2017) *Ind. J. Global Legal Stud.* 309, 313

280. Kim Cragin, 'The Challenge of Foreign Fighters Returnees', (2017) 33 *Journal of Contemporary Criminal Justice*, 294.

281. Major challenges remain, Executive Director of CTED tells Security Council in meeting on foreign terrorist fighters, <https://www.un.org/sc/ctc/blog/2017/11/28/major-challenges-remain-executive-director-of-cted-tells-security-council-in-meeting-on-foreign-terrorist-fighters/>

As ISIS began losing territory the rate of returns to home countries and relocations to third states increased significantly as had the number of terrorist attacks. As of April 2017, approximately 20 to 30 per cent foreign fighters had left Iraq and Syria, and, as of April 2016, an estimated 30 per cent of the EU foreign fighter contingent at the time had already returned to their countries of residence, equaling about 1,200 people.<sup>282</sup> On December 6<sup>th</sup> 2017, the Russian Ministry of Defense declared the liberation of Syria from ISIS stating that all territories previously under terrorist control were liberated in the final push by the Syrian Army.<sup>283</sup> The Iraqi government also announced in the same month that their fight against ISIS had been won. ISIS foreign fighters now more than ever pose a threat to their home countries or third countries they may have chosen to go to after leaving Syrian or Iraqi territory. South-East Asian countries particularly have seen not only an influx of returnees, but also a number of foreign fighters who appear to have chosen to go there rather than return to their own homes.

## **5.3.1. Security Council Resolutions relevant to FTFs**

The sanctions regimes against the Islamic State in Iraq and the Levant (ISIL) (Da'esh), Al-Qaida and the Taliban were introduced pursuant to Security Council resolution 1267 (1999) and subsequently modified and strengthened by numerous other resolutions, the latest one having been adopted in 2015 (see Security Council resolutions 1333 (2000), 1390 (2002), 1452 (2002), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009), 1989 (2011), 2170 (2014), 2178 (2014), 2199 (2015) and 2253 (2015)).

The sanctions are established under chapter VII of the Charter of the United Nations and require that States implement three types of measures against designated individuals and entities:

- A freezing of all assets belonging to these individuals and entities, with only certain exceptions (and under certain conditions), introduced by Security Council resolution 1452 (2002), where property is needed to cover basic expenses
- An arms embargo, whereby no arms, weapons or ammunition shall be supplied, sold or transferred to listed persons or entities (this type of sanction includes the prohibition to deliver technical advice, assistance and training related to military activities for the benefit of designated individuals and entities)
- A travel ban, which prevents listed individuals from entering into or transiting through States of which they are not nationals. Exemptions to the travel ban are envisaged, as set out in Security Council resolutions 1988 (2011), 2161 (2014) and 2253 (2015)

### **Tools**

The Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, the Security Council Committee established pursuant to resolution 1988 (2011) and the Analytical Support and Sanctions Monitoring Team have produced a number of documents to inform States about

282. Z. Fellmann, T.M. Sanderson and M. Galperin Donnelly, 'Foreign Fighter Fallout. Their Strategic Impact', Center for Strategic and International Studies, April 2017, [http://foreignfighters.csis.org/fallout\\_foreign\\_fighter\\_project.pdf](http://foreignfighters.csis.org/fallout_foreign_fighter_project.pdf); B. van Ginkel and E. Entenmann, eds., *The Foreign Fighters Phenomenon in the European Union* (2016); International Centre for Counter-Terrorism – The Hague, *The Four Dimensions of the Foreign Fighter Threat: Making Sense of an Evolving Phenomenon*, 5.

283. Russia Today, 'Syria Fully Liberated from ISIS Terrorists – Russian MoD', (7 Dec. 2017) <https://www.rt.com/news/412149-syria-liberated-isis-terrorists/>.

the procedure in force for listing individuals and entities, to assist them in the interpretation of the sanctions regimes and to guide them through the delisting process.<sup>284</sup> Those documents include the following:

- Guidelines of the committees (including their mandates, meetings and decision-making procedures)
- Consolidated sanctions lists
- Summaries of listing criteria
- Assets freeze: explanation of terms
- Travel ban: explanation of terms
- Arms embargo: explanation of terms

The INTERPOL assists with the worldwide dissemination of the consolidated lists. The INTERPOL-United Nations Security Council Special Notices<sup>285</sup> warn countries as to whether a certain individual or entity is being targeted by the sanctions regimes and informs recipients if the target of those sanctions has also been reached by a Red Notice.

The UNODC model legislative provisions against terrorism contain a section on the Al-Qaida and Taliban sanctions regimes and suggest drafting language for a wide spectrum of sanctions.<sup>286</sup> Examples of how countries have implemented the sanctions regimes can be found in the UNODC electronic legal resources on international terrorism.<sup>287</sup>

Unanimously adopted UNSCR 2178/2014,<sup>288</sup> requires all UN member States to take urgent action to stem the “*acute and growing threat posed by foreign terrorist fighters*” both at home and abroad. It requires UN Members to take measures domestically or internationally to prevent and suppress ‘the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their State of residence or nationality’ with the intent to commit, plan, or participate in terrorist acts or to be trained as terrorists, as well as the financing of their travel and other activities. It compels all UN member States to prosecute, as “*serious criminal offenses*,” any travel or intended travel abroad to join or train with a terrorist organization.

“*Foreign terrorist fighters*” are defined in UNSCR 2178 as “*individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict.*” It names the Islamic State, Al-Qaida, and the Nusra Front (a Syria-based Al-Qaida affiliate now calling itself the Front for the Conquest of the Levant) but leaves it to individual governments to determine which other groups they should target.

Member States should require airlines flying above their territories to submit advance passenger information (API) to the national authorities in order to enable them to prevent entry into or transit through their territories of persons who are listed on the Al-Qaeda Sanctions List kept by the Committee, which was established by UNSCR 1267/1999 and resolution. 1989/2011.<sup>289</sup>

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284. More information about the committees, including the resources listed here, are available from [www.un.org/sc/suborg/en/sanctions/information](http://www.un.org/sc/suborg/en/sanctions/information)

285. available at [www.interpol.int](http://www.interpol.int).

286. See [www.unodc.org/tldb/en/model\\_laws\\_treaties.html](http://www.unodc.org/tldb/en/model_laws_treaties.html). See, in particular, chapter 4, section 3, on restrictive measures concerning individuals, groups, undertakings and entities placed on the consolidated lists pursuant to Security Council resolution 1267 (1999) and following resolutions.

287. See the counter-terrorism legislation database in the terrorism prevention section of the UNODC website.

288. S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014).

289. S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014), cl. 9.

Member States are also urged to improve international and regional cooperation with the aim of preventing the travel of foreign terrorist fighters from or through their territories, through the sharing of intelligence regarding actions or movements of terrorists or terrorist networks, best practices, and a deeper understanding of the patterns of travel.<sup>290</sup> The resolution further focuses on the need for Member States to implement better border controls and issue travel documents with better care, preventing their counterfeiting, forgery or fraudulent use.<sup>291</sup>

Security Council resolution 2178 is fundamental to addressing foreign terrorist fighter threats, however some major challenges remain in its implementation, most notably the fact that fewer than 60 States have so far introduced measures requiring airlines to provide advance passenger information (API) – meaning that for over 100 Member States verifying the possible presence of a foreign terrorist fighter onboard an aircraft is very difficult.<sup>292</sup> Furthermore, many States still require assistance in effective prosecution, rehabilitation, reintegration strategies as well as establishing the necessary connectivity between national databases and border posts.<sup>293</sup> On the other hand international cooperation is undermined by practical and political challenges as well as by inconsistent compliance with human rights obligations.<sup>294</sup> While ‘impunity is not an option’ difficulty of collecting sufficient admissible evidence from conflict zones remains a substantive challenge.<sup>295</sup>

### **5.3.2. Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (ETS 217)**

Following UNSCR 2178 (2014) the Council of Europe Committee of Experts on Terrorism examined the issue of radicalization and FTF and proposed to the Committee of Ministers to draft terms of reference for a committee to be established for the purpose of drafting and Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism to supplement it with a series of provisions aimed at implementing the criminal law aspects of UNSCR 2178. The offences included in the Protocol are mainly of a preparatory nature in relation to terrorist acts and States Parties are required to criminalize them in their domestic legislation when committed unlawfully and intentionally:

**Article 2 participating in an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or group. The criminali-**

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290. S.C. Res. 2178, U.N. Doc. S/RES/2178 (Sept. 24, 2014), cl. 11.

291. *Ibid.*, para. 2.

292. Major challenges, *supra* note 312.

293. *Ibid.*

294. *Ibid.*

295. *Ibid.*

zation of passive membership of a terrorist association or a group, or the membership of an inactive terrorist association or group, is not required under this offence.<sup>296</sup> Also the attempt or the aiding or abetting of this offence do not need to be criminalized, however States Parties may do so if it is appropriate in their domestic legal systems.<sup>297</sup> The Protocol precisely defines the nature of the association or group, as criminalization ‘depends on the commission of terrorist offences by the group, regardless of its officially proclaimed activities.’<sup>298</sup>

**Example:** A woman cooking and providing food for a group of persons trained for committing terrorist offences knowing the purpose of their training and intentionally contributing to the success of the training would be an example of active membership and thus fall under this provision. On the other hand, a woman who purposely marries a Daesh combatant without any intention to directly contribute to the activities of the group would only be considered a passive member.

Source: UNODC, Foreign Terrorist Fighters, Manual for Judicial Training Institutes South-Eastern Europe, p. 20.

**Article 3 receiving training for terrorism, i.e. to receive instruction, including obtaining knowledge or practical skills, from another person in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence.** The wording here closely reflects that used in the offence of training for terrorism, including the terms ‘explosives, firearms or other weapons or noxious or hazardous substances’. Activities that would otherwise be lawful can fall under this article, as long as the person receiving the training has the criminal intent to use it to commit a terrorist offence.<sup>299</sup> Receiving training for terrorism may take place in person, or through electronic media, however merely visiting websites containing information or receiving communications, is not an offence under this article.<sup>300</sup> The perpetrator must take an active part in the training in order to come under the purview of this article by, for example, participating in interactive training via the Internet. ‘Self-study’ is thus not covered, but States Parties may wish to criminalize it domestically.<sup>301</sup>

**NOTE:** Merely visiting websites containing information or receiving communications, which could be used for training for terrorism purposes, is not an offence under this article.

UNODC, Foreign Terrorist Fighters, Manual for Judicial Training Institutes South-Eastern Europe, p. 21.

**Article 4 travelling abroad for the purpose of terrorism, i.e. travelling to a State, which is not that of the traveler’s nationality or residence, for the purpose of the commission of, contribution to or participation in a terrorist offence, or the providing or receiving of training for terrorism** (as defined in Article 7 of the Convention and Art. 3 of the Protocol). The travel may be direct or by transiting other States on route.<sup>302</sup> This does not require State Parties to criminalize all trav-

296. Council of Europe, Explanatory Report to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Council of Europe Treaty Series, No. 217, (hereinafter Explanatory Report 217), para. 33.

297. *Ibid.*, para. 35.

298. *Ibid.*, para. 37.

299. *Ibid.*, para. 41.

300. *Ibid.*, para. 40.

301. *Ibid.*

302. *Ibid.*, para. 44.



els to certain destinations, or introduce administrative measures, such as withdrawal of passports, but only to criminalize travel for the stated purposes. Article 4 applies only to travels undertaken from the territory of the State Party, or by its nationals, irrespective of their place of residence or starting point of travel.<sup>303</sup> While the Protocol uses wording slightly different from UNSCR 2178 this was not intended to detract from the meanings contained in the resolution.<sup>304</sup> Attempt to travel abroad for the purpose of terrorism is not included, however State Parties may wish to criminalize it.

**Example:** A citizen of a non-EU country travels from a EU Member State to Istanbul with the intent to continue his journey to Syria to fight for Al-Nusra.

Equally a citizen of a EU Member who begins his journey from a non-EU state for the same purpose, would be covered under this provision.

**Article 5 funding travelling abroad for the purpose of terrorism**, i.e. providing or collecting, by any means, directly or indirectly, funds fully or partially enabling any person to travel abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the funds are fully or partially intended to be used for this purpose. The definition of 'funds' is the same as that of Article 1(1) of the International Convention for the Suppression of the Financing of Terrorism. The criminalization of the attempt or the aiding or abetting of this offence is not required, though States Parties may do so.

**Example:** Paying flight tickets to Syria for an individual who has been recruited to join Nusra.

**Article 6 organizing or otherwise facilitating travelling abroad for the purpose of terrorism**, i.e. any act of organization or facilitation that assists any person in travelling abroad for the purpose of terrorism, as defined in Article 4, paragraph 1, of this Protocol, knowing that the assistance thus rendered is for the purpose of terrorism. 'Organization' covers conduct related to practical arrangements connected with travelling, while 'facilitation' refers to conduct that does not constitute 'organization' but which assists the traveler in reaching their destination.<sup>305</sup> The perpetrator must act intentionally, unlawfully and with the knowledge that the assistance is provided for terrorism purposes. This offence may also be criminalized as a preparatory act or as an element of aiding or abetting to the main offence.<sup>306</sup>

**Example:** Making route plans, providing funds for the route, assisting the individuals to enter the borders of a country illegally and seeing them off to the next border or the airport, etc.

### 5.3.3. General Remarks on SPC legislation relevant to FTF

303. *Ibid.*, para. 49.

304. The word 'commission' has been used instead of 'perpetration'; 'contribution' instead of 'planning' and 'preparation'; 'terrorist offences' instead of 'terrorist acts'; 'terrorist training' instead of 'training for terrorism.'

305. Explanatory Report 217, *supra* note 332, paras. 60-62.

306. *Ibid.*, para. 61.

Most SPCs have criminalized passive and active membership in and recruitment to join terrorist entities to commit acts of terrorism, and have criminalized recruitment inside and outside their territories (see below legislation for each SPC).

For example, Egypt does not specify what kind of membership in a terrorist group is punishable under Article 12 of the Combating Terrorism definition, while the Terrorist Entities law likewise considers a terrorist anyone who becomes member of a terrorist group, be it active or passive. Jordan also does not specify whether it requires active membership or if passive membership suffices under Article 3 of its Anti-Terrorism Law. In Israel the law also makes it possible for passive members of groups to be classified as terrorist organizations to be indicted.<sup>307</sup> A large number of Palestinian groups, including Hamas and Islamic Jihad, are classified as terrorist organizations in Israel, as is the leftist Popular Front for the Liberation of Palestine (PFLP) and, most controversially, the Palestinian Liberation Organization (PLO).<sup>308</sup> Note that while the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism under Article 2 merely does not require the criminalization of passive membership, or the membership of an inactive terrorist association or group, the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa specifically state that there shall be not criminal responsibility solely for membership, since criminal responsibility for acts of terrorism shall be individual, not collective.

When it comes to designating organizations as terrorist, there is no uniform standard that would apply indiscriminately. Some have thought it wise to choose the lesser evil between different terrorist groups, and take a more lenient approach to those that condemn even more radical ones. This can perhaps be a short-term approach but it is doubtful whether it can lead to necessary changes in the society in the long-term. Worse practices consist of publicly condemning terrorism on the one hand and using 'friendly' terrorist groups as proxies on the other. This applies both to SPCs as well as many EU Member States. It is necessary to stop such practices and equally condemn and fight all terrorist organizations based on impartial and objective standards.

The way organizations are classified as either terrorist or not affects both the North-South as well as the South-South cooperation. Some designations are overbroad while others are too narrow. For example, Egypt, which classifies the Muslim Brotherhood as a terrorist organization is urging the UK to do the same. The British government, however, refuses to do so. In a reversal of support for the 2014 review into the organization conducted by John Jenkins, the then ambassador to Saudi Arabia which suggested the organization served as a right of passage for violent militants, the UK government now subscribes to the view that political Islamists are actually a 'firewall' against violent extremism and should be engaged with either when in power or in opposition.<sup>309</sup>

In the opinion of al-Lawandi, an expert in international relations at Al-Ahram Center for Political and Strategic Studies, it is not a coincidence that Muslim Brotherhood members benefit from the absence of extradition agreements between Egypt and Britain: 'By not classifying the Muslim Brotherhood as a terrorist organization, failing to sign an extradition agreement with Egypt and some other states, and giving the group's members political asylum, the UK would be systematically supporting the Muslim Brotherhood and

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307. Middle East Eye, 'Israel Approves Controversial Counter-Terrorism Bill,' (15 June 2016), <http://www.middleeasteye.net/news/israel-ap-proves-controversial-counter-terrorism-bill-1.149441458>.

308. *Ibid.*

309. The idea first appeared in the Report by the House of Commons Foreign Affairs Committee, 'Political Islam', and the Muslim Brotherhood Review, Sixth Report of Session 2016-17, (7 Nov. 2016) and was endorsed in House of Commons Foreign Affairs Committee, 'Political Islam', and the Muslim Brotherhood Review: Government Response to the Committee's Sixth Report (6th March 2017).

other organizations.<sup>310</sup>

All SPCs have implemented at least some legal and security measures to tackle the phenomenon of FTFs. Only Lebanon lacks laws criminalizing foreign terrorist fighter activity, despite being a co-sponsor of UNSCR 2178 and taking several measures to prevent the flow of ISIS and al-Nusra Front fighters to Syria and Iraq.

A further essential policy of several SPCs in this regard has been the counter-propaganda and religious counter-narrative which forms part of the general policy against radicalization and recruitment.

In compliance with UNSCR 1373/2001, most SPCs have in one way or another criminalized under terrorist offences the travel or attempted travel, to another State with the intent to commit, plan, prepare, or participate in terrorist acts or with the intent to be trained.

While the UNSCR 1373 speaks of such travel on the part of their nationals *and other individuals*, some SPCs have only covered their own nationals under said provisions.

For example: Egypt under Article 21 of its Anti-Terrorism Law criminalizes the joining of a foreign terrorist entity for Egyptian citizens only. Merely seeking to communicate with such an entity is criminalized under Article 14, although only when the aim is committing a terrorist crime inside Egypt, against its citizens, interests, properties, etc.

Only facilitating for others to join such entities under Article 21, as well as training others or receiving training in any form for the commission of a terrorist crime under Article 15 are equally criminalized for Egyptians as well as non-Egyptians.

This potentially creates a gap in terms of those non-Egyptians who travel to another State to join a terrorist entity without necessarily having received training to commit a terrorist crime.

The SPCs have furthermore mostly criminalized receiving and providing training in or outside the territory for the perpetration, planning or preparation of, or participation in, terrorist acts; the wilful organization of travel for individuals travelling abroad for the purpose of preparing terrorist acts, or participating in, providing, or receiving training or facilitating the commission of terrorist acts, including recruitment; financing of travel and entering or crossing the territory with a view to travelling to another territory to commit terrorist offences. All States have criminalized joining a terrorist group inside and/or outside the territory.

Some have furthermore put additional restraints on travelling to certain areas which apply to individuals of a specific age group.

Apart from the necessary criminal legislation, another essential part in the fight against foreign terrorist fighters is border security and the thorough monitoring of travellers entering or leaving the country. Most SPCs have been improving their border security as well as increasing cooperation of neighbouring countries, introducing new databases and systems of screening to identify suspected travellers.

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310. Egypt Pulse, 'Egypt steps up efforts to Extradite Brotherhood Fugitives from UK' (June 2017).

## 5.4. SPCs: Legal Framework and Action Plans on Terrorism

### 5.4.1. Algeria

#### Background

On September 29, 2005 a referendum was held on the Charter for Peace and National Reconciliation, proposed by Algerian President and it passed with a 97% majority. The Charter is an attempt to bring closure to the 'national tragedy' and foresees two measures:

- Termination of prosecution in the cases where either the proceedings are at the stage of preliminary inquiry, a judicial inquiry is opened, the case is sent, registered or under advisement before the adjudicating court, or if there is a possibility of appeal of cassation before the Supreme Court;
- Pardon, which applies to persons definitely convicted as perpetrator or accomplice of the conducts defined in the provisions of the Charter.

The above-mentioned measures do not apply to the persons who have committed, aided or abetted, or incited to commit collective massacres, rapes, or to use explosives in public spaces, nor to the persons definitely convicted for having committed, aided or abetted, or incited to commit such acts.

The Charter establishes provisions concerning compensation measures, State benefits, and professional and social rehabilitation measures. Judicial assistance is automatically applicable in the procedure of declaration of death by a court in relation with the people who have disappeared and whose corpse have not been found, following an investigation, using all the legal means, which has proved unsuccessful.

#### Regional and International Cooperation

On regional and international cooperation in the field of countering violent extremism, Algeria would like to see sustained bilateral, regional and international cooperation similar to that in the field of fighting against terrorism. In 2015, it launched and hosted the International Conference on the fight against extremism and de-radicalization, where it shared its experience with the participants and sought to identify common challenges and points of cooperation within the UN system and the Global Counter Terrorism Forum. More than 50 countries and international organizations participated in the conference's first meeting.

Furthermore, it has been seeking to strengthen efforts against terrorism at the African level which has resulted in a number of international instruments and initiatives. In 2015 it has participated in the 7th meeting of intelligence and security heads in the Sahel-Sahara region, organized by the African Union. Algeria has engaged in a concerted approach through many mechanisms of cooperation, such as the Countries of the Field, the working Group on the Sahel co-chaired by Algeria and Canada under the Global Counterterrorism Forum (GCTF) of which it is a founding member; the Joint Operational General Staff Committee (CEMOC), the Fusion and Liaison Unit (UFL) mainly for sharing intelligence, and many other *fora* which are a great contribution to facilitating the deepening of security cooperation between the concerned countries.

In 2016, Algeria also convened international workshops on the role of democracy in countering terrorism, and on terrorists' use of the Internet.<sup>311</sup>

## Scope of Terrorism Offences and the Criminalization of Terrorist Acts

According to the questionnaire, Algeria indicated that its domestic law dealing with terrorist offences includes criminal acts within the scope of and as defined in the treaties listed in the annex to the International Convention on the Suppression of the financing of Terrorism.

On June 19, 2016 the president promulgated a new law completing Ordinance No. 66-155 of 6 June 1966 establishing the Code of criminal procedure (Act No. 16-02 of 19 June 2016, amending the Criminal Code) and expanding criminal liability in the areas of foreign terrorist fighters, those who support or finance foreign terrorist fighters, the use of information technology in terrorist recruiting and support; and internet service providers who fail to comply with legal obligations to store information for a certain period or to prevent access to criminal material. The legislation was intended to implement UN Security Council resolutions (UNSCR) 2178 (2014) and 2199 (2015) and other UNSCRs aiming to counter the financing of terrorism namely resolutions 1267 (1999), 1989 (2011) and 2253 (2015) and other UNSC Resolutions aiming to counter the financing of terrorism namely resolutions 1267(1999), 1989 (2011) and 2253 (2015) pertaining to IS, al-Qaeda's network and the persons, groups companies and various bodies that are linked to the above groups. The above-mentioned new law (Act No. 16-02 of 19 June 2016, amending the Criminal Code) also criminalizes someone's trip abroad in order to commit, organize, prepare or participate in terrorist acts as well as to provide or receive training in order to commit them.

The above-mentioned act (16-02) was promulgated in application of the UNSC resolutions on foreign terrorist fighters. As for the resolutions on terrorist financing, freezing, and the sanctions regime against Daesh and Al Qaeda, they are covered by the Act No. 05-01 amended and completed, on the prevention and the fight against money laundering and terrorist financing and by the executive decree No. 15-113 of 12/05/2015 on freezing and/or seizing of assets in the prevention and fight against terrorist financing.

Algeria's Penal Code defines terrorism broadly. Section 4 bis of the Penal Code deals with crimes qualified as terrorist or subversive (according to ordinance No. 95-11 of 25 February 1995). Article 87 bis considers as a terrorist or subversive act, any act which targets the security of the State, the integrity of its territory, the stability and the normal functioning of the institutions by any action which has the aim of:

- Spreading panic amongst the population and creating a climate of insecurity by causing moral or physical harm to persons or putting their lives, liberty or security in danger; or causing harm to their property;
- Hindering traffic or the liberty of movement on the roads and occupying public spaces with gatherings;
- Violating the symbols of the nation and the Republic and insulting its burial places
- Causing harm to means of communication and transportation at public and private property by taking possession of them or by unduly occupying them;
- Causing harm to the environment or introducing into the atmosphere, on the ground, under the ground or into the waters which include the territorial sea, a substance which would endanger the health of persons, animals or the natural environment;

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311. Bureau of Counterterrorism, Country Reports on Terrorism 2016, (United States Department of State Publications, 2017), <https://www.state.gov/documents/organization/272488.pdf>, (hereinafter Country Reports 2015), 176.

- Obstructing the action of the public authorities or the free exercise of worship and the public liberties as well as the operation of the institutions contributing to public service;
- Obstructing the operation of public institutions or causing harm to the life or property of their agents, or obstructing the enforcement of laws and regulations.

For the acts referred to in said article, the punishments are

- The death penalty, when life imprisonment is provided for in the law;
- Life imprisonment when imprisonment between 10 to 20 years is provided for in the law;
- Imprisonment of 10 to 20 years, when imprisonment between 5 to 10 years is provided for in the law;
- Double the punishment for any other punishments not enumerated above.<sup>312</sup>

For all acts which are not related to any of the categories provided in Article 87 bis above, the punishment is double the one provided by the penal code or other relevant texts not incorporated in it, when the facts are related to terrorism or subversion.

Article 87 bis 3 then continues that whoever creates, funds, organizes or leads any association, body, group or organization which has as its aim or its activities fall under the provisions of Article 87 bis, shall be punished by life imprisonment. Any association or participation, in any form, in such associations, bodies, groups or organizations, with knowledge of their aims or activities, is punishable by imprisonment between 10 to 20 years.

According to Article 87 bis 4, whoever gives apologies for, encourages or finances, by any means, the above-mentioned acts is subject to punishment of imprisonment between 5 to 10 years and a fine of between 100.000 DA – 500.000 DA.

Article 87 bis 5 then states that whoever knowingly reproduces or circulates documents, printed materials or recordings which gives apologies for said acts is subject to imprisonment between 5 to 10 years and a fine of between 100.000 DA – 500.000 DA.

According to Article 87 bis 10 anyone who preaches or tries to preach in a mosque or other public space designated for prayer; without being nominated, agreed upon and authorized for this purpose by the relevant public authority, is subject to imprisonment between 1 to 3 years and a fine of between 10.000 DA – 100.000 DA.

Imprisonment of 3 to 5 years applies and a fine of between 50.000 DA – 200.000 DA for anyone who preaches or by any other action undertakes an activity contrary to the noble mission of the mosque or an activity of a nature that is harmful to the cohesion of the society or to make apologies and propaganda for the above mentioned acts.

## Foreign Terrorist Fighters

A relatively very low number of foreign fighters has originated from Algeria. In this regard, the Algerian Interior Ministry representative Mohamed Talbi has credited Algeria's success in this regard to smooth information-sharing between national counterterrorism parties, as well as government-led efforts to thwart

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312. Art. 87 bis I.

terrorism recruitment online and in mosques.<sup>313</sup>

Algeria's border security has been a top priority in guarding against infiltration and terrorists from neighbouring countries. It has been increasing border security, installing new observer posts, reinforcing protection of energy installations, using new aerial-based surveillance technologies, upgrading communication systems, deploying additional troops and strengthening coordination with neighbouring countries with joint checkpoints and patrols, information sharing and training and equipment programs.<sup>314</sup>

The government closely monitors passenger manifests for inbound and outbound flights and scrutinizes travel documents of visitors, employs biometric screening systems and computerized fingerprint identification to identify suspect travellers and uses Interpol channels, alerts, and fusion notices to stay informed on suspicious travellers at land, air, and maritime borders.<sup>315</sup>

The Algerian government reported it had established a regularly updated database regarding foreign terrorist fighters, which is deployed at all border posts and Algerian diplomatic missions overseas.<sup>316</sup>

The Algerian penal code has been reviewed to ensure the compliance with UNSCR 2178, by law 16/02 of 19 June 2016, which added Articles 87 bis 11, 87 bis 12, and 394 bis 8.

Article 87 bis 11 reads:

'Is punished by imprisonment from five to ten years and a fine of 100.000 DA to 500.000 DA, any Algerian or foreign national residing in Algeria legally or illegally, who goes or attempts to go to another State for the purpose of committing, organizing or preparing or participating in terrorist acts or for providing or receiving training for the purpose of committing such acts.

Is punished by the same, whoever:

- Provides or deliberately collects funds, by any means, directly or indirectly, for the purpose of using them or which he knows will be used to finance travel of persons which are going to another State for the purpose of committing the acts provided for in paragraph 1 of this article
- Finances or organizes deliberately travel for persons who are going to another State for the purpose of committing, organising or preparing, or participating in terrorist acts or for providing or receiving training for the purpose of committing such acts or for facilitating the travel.
- Uses information and communication technologies to carry out the acts provided for in this Article.'

Article 87 bis 12 reads:

'Is punishable by imprisonment of five to ten years and a fine of 100,000 AD to 500,000 AD, whoever, using information and communication technology, recruits persons on behalf of a terrorist, an association, body, group or organization whose purpose or activities fall under the provisions of this section, or takes charge of its organization or supports its acts or activities or disseminates its ideas in a direct or indirect manner.'

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313. Counter-Extremism Project: Algeria: Extremism and Counter-Extremism Report, available at: <https://www.counterextremism.com/countries/algeria>.

314. <https://www.state.gov/documents/organization/239631.pdf>, 160.

315. Country Reports on Terrorism 2016, *supra* note 359, 173.

316. *Ibid.*

Article 87 bis 6 of the Algerian Penal Code states that any Algerian who activates or gets enrolled abroad in a subversive or terrorist association, group or organization, whatever their form or denomination, even if their activities are not directed against Algeria, will be punished by imprisonment from 10-20 years and a fine of between 500.000 DA – 1.000.000 DA. If the acts defined above have as their objective the harming of Algerian interests, the punishment is life imprisonment.

Concerning the regime of the sanctions adopted against ISIL (Da'esh) and al-Qa'ida as provided by the UNSC resolutions, the executive decree No. 15-113 of 12 May 2015 on the procedure of freezing or seizure of assets in the prevention and fight against terrorist financing is also worth mentioning. It establishes the implementing rules of freezing or seizure of assets measures, as established by Act No. 05-01, as amended and consolidated, on the prevention and the fight against money laundering and terrorist financing in application of the relevant resolutions of the UNSC.

## **5.4.2. Egypt**

### **Background**

Egypt fully supports all efforts aimed at resolving the region's crises so as to maintain the unity, sovereignty and territorial integrity of the national States and to protect them from the forces of extremism and sectarian fragmentation. Egypt categorically rejects all attempts of foreign intervention in the domestic affairs of Arab and Islamic countries or attempts to fuel sectarianism, which provides a fertile ground for the proliferation of terrorism and the collapse of the national State.

### **Regional and International Cooperation**

Egypt is a member of the Global Coalition to Defeat ISIS and its Counter-ISIS Finance Group.<sup>317</sup> Egypt shares its security interests with most of its Gulf neighbours.

The new Anti-Terrorism Law makes it a crime for journalists to print different statistics from what the government has put out, to minimize one of the main objectives of terrorist activities which is the spread of panic and fear and the lowering of army and police morale.<sup>318</sup>

The new Anti-Terrorism Law furthermore promises protection from prosecution for security officers when they use necessary and proportionate force to perform their duties<sup>319</sup> and gives power to the Pub-

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317. Bureau of Counterterrorism, Country Reports on Terrorism 2015, (United States Department of State Publication, 2016), <https://www.state.gov/documents/organization/258249.pdf>, 166.

318. Art. 35 Whoever intentionally, by any means, publishes, broadcasts, displays, or promotes false news or statements on terrorist acts inside the country or anti-terrorism operations contrary to the official statements released by the Ministry of Defense shall be punishable by a fine of no less than 200,000 Egyptian pounds and no more than 500,000 Egyptian pounds, without prejudice to the disciplinary penalties prescribed. In cases where the crime is committed through a juridical person, the person in charge of the actual management of such juridical person shall be punished by the same penalty set forth in the first paragraph of this Article, provided that the crime is committed to his own account or benefit. The juridical person shall be jointly liable for the fines and compensation sentenced. In all cases, the court shall prohibit the convicted party from practicing the profession for a period not exceeding one year if the crime is a breach to the ethics of the profession.

319. Art. 8 Enforcers of the provisions of this Law shall not be held criminally accountable if they use force to perform their duties or protect themselves from imminent danger to lives or properties, when the use of this right is necessary and adequate to avert the risk.



lic Prosecutor or the relevant investigating authority to authorize a reasoned warrant for surveillance.<sup>320</sup>

## Religious Counter-Narrative

The Egyptian government has identified the need for religious reform and the President has expressly called for a 'religious revolution' addressing the main religious establishment in Egypt, Al Azhar with a plea for joint efforts in tackling the ideology which has been 'a source of concern, danger, death and destruction to the world'. The Ministry of Religious Endowments has since been closing unofficial mosques, unifying Friday sermons and cracking down on unlicensed preachers. At the Riyadh summit Sisi reiterated his commitment to renewing the religious discourse and said he was following up on this initiative with the established religious institutions in Egypt in cooperation with intellectuals and scholars in the Arab and Islamic worlds.

Al Azhar Gand Imam Sheikh Ahmed Al Tayyeb hosted a two-day conference with dozens of Egyptian and international religious scholars aiming to discredit the theological basis of ISIS and to promote co-existence between Muslim and Christians.<sup>321</sup>

The United States Department of State Country Reports on Terrorism 2016 reports:

'Egypt's Dar Al-Iftaa, an official body that issues religious edicts, has taken the lead in establishing a General Secretariat for Fatwa Authorities Worldwide to counter violent extremist religious messaging via religious channels. Dar Al-Iftaa sends scholars to engage communities considered vulnerable to violent messaging; trains new muftis; organizes international outreach and speaking tours throughout Muslim majority countries and the West; publishes books and pamphlets to challenge the alleged religious foundations of violent extremist ideology; runs rehabilitation sessions for former violent extremists; and confronts violent extremists in cyber space.

Al-Azhar University is revising its pre-university curricula by removing material that could be misinterpreted to promote violent extremism. Al-Azhar's online observatory monitors, reports on, and responds to extremist messaging and *fatwas* on the internet. The Ministry of Islamic Endowments (Awqaf) is legally responsible for issuing guidance to which all imams throughout Egypt are required to adhere, including weekly instructions on a provided theme that aims to prevent extremist language in sermons. The Ministry is also required to license all mosques in Egypt; however, many continued to operate without licenses. The government appoints and monitors the imams who lead prayers in licensed mosques and the government pays their salaries.<sup>322</sup>

The new Anti-Terrorism Law also tackles the promotion of ideas and beliefs inciting the use of violence and using telecommunication technology for the purpose of spreading such ideas:

## Article (28)

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320. Art. 46 The Public Prosecutor or the relevant investigating authority in a terrorist crime, according to the case, may authorize a reasoned warrant for a period not exceeding thirty days to monitor and record the conversations and messages received on wired, wireless, and other means of modern telecommunications, record and film what is happening and being written in private premises or across communication and information networks or websites, and seize ordinary or electronic correspondence, letters, publications, parcels, and cables of all kinds. The warrant referred to in the first paragraph of this Article may be renewed for one or more similar periods.

321. Country Reports 2015, *supra* note 366, 166.

322. *Ibid*, 183.

Whoever promotes or prepares to promote, directly or indirectly, the perpetration of any terrorist crime, whether verbally, in writing, or by any other means, shall be punished by imprisonment for no less than five years.

Indirect promotion shall include the promotion of ideas and beliefs inciting the use of violence by any of the means set forth in the preceding paragraph of this Article.

The penalty shall be imprisonment for no less than seven years if the promotion occurs inside houses of worship, among members of the armed or police forces, or in locations belonging to such forces.

Whoever possesses or acquires any public means of printing or recording used or intended for use, even if temporarily, for the purpose of printing, recording, or broadcasting the aforementioned shall be punishable by the same penalty set forth in the first paragraph of this Article.

## Article (29)

Whoever establishes or uses a communications site, website, or other media for the purpose of promoting ideas or beliefs calling for the perpetration of terrorist acts or broadcasting material intended to mislead security authorities, influence the course of justice in any terrorist crime, exchange messages, issue assignments among terrorist groups or their members, or exchange information relating to the actions or movement of terrorists or terrorist groups domestically and abroad shall be punished by imprisonment for no less than five years.

Whoever unduly or illegally accesses websites affiliated with any government agency in order to obtain, access, change, erase, destroy, or falsify the data or information contained therein in order to commit an offense referred to in the first paragraph of this Article or prepare it shall be punishable by imprisonment for no less than ten years.

## Scope of Terrorism Offences and the Criminalization of Terrorist Acts

Egypt has enshrined its commitment to fighting all types and forms of terrorism and tracking its sources of funding in Article 237 of its 2014 Constitution. The legislative framework in combating terrorism includes the Egyptian Penal Code Art. 86, Code of Criminal Procedures, Law 94/2015 on Combating Terrorism<sup>323</sup> and Law No. 8/2015 regulating designated terrorist entities lists and Terrorists<sup>324</sup>.

The development of terrorists and terrorism entities lists as well as referring the developed lists to competent courts to take due legal actions according to the relevant law is the role of the public prosecution.

Egypt ratified almost all of the international and regional conventions on combating terrorism including the International Convention for the Suppression of Terrorist Bombings (1997); the International Convention for the Suppression of the Financing of Terrorism (1999); the Arab Convention for the Suppression of Terrorism (1998); and the Organization of African Unity Convention on the Prevention and Combating of Terrorism (1999).

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323. Law No. 94/ 2015 Related to the Enactment of Anti-Terrorism Law Official Gazette - No. 33 (bis) issued 15 August 2015.

324. Official Gazette, No. 7 (bis) (z) issued 17 Feb. 2015.

Article 93 of the Egyptian Constitution of 2014 stipulates:

'The State shall abide by the international conventions, covenants and covenants on human rights ratified by Egypt and shall have the force of law after their publication in accordance with the prescribed conditions.'

Article 2 of Law 94/2015 on Combating Terrorism defines a terrorist act as:

'any use of force, violence, threat, or intimidation domestically or abroad with the purpose of disturbing public order; or endangering the safety, interests, or security of the society; or harming individuals or terrorizing them or jeopardizing their lives, or freedoms, or public or private rights, or security, or other freedoms and rights guaranteed by the Constitution and the law; or harming national unity, social peace, or national security or damaging the environment, or natural resources, or antiquities, or funds, or buildings, or public or private properties or occupying or seizing them or preventing or impeding public authorities, agencies or judicial bodies, government offices or local units, houses of worship, hospitals, institutions, educational institutes, diplomatic and consular missions, or regional and international organizations and bodies in Egypt from carrying out their work or exercising all or some of their activities, or resisting them or disabling the enforcement of any of the provisions of the Constitution, laws, or regulations.

A terrorist act shall likewise refer to any conduct committed with the intent to achieve any of the purposes set out in the first paragraph of this article, or for the preparation for it or instigation of it, if it is as such to harm communications, information systems, financial or banking systems, national economy, energy reserves, security stock of goods, food and water, or their integrity, or medical services in disasters and crises.'

The punishment for any of these acts is imprisonment for no less than ten years and if the act resulted in permanent disability with no possibility for treatment, the penalty is life imprisonment. If the act results in the death of a person, the penalty is the death sentence.<sup>325</sup>

Establishing, organizing, funding<sup>326</sup> or assuming leadership of a terrorist group is punishable by death or life imprisonment. Joining or participating in a terrorist group is punishable with aggravated imprisonment. The penalty shall be the aggravated imprisonment of not less than ten years if the offender receives military, security or technical training for the terrorist group to achieve its purposes.<sup>327</sup> Coercing another to join a terrorist group is punishable by life imprisonment and by death if the coercion results in the coerced person's death.<sup>328</sup>

Whoever commits a terrorism financing crime shall be punished by life imprisonment if the funding was for a terrorist and by death if the financing was for a terrorist group or a terrorist act.<sup>329</sup>

In cases where the offence is committed by a terrorist group, the person in charge of the actual management of this group shall be punished by the penalty prescribed in the preceding paragraph of this Article

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325. Art. 19.

326. According to Art. (3), funding terrorism shall refer to the collection, receipt, possession, supply, transfer, or provision of funds, weapons, ammunition, explosives, equipment, data, information, materials or other; directly or indirectly, and by any means, including digital or electronic format, in order to be used, in whole or in part, in the perpetration of any terrorist crime. It shall also refer to the knowledge that they will be used for such purpose or to provide safe haven for one or more terrorists or for those who fund them by any of the methods mentioned above.

327. Art. 12.

328. Art. 12.

329. Art. 13.

provided that the crime is committed on behalf of the group or to its advantage.

The terrorist group shall be punished by a fine of no less than 100,000 Egyptian pounds and no more than 3 million Egyptian pounds. It shall be jointly responsible for the payment of the financial penalties or compensation sentenced. The law also punishes attempt,<sup>330</sup> incitement<sup>331</sup> and facilitation<sup>332</sup> of terrorist acts. Attempts and incitement are punishable by the same penalty as the full offence. For incitement it does not matter whether it is directed against a specific person or group, whether it is public or private, what were the means used or whether it actually had effect.<sup>333</sup>

## Seizure and safety of aviation and maritime navigation

Article 24 of Law 94/2015 on Combating Terrorism stipulates:

'Whoever captures by force, violence, threat, or intimidation any means of air, land, sea, or river transport or fixed platforms installed permanently on the bottom of the sea for the purpose of discovering or exploiting resources or for any other economic purposes in order to achieve a terrorist purpose shall be punished by aggravated imprisonment for no less than seven years.

The penalty shall be life imprisonment if the means of transport or the fixed platform is for the armed forces or the police, if the perpetrator commits an act of violence against a person present in any of such installations, or if (s)he destroys or causes damage to the means of transport or fixed platform in a manner that results in a permanent or temporary disruption.

The penalty shall be the same provided for in the second paragraph of this article for whoever places on the means of transport or fixed platform, devices or materials that destroy or harm lives or property or whoever destroys or vandalizes transportation installations and facilities or resists by force or violence the public authorities during the performance of their duty to restore the means or the fixed platform or prevents such authorities from carrying out their duties.

The penalty shall be the death sentence if the act results in the death of a person.'

## Internationally protected persons

Article 24 of Law 94/2015 on Combating Terrorism stipulates:

'Whoever enters by force or resistance the headquarters of a diplomatic or consular mission, an international or regional body or organization, or the official offices or private residences of their members in Egypt or abroad for the purpose of committing a terrorist crime shall be punished by life imprisonment or aggravated imprisonment for no less than ten years.

Whoever resorts to the use of force to attack or simply threatens to attack any of the headquarters set forth in the first paragraph of this Article or means of transport of a person under international protection

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330. Art 5.

331. Art 6.

332. Art 7.

333. Art 6.

shall be punished by the same penalty if such an attack jeopardizes the latter's security or freedom.

The penalty shall be life imprisonment if the act was carried out with the use of weapons by one or more individual. If the act results in the death of a person, the penalty shall be the death sentence.'

## Hostage taking

Article 22 of Law 94/2015 on Combating Terrorism stipulates:

'Whoever arrests, abducts, detains, imprisons, or limits the freedom of a person in any manner shall be punished by imprisonment for no less than ten years if the purpose is to force a State body or authority to take or refrain from an action or to obtain an advantage or benefit of any kind.

The penalty shall be life imprisonment if the offender commits any of the acts set forth in Article (2) of this Law or if he makes false impersonations, unduly wears an official uniform or bears a card or insignia distinctive of a profession or function, conducts a job in accordance with the requirements of these professions, presents false documents, claiming they are issued by a State authority, if the act results in an injury, if the offender resists public authorities during the performance of their function while releasing the victim. The penalty shall be the death sentence if the act results in the death of a person.'

## Nuclear weapons

Article 15 of Law 94/2015 on Combating Terrorism stipulates:

'Whoever, in any manner, directly or indirectly, and with the intent to commit a terrorist crime domestically or abroad, prepares or trains people to manufacture or use conventional or unconventional weapons, wired, wireless, or electronic means of communication, or any other technical means or teaches them martial arts, combat, technology, skills, tricks or other methods in whatever form to be used to commit a terrorist crime or instigate to any the above shall be punished by life imprisonment or imprisonment for no less than ten years.

Whoever receives the training or education provided for in the preceding paragraph of this Article or is present in such locations in order to prepare or commit one of the offenses referred to in the first paragraph of this Article shall be punished by imprisonment for no less than seven years.'

Article 23 of Law 94/2015 on Combating Terrorism stipulates:

'Without prejudice to any other aggravated penalty, whoever makes, designs, acquires, achieves, provides, offers, or facilitates the obtainment of a conventional weapon to be used or prepared for use in the perpetration of a terrorist crime shall be punished by aggravated imprisonment for no less than ten years.

The penalty shall be life imprisonment if the weapon subject of the crime is unconventional.

The penalty shall be the death sentence if the use of the conventional or unconventional weapon or the material results in the death of a person.'

**NOTE** (that ‘unconventional weapons’ here include nuclear, chemical, biological, radiological, bacteriological or any other natural or artificial solid, liquid, gas, or vaporous materials whatever their origin or method of production, that have the ability and power to cause death or serious physical or mental injuries or cause damage to the environment, buildings, and facilities.)

Egypt has put reservations and a declaration to the Convention on the Suppression of Financing of Terrorism as follows:

- Under Article 2, paragraph (a), of the Convention, the Government of the Arab Republic of Egypt considers that, in the application of the Convention, conventions to which it is not a party are deemed not included in the annex.
- Under Article 24, paragraph 2, of the Convention, the Government of the Arab Republic of Egypt does not consider itself bound by the provisions of paragraph 1 of that article.

*Explanatory declaration:*

Without prejudice to the principles and norms of general (public) international law and the relevant United Nations resolutions, the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, paragraph 1, subparagraph (b), of the Convention.

Note that the majority of EU countries<sup>334</sup> objected to the second reservation, claiming it was contrary to the object and purpose of the Convention and that it amounted to a reservation, since it unilaterally limited its scope.

## Designating organizations and individuals as terrorist entities

By a Presidential decree in 2015 ratified by Parliament in 2016, the Terrorist Entities Law No. 8/2015 was promulgated; it established a mechanism for designating organizations or individuals as terrorist entities. The development of terrorists and terrorist entities lists as well as referring the developed lists to competent courts to take due legal actions according to the relevant law is the role of the Public Prosecution.

Article 1 of the 8/2015 law defines terrorist entities as:

‘associations, organizations, groups, gangs, cells or other groupings, whatever their legal or factual form, when they have advocated or are intended to advocate by any means within or outside the country the harming or terrorizing of individuals or endangering their lives or freedoms or rights or their security or causing damage to the environment or natural resources, or antiquities or communications, or land, air or sea transportation, or funds, or buildings, or public or private property, or occupying it, or seizing it, or preventing or obstructing public authorities, judicial institutions, governmental bodies, civic centres, places of worship, hospitals, institutions and educational institutes, other public facilities, diplomatic and consular missions, or regional and international organizations and institutions in Egypt obstructing them from carrying out part or all of their

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334. Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Portugal, Spain, Sweden, United Kingdom and Northern Ireland.

activities or endangering their operation by any means, or if its purpose was provoking by any means the disruption of public order or to endanger the safety of the society, its interests or security, or to disrupt the provisions of the Constitution or laws or preventing a State institution or a public authority from the exercise of their duties, or infringes personal liberty of the citizen or other freedoms and public rights guaranteed by the Constitution and the law, or harming national unity or social peace or national security.

This shall apply to the said entities and persons when they have exercised, targeted or intended to carry out any of these acts, even if they are not directed to the Arab Republic of Egypt.'

The law further defines a terrorist as:

'any natural person who commits or attempts to commit or instigates or threatens or plans, at home or abroad, a terrorist offense by any means, even individually, or contributes to this crime in the framework of a common criminal enterprise, or acts as a leader, director, commander or creates or establishment or joining the membership of any of the terrorist entities provided for in Article (1) of this law, or finances it, or contributes to its activity with knowledge.'

In Article 9 the law sets out the commitment for cooperation with other countries in this field:

'In the field of combating the activities of terrorist entities and terrorists, the judicial bodies and the Egyptian authorities involved in terrorism affairs shall cooperate with their foreign counterparts, through the exchange of information, assistance and transfer of proceedings, the extradition of persons and proceeds of crime, the return of funds and the transfer of sentenced persons and informing states and relevant organizations on the decisions described above, and other forms of judicial and information cooperation, in accordance with the rules established by the international conventions in force in the Arab Republic of Egypt or in accordance with the principle of reciprocity.'

## Potential Developments of the Relevant Law

There are legislative amendments currently on the table at the Legislative and Legal Affairs committee of the Parliament regarding the criminal procedures law that would expedite judicial appeals procedures to ensure swift justice in terrorism-related cases. The Egyptian government planned to convene a major conference to discuss amendments to the criminal procedures law, including initiatives to allow the Cassation Court to consider cases as soon as they are appealed and issue verdicts quickly instead of referring them for retrial in criminal courts. Several politicians have also called for Parliament to refer all terrorism cases to military courts.<sup>335</sup>

On 9 February 2016, the Department for Anti-Money Laundering and Finance of Terrorism received a report from FAFT based on the questionnaire distributed to several countries on their efforts in combating the financing of terrorism. It shows that Egypt has an effective system for the criminalization of the financing of terrorism and meets the international standards in addition to the criminalization of the conducts provided for in SC resolution 2178 and that Egypt developed an effective enforcement mechanism for the execution of the sanctions regime pursuant to SC resolutions.

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335. Country Reports 2016, *supra note* 359.

This report concludes that there is no need for further action in this regard, which is a very positive evaluation considering it was only given to 6 out of the 19 countries MENA region.

## Foreign Terrorist Fighters

In 2013, the former President Mohamed Morsi attended a rally at a Cairo stadium where he waved the flag of the Syrian opposition and announced that Egypt was cutting ties with Damascus.<sup>336</sup> Clerics at the rally were urging him to back their calls for Egyptians to travel to Syria and to perform jihad.<sup>337</sup> Although he did not directly address their calls, his appearance was seen as an implicit backing of this message. A senior presidential aide at the time further implied that citizens were free to travel to Syria to help rebels, and the State would take no action against them.<sup>338</sup> At least 600 Egyptians have gone to fight in Iraq and Syria, mostly joining ISIS and the Nusra Front<sup>339</sup> and some have since returned to Egypt.

The current authorities have passed new legislation limiting travel abroad. Egyptians between 18 and 40 years of age who are destined for Iraq, Syria, Qatar or Turkey must now receive government permission to travel. Egypt continues to improve its border security and the authorities check for the presence of known security features within travel documents, such as micro-printing, UV features, and digital schemes.<sup>340</sup> They further scan and cross-reference documents with criminal databases and maintain a terrorist watchlist with a simple listing provided to Egyptian immigration officials at the ports of entry and detailed information maintained by the security services.

The new Anti-Terrorism Law further includes provisions which deal with joining foreign militant groups, associations, bodies, or organizations, communicating with such entities, training people domestically or abroad for the commission of terrorist attacks, *et cetera*.

Article 22 of Law 94/2015 on Combating Terrorism stipulates:

'Any Egyptians who, without written permission from the relevant authority, cooperate with or enlist in the armed forces of a foreign state or any militant groups, associations, bodies, or organizations based outside Egypt, and use terrorism, military training, military arts, combat methods, tricks or skills as means to achieve their objectives in the perpetration or preparation of terrorist crimes shall be punished by imprisonment for no less than ten years, even if the actions of these entities do not target Egypt.

If the offender receives any kind of training or education referred to in the preceding paragraph of this Article, the penalty shall be life imprisonment.

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336. <https://www.yahoo.com/news/egypt-seen-nod-toward-jihadis-syria-202608813.html>

337. *Ibid.*

338. *Ibid.*

339. The Soufan Group, Foreign Fighters, 'An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq' 2015 available online at [http://soufangroup.com/wp-content/uploads/2015/12/TSG\\_ForeignFightersUpdate3.pdf](http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf).

340. Country Reports 2016, *supra* note 359.



Whoever facilitates for others to cooperate, join, or transit outside Egypt in order to join the armed forces of a foreign state or any armed groups, associations, bodies, or organizations shall be punished by the same penalty set forth in the first paragraph of this Article.'

Article 14 of Law 94/2015 on Combating Terrorism stipulates:

'Whoever seeks to communicate or communicates with a foreign country or any association, body, organization, group, gang, or other entities based inside or outside Egypt or with someone who works for the benefit of such foreign state or any of the parties cited with the aim of committing or preparing for a terrorist crime inside Egypt or against any of its citizens, interests, or properties, the headquarters and offices of diplomatic or consular missions, its institutions, the branches of its institutions abroad, or against any of the employees in any of the above bodies or persons enjoying international protection shall be punished by life imprisonment.

The penalty shall be the death sentence if the terrorist crime subject of the communication or espionage attempt is carried out or attempted.'

Article 15 of Law 94/2015 on Combating Terrorism stipulates:

'Whoever, in any manner, directly or indirectly, and with the intent to commit a terrorist crime domestically or abroad, prepares or trains people to manufacture or use conventional or unconventional weapons, wired, wireless, or electronic means of communication, or any other technical means or teaches them martial arts, combat, technology, skills, tricks or other methods in whatever form to be used to commit a terrorist crime or instigate to any the above shall be punished by life imprisonment or imprisonment for no less than ten years.

Whoever receives the training or education provided for in the preceding paragraph of this Article or is present in such locations in order to prepare or commit one of the offenses referred to in the first paragraph of this Article shall be punished by imprisonment for no less than seven years.'

### **5.4.3. Israel**

#### **Background**

The new Combatting Terrorism Law, 5776-2016 gives security services greater powers to detain and prosecute people in Israel. It further gives law enforcement authorities criminal and administrative powers to prevent the establishment, existence, and operation of terrorist organizations and the perpetration of terrorist actions conducted by terrorist organizations or by individuals.<sup>341</sup> The Law empowers regional police commanders to issue decrees to prevent activities by or in support of terrorist organizations, including organizing meetings, marches, or training.<sup>342</sup> The General Superintendent of the Israel Police (GSIP) may restrict the use of a place suspected of being used for activities of a terrorist organization after giving its owner the right to be heard by the GSIP. The decree may apply for three months, extendable for a total of an additional three months.<sup>343</sup>

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341. (§ 1).

342. (§ 69).

343. (§ 70).

Israel has developed powerful forces, efficient intelligence, cutting edge technologies, and various other security measures and its counterterrorism system is highly efficient preventing approximately 85% of suicide bombings and a large number of direct attacks.<sup>344</sup> The counterterrorism strategy of Israel consists of the following features:

1. Intelligence gathering and analysis;
2. Military and paramilitary actions to interject terrorist society and Infrastructure;
3. Commercial aviation security;
4. Defence against chemical and biological attacks;
5. Efforts to reinforce the psychological fortitude of the civilian Population.<sup>345</sup>

The system mainly focuses on pre-emptive strikes, gathering information, destroying terrorist infrastructure and preventing terrorists from entering Israel.<sup>346</sup> One of its more controversial counterterrorism policies has been covert or overt assassinations of the leaders of terrorist groups.

Israel's airport security methods have proven to be very successful.<sup>347</sup> Apart from an array of equipment and technology used, the approach is mainly focused on the 'human factor': all vehicles pass through a preliminary security checkpoint where armed guards search the vehicle and exchange a few words with the passengers, later trained security agents question each passenger before check in whereas armed security personnel constantly patrol the terminal to keep a close eye on people entering the terminal.<sup>348</sup> Second-tier measures include luggage conciliation (matching bags to passengers who board an aircraft) and the processing of baggage and cargo through explosives-detection devices such as InVision scanners and chemical sniffers. Screened luggage that appears suspicious is diverted to an on-site laboratory at Ben Gurion airport for detailed chemical sampling and analysis. In addition, a compression chamber is used to check bags for bombs that have air-pressure fuzes.<sup>349</sup> As a third line of defence, El Al, the flag carrier of Israel, employs on-aircraft protective measures, including at least one armed sky marshal per flight, reinforced and bulletproof cockpit doors, and explosion-resistant cargo holds.<sup>350</sup> The Israeli government has been considering legislation which would make it obligatory for companies, such as Google and Facebook to prevent the proliferation of online content inciting to terrorism.

## Scope of Terrorism Offences and Criminalization of Terrorist Acts

According to a 2016 report by the United States Department of State 'Israel has a robust legal framework to counter terrorism and promote international legal assistance in the investigation and prosecution of terrorists. The Israeli Knesset passed new counterterrorism legislation in 2016 that broadened the range of activities subject to enhanced criminal sentencing. These activities include tunnel-digging, stone throwing, incitement, and planning intended to assist terrorist organizations and individuals. The Combatting Terror-

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344. Jonathan B. Tucker, "Strategies for Countering Terrorism – Lessons from the Israeli Experience", Coin Central, (4 June 2008), <https://coincentral.wordpress.com/2008/06/04/strategies-for-countering-terrorism-lessons-from-the-israeli-experience/>; "Wave of terror 2015/16", Israel Ministry of Foreign Affairs, <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx>

345. *Ibid.*

346. Adarsh Aravind, 'A Critical Analysis of Israel's Counter-terrorism Strategy', *Foreign Policy News*, (8 Aug 2016), <http://foreignpolicynews.org/2016/08/08/a-critical-analysis-of-israels-counter-terrorism-strategy/>.

347. Daniel Wagner, 'What Israeli Airport Security Can Teach the World', *The Huffington Post*, (17 March 2014), [http://www.huffingtonpost.com/entry/what-israeli-airport-secu\\_b\\_4978149.html?section=india](http://www.huffingtonpost.com/entry/what-israeli-airport-secu_b_4978149.html?section=india)

348. *Ibid.*

349. Tucker, *supra* note 393.

350. *Ibid.*

ism Law was designed to empower law enforcement authorities to preempt the establishment of terrorist cells and attack planning. The new provisions contained in the law codified numerous military and emergency orders issued under general emergency powers in place since the founding of the State of Israel. They include: the Anti-Terrorism Ordinance of 1948, the Anti-Terrorist finance Law of 2005, and various regulations issued under pre-statehood emergency defense authorities of 1945.<sup>351</sup>

On June 15, 2016, the Knesset passed the Combatting Terrorism Law, 5776-2016.<sup>352</sup> The new provisions introduced by the Law replace a number of counterterrorism laws and regulations, including the Prevention of Terrorism Ordinance, 5708-1948, the Prevention of Funding of Terrorism Law, 5765-2005, and various regulations under the Defence (Emergency) Regulations, 1945. The Law defines a “terrorist action” as an action that:

1. Is driven by a political, religious, or ideological motive;
2. Is carried out with the goal of instilling in the public fear or anxiety, or of forcing the Israeli government or another governmental agency, including an agency of a foreign country, or an international organization to do or refrain from doing an act; or
3. Involves an actual act or a real threat to inflict severe harm on one of the following:
  - a. A person's body or liberty;
  - b. Public security or health;
  - c. Property, where the circumstances involved entail an intention or a real possibility to inflict severe harm on individuals or public safety and liberty;
  - d. Religious sites, burial places, and religious paraphernalia; or
  - e. Infrastructure, public systems or essential services, or the State economy or environment.<sup>353</sup>

Among the terrorist offenses defined by the Law are:

1. Leading and directing a terrorist organization, punishable on conviction by 25 years of imprisonment or life imprisonment if the organization's activity includes murder;<sup>354</sup>
2. Being a member of or recruiting members for a terrorist organization, punishable by five to seven years' imprisonment;<sup>355</sup>
3. Expressing support for or inciting to conduct terrorist acts, punishable by three years' imprisonment;<sup>356</sup>
4. Knowingly refraining from preventing a terrorist act, punishable by imprisonment for three years;<sup>357</sup>
5. Threatening to commit a terrorist act, punishable by seven years' imprisonment;<sup>358</sup>
6. Preparing for commission of a terrorist offense, punishable by half of the penalty for committing the

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351. Country Reports 2016, *supra* note 359, 188-189.

352. SEFER HAHUKIM [BOOK OF LAWS, the official gazette] 5776 No. 2556, 898, available at the Knesset website in Hebrew: [http://fs.knesset.gov.il/20/law/20\\_lsr\\_343902.pdf](http://fs.knesset.gov.il/20/law/20_lsr_343902.pdf).

353. (§ 2).

354. (§ 20).

355. (§ 22).

356. (§ 24).

357. (§ 26).

358. (§ 27).

- given offense, and if the terrorist offense is punishable by a life sentence, 15 years' imprisonment;<sup>359</sup>
7. Providing training in and committing offenses involving the use or possession of weapons, punishable by nine years' imprisonment;<sup>360</sup>
  8. Engaging in an activity involving a weapon with the objective of promoting the activities of a terrorist organization or the perpetration of a terrorist act, punishable by imprisonment for 20 or 25 years if the weapon involved is a chemical, biological, or other harmful weapon, or a fine;<sup>361</sup> and
  9. Using or transferring property to assist, promote, or fund the perpetration of a terrorist offense or providing compensation to a person who either committed or planned on committing a serious terrorist offense, punishable by seven years' imprisonment or fine.<sup>362</sup>

Terrorist offenses are subject to harsher penalties than the offenses for similar acts that do not involve terrorist motives.<sup>363</sup> Perpetrators of acts of mass terrorism are punishable by a life sentence. Moreover, the terms of persons sentenced to life imprisonment for committing terrorist offenses cannot be commuted during the first 15 years following the conviction or the incarceration. The Law requires that the period of a commuted sentence under such circumstances not be less than 40 years' imprisonment.<sup>364</sup>

Israel regularly updates the list of foreign terrorist organizations and individuals involved in terrorism, to implement the UNSC ISIL (Da'esh) and al-Qa'ida sanctions regime. Israel also has a domestic sanctions regime in place with the Anti-Terrorist Finance Law of 2005, which allows the Israeli Security Cabinet to declare a foreign organization to be classified as a foreign terrorist organization in coordination with findings presented by a foreign country or by the UNSC.<sup>365</sup>

The Minister of Defence declares that an association is a "terrorist organization" upon being convinced that the association, in a systematic and continuous plan, is:

1. Perpetrating or intentionally promoting the perpetration of terrorist acts, including by conducting training or providing guidance for executing terrorist acts, or by performing an act or engaging in a transaction involving a weapon with the goal of perpetrating terrorist acts; or
2. Directly or indirectly assisting or acting with the goal of advancing the activities of such an association.<sup>366</sup>

A declaration that an association is a "terrorist organization" must be based on a detailed written request issued by the Head of the General Security Service (HGSS), or by heads of other security services via the HGSS, with the approval of the Attorney General. Unless it could hamper law enforcement authorities' ability to act against such an association, the HGSS may only make the request upon finding that the association continued its activities in spite of a prior warning issued against it.<sup>367</sup>

The Law further authorizes the Prime Minister, in special circumstances, to determine that the declaration

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359. (§ 28).

360. (§ 29).

361. (§ 30).

362. (§ 32).

363. (§§ 37-38).

364. (§ 40).

365. Country Reports 2016, *supra note* 359, 190.

366. (§§ 2 & 3(a)).

367. (§ 3(b-c)).

decision will be made by a ministerial committee or the government.<sup>368</sup> The Law authorizes the Minister of Defence, after filing a request to declare an association to be a terrorist organization, to issue a temporary declaration to this effect until a final decision on the request is made.<sup>369</sup> An association against which a request for a declaration was issued has the right to be heard and to argue against approval of the request.<sup>370</sup>

The Law authorizes the Ministerial Committee for National Security to declare that a foreign association is a terrorist organization if that association has been subject to a similar declaration by a foreign authority in accordance with powers granted to that authority under the relevant foreign law.<sup>371</sup> The Law provides procedures for periodic reviews of declarations as well as for appeals of declaration decisions.<sup>372</sup> The Law makes it possible for 'passive members' of groups classified as terrorist organizations to be indicted.<sup>373</sup> Being convicted of membership in an outlawed group is punishable by five years in jail, while leaders will get 25 years in jail, or a life sentence if their group has committed a deadly attack.<sup>374</sup> A large number of Palestinian groups, including Hamas and Islamic Jihad, are classified as terrorist organizations in Israel, as is the leftist Popular Front for the Liberation of Palestine (PFLP) and, most controversially, the Palestinian Liberation Organization (PLO).<sup>375</sup> In addition to imposing other penalties, a court that convicts a person of a certain terrorism offense may also order confiscation of property held by the terrorist organization in connection with which the person was convicted.<sup>376</sup> Under certain circumstances provided by the Law, the Minister of Defence may similarly order confiscation of property involved in or connected to the operations of a terrorist organization without seeking judicial approval.<sup>377</sup> The Combatting Terrorism Law makes it an offense to demonstrate solidarity with a terrorist organization or with an act of terrorism as well as any incitement to terrorism, including via the internet and social media.<sup>378</sup>

## Foreign Terrorist Fighters

Under the Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, as amended, '[a]nyone who knowingly and unlawfully leaves Israel to [go to] Lebanon, Syria, Egypt, Jordan, Saudi Arabia, Iraq, Yemen, or any other part of the Land of Israel [referring to the Biblical territory] that is outside of [the territory of] Israel, is subject to imprisonment of four years or a fine...'<sup>379</sup>

In addition, the citizenship of any Israeli who has been found to have committed an act of disloyalty to the State of Israel may be voided based on a decision of an administrative court pursuant to a request by the Minister of Interior. Such a decision may be made due to a determination that the person perpetrated, assisted, or solicited an act of terrorism. Israeli citizenship under these circumstances may be voided as long as the person will not become stateless. The Law presumes that a person who lives permanently outside of Israel will not become stateless. If it is proven that the person would be stateless if found to have met

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368. (§ 3(d)).

369. (§ 4).

370. (§ 5).

371. (§ 11).

372. (§§ 12-13).

373. Middle East Eye, *supra* note 342.

374. *Ibid.*

375. *Ibid.*

376. (§§ 53-55).

377. (§§ 56-68).

378. Country Reports, *supra* note 366, 190.

379. Prevention of Infiltration (Offences and Jurisdiction) Law, 5714-1954, § 2A, 8 LAWS OF THE STATE OF ISRAEL [LSI] 133 (5714-1953/54).

the criteria for removal of citizenship, the person will be permitted to reside in Israel subject to conditions as determined by the court.<sup>380</sup> 'The Israeli Ministry of Interior maintained a voluntary biometric passport control system at Tel Aviv's Ben Gurion International Airport, which was available for Israeli passport holders over the age of 18 years, facilitating both entry into and exit from Israel via an automatic kiosk for Israeli citizens who successfully passed a background check and provided a scan of their hand.'<sup>381</sup>

## **5.4.4. Jordan**

### **Background**

According to experts, Jordan's Islamist groups are growing in numbers and are becoming increasingly violent. In the latter half of 2014, Jordan arrested 200 to 300 Islamist militants. Between August and September 2014, Jordan arrested 80 alleged ISIS supporters in the country. Security officials arrested six alleged supporters in a September 9, 2014, raid in Amman.<sup>382</sup>

The General Intelligence Directorate is the primary government agency responsible for counterterrorism. The Government of Jordan is implementing measures to improve interagency coordination among security agencies during responses to terrorism-related events.

### **Religious Counter-Narrative**

In the 'Amman Declaration' King Abdullah called for tolerance and peace within the Islamic community and rejected 'wanton aggression and terrorism'. In 2016 he noted at the UN General Assembly that the most vital battleground is the mind underlying the importance of a 'counter-narrative of hope, tolerance, and peace.'<sup>383</sup>

Jordan's action plans have included counter-messaging and religious education, awareness-raising, and rehabilitation support for former violent extremists. Jordan worked with the UN Development Program to develop a holistic National Strategy on Preventing/Countering Violent Extremism, which is expected to establish roles and responsibilities for government entities and promote the involvement of non-governmental organizations, civil society, and the private sector in such initiatives.<sup>384</sup> In November 2014, the Ministry of Awqaf and Islamic Affairs claimed it had prevented 25 radical preachers from delivering extremist sermons.<sup>385</sup>

### **Regional and International Cooperation**

Jordan is a founding member of the Global Counterterrorism Forum, and is a member of the Arab League,

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380. Nationality Law, 5712-1952, §§ 11 & 11A, 6 LSI 50 (5712-1951/52).

381. State Reports 2016, *supra* note 359, 189.

382. Counter Extremism Project, Jordan: Extremism & Counter-Extremism, available online at <https://www.counterextremism.com/countries/jordan>.

383. Country Reports 2016, *supra* note 359, 198.

384. *Ibid.*

385. Counter Extremism Project, Jordan, *supra* note 431.

the Organization for Islamic Cooperation, the Global Initiative to Combat Nuclear Terrorism, and the Proliferation Security Initiative. Jordan continued to host and conduct training for Palestinian Authority Security Forces and Civil Defence, in addition to other police forces from around the region.

## Scope of Terrorism Offences and the Criminalization of Terrorist Acts

In 2006, the Anti-Terrorism Law was enacted and it defined a terrorist act as, 'every intentional act, committed by any means and causing death or physical harm to a person or damage to public or private properties, or to means of transport, infrastructure, international facilities or diplomatic missions and intended to disturb public order, endanger public safety and security, cause suspension of the application of the provisions of the Constitution and laws, affect the policy of the State or government or force them to carry out an act or refrain from the same, or disturb national security by means of threat, intimidation or violence.'<sup>386</sup>

Providing, collecting, or making funds available for the commission of a terrorist attack inside the Kingdom or against the Kingdom's nationals or interests abroad is further considered as a terrorist act, as is mobilizing persons to join groups or establishing, organizing or joining groups intending to commit such acts.<sup>387</sup>

In 2014 amendments to the Law removed the requirement of a connection to an act of violence, instead including in the definition acts that 'sow discord' or 'disturb public order.' Furthermore, it broadened the definition to include such acts as "disturbing [Jordan's] relations with a foreign state,' an offence already included in Jordan's penal code, now incurring harsher penalties.

The amendments came as a response to the influx of Jordanian fighters returning from Syria and a need to cope with this influx.<sup>388</sup>

The amendments added to the list of acts to be considered terrorism, including:

Acts that subject the Kingdom to danger of hostile acts, disturb its relations with a foreign State, or expose Jordanians to danger of acts of revenge against them or their money (Article 118);

- Any information system or network that facilitates terrorist acts, supports or spreads ideas of a group that undertakes an act of terrorism, or subjects Jordanians or their property to danger of hostile acts or acts of revenge;
- Possessing or handling in any way dangerous materials or weapons or working with them to use them for terrorist acts or unlawfully;
- Attacking the King or his freedom, the Queen, the crown prince, or a guardian of the throne;
- Any act committed with the intent to provoke an armed rebellion or changing the constitution in an unlawful way; and
- Forming a gang with the intent to commit thievery or infringe on people or money.

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386. Anti-Terrorism Law No. 55 of year 2006, published on page 4264 of the Official Gazette No. 4790 of November 1, 2006, Art. 2.

387. *Ibid.*, Art. 3

388. Washington Post, Worried about terror attacks at home Jordan steps up arrests of suspected Syria jihadists (25 April 2014), [http://www.washingtonpost.com/world/middle\\_east/worried-about-terror-attacks-at-home-jordan-steps-up-arrests-of-suspected-syria-jihadists/2014/04/25/6c18fa00-c96d-11e3-95f7-7ecdde72d2ea\\_story.html](http://www.washingtonpost.com/world/middle_east/worried-about-terror-attacks-at-home-jordan-steps-up-arrests-of-suspected-syria-jihadists/2014/04/25/6c18fa00-c96d-11e3-95f7-7ecdde72d2ea_story.html).

Article 118 is used by the authorities to arrest and pursue security-related prosecutions against Jordanians who return from fighting in Syria.

The terrorism amendments also toughen penalties. They require the death penalty for any act that causes a death, destroys or damages a building if someone was inside, uses poisonous or other dangerous materials, or for a life-threatening attack against the king, queen, or crown prince. The law stipulates life imprisonment for provoking an armed rebellion and an attack against the king that is not life threatening. All other acts proscribed by the law are punishable by “temporary hard labour,” between three and 20 years in prison.

Jordan’s Criminal Procedure Code grants all prosecutors in Jordan the right to detain suspects at their discretion. The 2006 Anti-Terrorism Law granted several additional powers to State Security Court prosecutors including issuing the decision to:

1. Place under surveillance the domicile, moves and means of communications of the suspect;
2. Prohibit any suspect from travelling;
3. Search the premises of the suspect and show restraint on anything related to a terrorist act as provided in the present law
4. Exercise preventive seizure of any funds suspected to be involved in terrorist activities

These decisions can be challenged before the State Security Court and if there is a rejection decision, the defendant can challenge it before the Court of Cassation.

Jordan has indicated that the definition of terrorist offences in its domestic criminal law includes all acts within the scope of the treaties listed in the Convention on the Suppression of the Financing of Terrorism’s Annex. However, like Egypt, Jordan put a declaration on the Convention, stating that it does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people’s right to self-determination as terrorist acts within the context of paragraph 1(b) of Article 2 of the Convention.

Jordan is not a party to the following treaties:

1. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.
2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988
3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988
4. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997.

Accordingly, Jordan is not bound to include, in the application of the International Convention for the Suppression of the Financing of Terrorism, the offences within the scope and as defined in such Treaties.

Crimes related to terrorism, espionage, treason, drugs, or money counterfeiting fall under the jurisdiction of the State Security Court.<sup>389</sup> The State Security Court (SSC) is the primary legal apparatus with jurisdic-

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389. State Security Court Law 2014.



tion over crimes that touch on national security, including terrorism cases. Amendments to the SSC law, adopted in 2014, attempted to limit the Court's jurisdiction to five crimes – treason, espionage, terrorism, drug-related offenses, and currency forgery, although the SSC jurisdiction was extended to a broad interpretation of these crimes. The amendments also placed civilian judges on the SSC bench, although all prosecutors remain military officers. During 2016 Jordanian authorities took legal action against numerous individuals accused of terrorism under Jordanian law. SSC verdicts related to terrorism are published almost daily in local media. Some of the more prominent cases:

- On July 13 charges were filed against 21 suspected ISIS affiliates in connection with the pre-emptive March raid on an alleged ISIS safe house in Irbid. The defendants were charged with carrying out terrorist acts, using weapons that resulted in the death of a Jordanian soldier, possessing weapons and explosives, and “propagating ISIS ideology,” a charge often used for online activity.
- On August 4, the SCC sentenced to death the perpetrator of the June 6 attack on a GID sub-facility near Baqa'a that resulted in the death of five security personnel. A second defendant was charged with selling a weapon to the shooter and sentenced to one year in prison.
- On December 20, the SSC sentenced to death the man accused of murdering Jordanian journalist Nahed Hattar on September 25. The attacker was charged with carrying out a deadly terrorist attack, incitement, premeditated murder, and possession of an illegal firearm.
- The SSC prosecuted several individuals in 2016 for “propagating ISIS ideology.” Sentences for such cases typically last two to three years.<sup>390</sup>

## Foreign Terrorist Fighters

Jordan continued to reinforce its border defences and surveillance and interdiction capabilities to deter, detect, and interdict terrorist and other illicit activity on the frontier and at ports of entry. Jordan conducts official screening of travellers, including at airports, and uses biometric systems in line with international standards. Jordan also routinely provides advanced passenger information to partner nations, and shares names with INTERPOL watchlists and databases. Jordanian authorities continued to use the U.S.-provided Personal Identification Secure Comparison and Evaluation System (PISCES) at unofficial border crossing sites along the Syrian border to complement the border screening system at official ports of entry. Jordan also participated in the US Department of State's Antiterrorism Assistance program.<sup>391</sup> FTF have nonetheless circumvented the surveillance of intelligence by deviating their trips, joining Iraq from Turkey or from other Arab countries.

Jordan has stepped up arrests of hard-line Islamists and moved to strengthen anti-terror legislation amid rising concern about homegrown militants returning from the battlefields in next-door Syria. The law also criminalizes the intent or act of joining, recruiting, funding or arming terrorist organizations inside or outside Jordan.<sup>392</sup> Jordan seems to have taken a more lenient approach to more 'moderate' jihadists under a *divide et impera* tactic.<sup>393</sup>

Another strategy of Jordanian intelligence has been to infiltrate radical groups, an approach noticeably more successful with Jabhat al-Nusra.

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390. Country Reports 2016, *supra note* 359, 196.

391. *Ibid*, 198.

392. Washington Post, *supra note* 437.

393. Jordan has dropped terrorism charges against several famous jihadists, such as Abu Qatada in 2014 and Maqdisi in 2015, both Nusra front supporters but significant critics of ISIS. This is important against the background of the Jordanian Salafist movement shifting its support from Nusra front to ISIS, Mona Alami, Jordan's Salafists switch allegiance to ISIS, *Al Monitor*, (20 April 2015), <http://www.al-monitor.com/pulse/originals/2015/04/jordan-amman-is-nusra-militants-salafi-jihadists.html#ixzz4tuR6BHzC>

Analysts estimated in early 2015 that ISIS and other jihadi groups had about 9,000 to 10,000 Jordanian supporters, including 2,000 fighters who have left for Syria primarily joining Nusra.<sup>394</sup> Authorities have arrested about 400 Jordanians trying to cross into Syria to join jihadist groups. Jordan's extremist leaders have encouraged followers to join the fighting in Syria. Abu Mohammad al-Tahawi issued a fatwa calling for jihad in Syria.<sup>395</sup> Al-Chalabi said in June 2013 that more than 500 Jordanian were fighting in Syria alongside the Nusra Front. Eighty-five percent of Jordanian fighters have reportedly switched their allegiances from the Nusra Front to ISIS as of April 2015.<sup>396</sup>

## 5.4.5. Lebanon

### Religious Counter-Narrative

A comprehensive counter-messaging strategy is being developed that amplifies moderate voices and uses television spots, social media, billboards, and SMS texts to counter violent extremist narratives.<sup>397</sup> The government is countering ISIS messaging through online communication and social media campaigns promoting tolerance online.<sup>398</sup>

### International and Regional Cooperation

Lebanon is a member of the Global Coalition to Defeat ISIS, and attended Global Counterterrorism Forum meetings. Lebanon is a member of the Organization of Islamic Cooperation and the Arab League. Lebanon continued to voice its commitment to fulfilling relevant UNSCRs, including 1559 (2004), 1680 (2006), and 1701 (2006). The Special Tribunal for Lebanon, an international body investigating the 2005 assassination of former Prime Minister Rafiq Hariri, received Lebanon's annual contribution of approximately \$32.5 million.

The Lebanese army partnered with several nations on a bilateral basis to receive training programs that focused on strengthening its counterterrorism capabilities.<sup>399</sup>

### Foreign Terrorist Fighters

Lebanon was a co-sponsor of UN Security Council resolution 2178 regarding foreign terrorist fighters. In accordance with the resolution, the Lebanese government increased security measures at airports, border crossings, and ports to prevent the flow of ISIS and al-Nusra Front fighters to Syria and Iraq; however, Lebanon lacks laws criminalizing foreign terrorist fighter activity.<sup>400</sup>

The Lebanese security forces sought to impede the flow of foreign terrorist fighters both to and from Syria by working to secure the border and by conducting counterterrorism operations. The services have increased security measures at airports, border crossings, and ports with a special emphasis on detecting counterfeit passports. The Directorate of General Security, under the Ministry of Interior, controls immigra-

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394. Counter Extremism Project, Jordan, *supra* note 431.

395. *Ibid.*

396. *Ibid.*

397. Country Reports, 2016, *supra* note 359, 205-206.

398. *Ibid.*

399. *Ibid.*

400. *Ibid.*, 203.

tion and passport services, and uses an electronic database to collect biographic data for travellers at the airport; however, it does not collect biometric data at land borders. Lebanon collects and disseminates Passenger Name Records (PNR) on commercial flights, and is preparing to begin collecting advanced passenger information in 2017. The Lebanese security services disrupted multiple terrorist networks and made several high-profile arrests in 2016.

The army, the Internal Security Forces (ISF), and the Directorate of General Security were also actively engaged in monitoring potential ISIS and other extremist elements in Lebanon, disrupting their activities and networks, and arresting those suspected of plotting terrorist attacks. The ISF has worked to prevent violent extremist recruitment and the direction of terrorist activities by prison inmates and has built a new facility at Lebanon's main prison to house high-threat prisoners.

## Scope of Terrorism Offences and the Criminalization of Terrorist Acts

Lebanon does not have a comprehensive counterterrorism law, but several articles of Lebanon's Criminal Code are used to prosecute acts of terrorism. Article 314 of the Lebanese Criminal Code, (Legislative Decree No 340 of 1 March 1943), states that: "Terrorist acts are all acts intended to cause a state of terror and committed by means liable to create a public danger such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents."<sup>401</sup>

In addition, the Law of 11 January 1958 provides as follows:

Article 6: 'Any act of terrorism shall be punishable by hard labour for life. Where the act results in the death of one or more individuals, the total or partial destruction of a building having one or more individuals inside it, the total or partial destruction of a public building, an industrial plant, a ship or other facilities, or disrupts the functioning of telecommunication or transport services, it shall be punishable by death.'

Article 7: 'Every person who enters into a conspiracy with a view to the commission of any of the offences contemplated in the preceding articles shall be liable to the death penalty'

It is clear from these provisions that the elements of terrorism under Lebanese law are as follows:

1. An act, whether constituting an offence under other provisions of the Criminal Code or not, which is
2. Intended "to cause a state of terror"; and
3. The use of a means "liable to create a public danger (*un danger commun*)"

Article 315 of the Lebanese Criminal Code, criminalizing conspiracy to commit terrorist acts, was superseded by the Law of 11 January 1958, which provides a supplementary criminalization of conspiracy, and in addition increases the penalties applicable to terrorist crimes. Article 316 of the Lebanese Criminal Code criminalizes organizations (and their founders and members) set up with a view to changing the economic, social or other fundamental institutions of society, through the perpetration of terrorist acts pursuant to Article 314.

'While the Lebanese law does include a non-exhaustive list of the means by which the crime of terrorism can be committed, it requires the means used to be of a nature that by itself creates public danger. This has

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401. Penal Code (Lebanon), Legislative Decree No 340 of 1 March 1943.

created considerable confusion among parts of the legal community. The English translation may have caused such confusion as to whether the ‘creating public danger’ is referred to the crime or to the ‘means’ used. The proper interpretation is that the Lebanese crime of terrorism requires commission by means that by their nature create public danger.<sup>402</sup>

‘The Arabic provision is clearer, and it confirms that the commission of the crime of terrorism takes place only by means which by themselves cause public danger. It is one of the requirements of the material element of the crime. The statutory provision is clear and the domestic jurisprudence is consistent. The probable confusion may have originated from the non-exhaustive list of the means within Article 314. The non-exhaustive list includes means such as ‘explosive devices, inflammable materials, poisonous or incendiary products or infectious or microbial agents ...’. This list can include other means as long as they are by themselves of the nature to create public danger.’<sup>403</sup>

The definition excludes attacks that are conducted by weapons that are not likely ‘to create a public danger’. For instance, the use of rifles, pistols, revolvers, guns or knives does not fall under the realm of Article 314. The Lebanese Council of Justice has been relatively consistent in excluding crimes perpetrated by guns or revolvers from the ambit of the crime of terrorism. This is a restrictive element in the Lebanese definition of terrorism.<sup>404</sup>

Under Lebanese law the objective elements of terrorism are as follows:

1. An act whether constituting an offence under other provisions of the Criminal Code or not; and
2. The use of a means “liable to create a public danger”.

These means are indicated in an illustrative enumeration: explosive devices, inflammable materials, poisonous or incendiary products, or infectious or microbial agents. According to Lebanese case law, these means do not include such non-enumerated implements as a gun, a machine-gun, a revolver, a letter bomb or a knife. The subjective element of terrorism is the special intent to cause a state of terror.<sup>405</sup>

Some Lebanese courts have propounded a strict interpretation of Article 314. According to the Lebanese Military Court of Cassation in *Case no. 125/1964*, decision of 17 September 1964, it is not the conduct, but the *means or instrument or device used* that must be such as to create a public danger. If the means used is apt to create a public danger, then the act can be defined as terrorism. Thus, for instance, in the *Karami case*<sup>406</sup> the Court of Justice held that the use of explosive devices in a flying helicopter created a public danger and was therefore to be considered as a terrorist act.

Lebanese courts appear to have further concluded that the definition of (terrorist) “means” is limited to those means which *as such* are likely to create a public danger, namely a danger to the general population.

402. Nidal Nabil Jurdi, ‘The Crime of Terrorism in Lebanese and International Law’ in Amal Alamuddin *et al.* (eds.) *The Special Tribunal for Lebanon* (Oxford: OUP, 2014), 76.

403. *Ibid.*

404. *Ibid.*

405. Special tribunal for Lebanon, Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Case No. STL-11-01//AC/R176bis.

406. Court of Justice, *Rachid Karami case*, decision no 2/1999, 25 June 1999, available on the STL website. (Although the English translation of the Lebanese Criminal Code on the STL’s website refers to the Court of Justice as the “Judicial Council”, for consistency with the French (“*Cour de Justice*”) and Arabic (“*Al-majless al-adli*”).

It would follow that the definition does not embrace any non-enumerated means referred to in Article 314 (“means such as ...”) unless these means are similar to those enumerated in their effect of creating a public danger *per se*. The means or implements which under this approach are not envisaged in Article 314 include a gun, a semi-automatic or automatic machine gun, a revolver, or a knife and perhaps even a letter-bomb. This construction was applied by the Court of Justice in the *Assassination of Sheikh Nizar Al-Halabi*, in which an act that would be considered terrorism under most national legislation and international treaties was instead categorized as simple murder. In this case, Sheikh Nizar al-Halabi was killed (on 31 August 1995) by means of Kalashnikov assault rifles by masked men in broad daylight and in a crowded street, as he was leaving his home to go to his office in Beirut. The Sheikh was murdered because he was the leader of the Al-Ahbash movement, regarded by the killers, who belonged to another Islamic movement (Wahabi), as deviating from the precepts of Islam and perverting the verses of the Quran. Nevertheless, according to the Court the murder in question did *not* amount to a terrorist act because the materials or devices used were not those required by Article 314. The Court stated: ‘Article 314 of the Criminal Code defines terrorist acts as all acts aimed at creating a state of panic and committed by such means as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents that are liable to cause a public threat.

While it is true that the actions of the defendants Hamid, Aboud, Al-Kasm, Nabah and Abd al-Mo’ti pertaining to the homicide of Sheikh Nizar al-Halabi were liable to cause a state of panic in view of the Sheikh’s religious and social standing and the fact that the offence was committed in broad daylight in a street full of residents, shopkeepers and pedestrians, the offence was not committed by any of the means listed in Article 314. [Hence] the said defendants must be acquitted of the offence defined in Article 6 of the Act of 11 January 1958 [namely terrorist acts] inasmuch as its elements have not been fulfilled.

In the *Homicide of Engineer Dany Chamoun and others* case, the same Court also held that the murder of Mr Chamoun, his wife and his two sons was not a terrorist act, but “simply” murder, because of the means used:

‘While it may be true that the crime that is being prosecuted was intended and succeeded in creating panic, it was *not perpetrated by any of the means referred to in the Article 314 of the Criminal Code, and the means used* (handguns and submachine guns), the place in which they were used, a private and closed apartment, and the persons targeted *were not designed to bring about a public emergency.*’

However, these kinds of interpretations are no longer in practice and the courts have since adopted a more flexible approach in defining the means possible for the perpetration of terrorist offences.

## 5.4.6. Morocco

### Background

Morocco plays an active part in the fight against terrorism, under the scope of international cooperation, particularly in respect of the United Nations and Regional Organizations.

Morocco has ratified multiple international legal instruments relating to the fight against terrorism.

On a regional level, Morocco has also ratified conventions on the fight against terrorism adopted by:

- The League of Arab States,
- The Organization of Islamic Cooperation,
- The OAU (Convention on the prevention and fight against terrorism).

The strategy adopted by the Moroccan State and all its official institutions following the events experienced in Casablanca in 2003 is specifically aimed at the prevention of terrorist attacks. Such prevention can be achieved by laying down suitable criminal legislation, which guarantees the possibility of intervention and the avoidance of terrorist attacks. The Moroccan anti-terrorist law has thus envisaged a series of measures and principles concerning the procedural rules and basic rules regulating the investigation and prosecution of this type of crimes.

If an individual is placed into custody, the public prosecutor has to be notified along with details of the complete identity of the person concerned by the measure and a summary of the charges brought. The public prosecutor can put an end to this custody at any time.

The person placed in custody has the right to demand from the legal police officer that (s)he be visited by a lawyer. The lawyer also has the right to ensure that the public prosecutor visits his or her client before expiry of the initial duration of custody. The public prosecutor must answer immediately.

The legal police officer must present the allegations to the public prosecutor so as to take suitable legal measures in this regard; either requesting an investigation before the competent magistrate to rule on terrorism or submitting the matter to the court directly (Article 73 of the Code of Criminal Procedure) or withdrawing proceedings in his or her regard, if such should be justified.

As of 2011, investigators have more powers according to the amendments to the Criminal Procedure Code<sup>407</sup> when the crime being investigated is classified as a terrorist crime:

- Investigators are authorized to seize any type of documents that may prove the commission of a crime by searching the residence of those who have possession of such documents. (Article 59)
- Searches of residences are not restricted to certain times (Article 62)
- Investigators can detain anyone who could be helpful for the investigation for a period not exceeding 96 hours, renewable for the same period twice (Article 66)
- Searches of residences for the purpose of seizing evidence do not require the approval of the owner of the residence but can be conducted following a written order of the general prosecutor (Article 79)
- Not merely the investigative judge, but also the public prosecutor can order the interception of telephonic and other means of communication by him/herself, although this is possible only in exceptional circumstances. Generally speaking, the public prosecutor must obtain an order in written from the first president of the Court of Appeals for the interception of telephonic or long-distance means of communication, to register them and to either copy them or seize them, when the offence at stake undermines State security, when this is a terrorist offence or when it relates to a criminal association, homicide, poisoning, abduction, taking of hostages, counterfeit, falsification of money or of the result of public credit, drugs, psychotropic substances, weapons, ammunitions and explosives, or the protection of health. However, the public prosecutor may, under exceptional circumstances, in case of extreme emergency, if the interests of the investigation require swiftness in order to gath-

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407. Criminal Procedure Code, Dahir n° 1-58-261 of 1959, as amended on Oct. 27, 2011.

er evidence, order in written form the interception of telephonic or long-distance means of communication, to register them and to either copy them or seize them, when the offence at stake undermines State security, when this is a terrorist offence or when it relates to drugs, psychotropic substances, weapons, ammunitions and explosives, abduction or the taking of hostages. The public prosecutor is required to inform the first president immediately of such an order (Art. 108).

The US Department of State has characterized Morocco's counterterrorism strategy as 'comprehensive' including 'vigilant security measures, regional and international cooperation, and counter-radicalization policies' and pursuing various programs aimed at improving the performance of its security forces in combating terrorism.<sup>408</sup>

## Religious Counter-Narrative and Development

Morocco has stated to the United Nations Counter-Terrorism Committee that it has accelerated the in-depth educational, religious, and cultural reforms as part of its counterterrorism strategy and that major reforms had been carried out with respect to religious activity in an effort to protect Morocco from extremism and terrorism.<sup>409</sup>

The government seeks to reinforce the influence of the Maliki School, which does not support violent extremist ideologies, by upgrading places of worship, closing unregulated mosques, rehabilitating those who have been convicted of a terror-related crime, promoting Moroccan religious values on television and radio and modernizing the teaching of Islam.<sup>410</sup> A curriculum has been developed for imams for countering violent extremism; the Moroccan Council of Ulama for Europe and the Minister Delegate for Moroccans Living Abroad has been established to promote religious tolerance among Moroccans living in Europe; a new Islamic satellite channel, has been launched by the King, which directly criticizes jihadist clerics and their media and promotes tolerance.<sup>411</sup>

Furthermore, Morocco provides healthcare and job training for the poor, expands rural infrastructure and improves the overall livelihood of Moroccans while paying increasing attention to human rights issues as additional components of its efforts to combat the appeal of extremism.<sup>412</sup>

## Scope of Terrorism Offences and Criminalization of Terrorist Acts

In the wake of the terrorist attacks that took place in Casablanca on 16 May 2003, the Kingdom of Morocco introduced Law No. 03-03 on the fight against terrorism, promulgated by Dahir Chérifien No. 1-03-140 of 28 May 2003.<sup>413</sup> It lays down provisions criminalizing acts relating to crimes of terrorism with recommended penalties and rules of procedure, supplemented by the provisions of the Criminal Code and the Code of Criminal Procedure, which present the general legal framework under Moroccan criminal law. In

408. U.S. Department of State, Country Reports on Terrorism 2013: Middle East and North Africa, ch. 2 (Apr. 2014), <http://www.state.gov/j/ct/rls/crt/2013/224823.htm>

409. Supplementary Report of the Kingdom of Morocco to the Security Council Committee Established Pursuant to Resolution 1373 (2001), at 5, U.N. Doc. S/2004/826 (Oct. 13, 2004), <http://www.saudiembassy.net/files/PDF/Reports/Counterterrorism.pdf>.

410. Eric V. Thompson & Will McCants, Partners Against Terror: Opportunities and Challenges for U.S.-Moroccan Counterterrorism Cooperation 3 (2013), <http://www.cna.org/sites/default/files/research/PartnersAgainstTerrorism2.pdf>.

411. *Ibid.*

412. *Ibid.*

413. Bulletin Officiel n° 5114 du Jeudi 5 Juin 2003 Dahir n° 1-03-140 du 26 rabii I 1424 (28 mai 2003) portant promulgation de la loi n° 03-03 relative à la lutte contre le terrorisme, available at: <http://adala.justice.gov.ma/production/legislation/fr/penal/luttecontreterrorisme.htm>.

accordance with Law No. 15-53 of 20 May 2015,<sup>414</sup> the Moroccan legislator further amended and completed the provisions of the Criminal Code and Code of Criminal Procedure<sup>415</sup> on the fight against terrorism.

The following offenses constitute acts of terrorism according to Art. 218-1 of the Law no. 03-03, when they are intentionally connected with an individual or collective undertaking whose aim is to seriously infringe public order by intimidation, terror or violence:

1. Wilfully killing or harming the integrity of persons, or their freedoms, the abduction or sequestration of persons;
2. Counterfeiting or falsification of currencies or public credit notes, seals of the State and stamps, or forgery or falsification referred to in Articles 360, 361 and 362 of this Code;
3. Destructions, degradations or deteriorations;
4. Diversion, degradation of aircraft or vessels or any other means of transport, degradation of air, sea and land navigation facilities and destruction, degradation or deterioration of the means of communication;
5. Theft and extortion of property;
6. The manufacture, possession, transport, distribution or unlawful use of weapons, explosives or ammunitions;
7. Offenses relating to automated data processing systems;
8. The forgery or falsification of checks or any other means of payment referred to respectively by Articles 316 and 331 of the Code of Commerce;
9. Participation in an association formed or an agreement established for the preparation or commission of an act of terrorism;
10. Knowingly concealing proceeds from terrorism offenses.

An act of terrorism, in the sense of the first paragraph of Art. 218-1, equally constitutes the act of introducing or putting into the atmosphere, on the ground, the underground or in waters, including those of the territorial sea, a substance that endangers the health of persons or animals or the natural environment.<sup>416</sup>

The penalty for the acts of the first paragraph is from ten to twenty years imprisonment. If the acts resulted in mutilation, amputation, deprivation of the use of a limb, blindness, loss of an eye or any other permanent disability for one or more persons the punishment is life imprisonment. If the acts cause the death of one or several persons, the punishment is the death penalty.

In addition, the following acts are considered acts of terrorism:

1. The provision, collection or management by any means, directly or indirectly, of funds, valuables or property intended to be used or in the knowledge that they will be used, in full or in part, for committing an act of terrorism, irrespective of the occurrence of such an act;
2. Providing assistance or advice for this purpose.

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414. Dahir n° 1-15-53 du 1er chaabane 1436 (20 mai 2015) portant promulgation de la loi n° 86-14 modifiant et complétant certaines dispositions du Code pénal et de la procédure pénale relatives à la lutte contre le terrorisme, available at: <http://adala.justice.gov.ma/FR/DocumentViewer.aspx?id=189764.htm>.

415. Code Pénal – version consolidée en date du 15 décembre 2016, available at: <http://adala.justice.gov.ma/production/legislation/fr/Nouveautes/code%20penal.pdf>.

416. Arts. 218-3.



These offenses are punishable: for natural persons, from five to twenty years' imprisonment and a fine of between 500,000 and 2,000,000 dirhams; for legal persons, a fine of 1,000,000 to 5,000,000 dirhams, without prejudice to the penalties which may be imposed on their leaders or agents involved in the offenses. The penalty shall be increased to ten years and to thirty years' imprisonment and to double the fine:

1. Where the offenses are committed using the facilities provided for the pursuit of a professional activity;
2. Where the offenses are committed in organized groups;
3. In case of recidivism.

The person guilty of the financing of terrorism also incurs the confiscation of all or part of their property.<sup>417</sup>

The maximum penalties provided for the offenses referred to in Article 218-1 when the acts committed constitute terrorist offenses are as follows:

1. Death where the penalty is perpetual imprisonment;
2. Life imprisonment where the maximum penalty is 30 years' imprisonment;
3. The maximum of the penalties shall be doubled, without surpassing 30 years when the penalty is imprisonment
4. Where the penalty is a fine, the maximum penalty is multiplied by 100 without being less than 100,000 dirhams;
5. Where the author is a legal entity, its dissolution and the two security measures provided for in Article 62 of the Penal Code must be pronounced subject to the rights of third parties.

Law No. 15-53 of 20 May 2015<sup>418</sup> included in the list of terrorist acts<sup>419</sup> the following:

1. Joining or attempting to join individually or collectively, within an organized or unorganized framework, terrorist entities, organizations, bands or groups, whatever their form, purpose or location, even if the terrorist acts are not intended to prejudice the Kingdom of Morocco or its interests;
2. Receiving or attempting to receive teaching or training in any form, nature or duration within or outside the Kingdom of Morocco, with a view to committing an act of terrorism within or outside the Kingdom, irrespective of the occurrence of such an act;
3. Enlisting by any means whatsoever; teaching or training or attempting to enlist, teach or train one or more persons, with a view to rallying them with entities, organizations, bands or terrorist groups inside or outside the territory of the Kingdom of Morocco.

The aforementioned acts are punishable by imprisonment of five to ten years and a fine of 5,000 to 10,000 dirhams.

The penalties provided for in the preceding paragraph shall be doubled when enrolling, teaching or training a minor; or when the oversight of schools, institutes or centres of education or training, of whatever nature,

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417. Art. 218-4

418. *Dahir n° 1-15-53 du 1er chaabane 1436 (20 mai 2015) portant promulgation de la loi n° 86-14 modifiant et complétant certaines dispositions du Code pénal et de la procédure pénale relatives à la lutte contre le terrorisme.* available at: <http://adala.justice.gov.ma/FR/DocumentViewer.aspx?id=189764.htm>

419. Art. 218-1-1

has been exploited. Where the offender is a legal entity, it shall be liable to a fine of 1,000,000 to 10,000,000 dirhams as well as its dissolution and the two security measures provided for in Article 62 of the Penal Code must be pronounced subject to the rights of third parties and without prejudice to the sanctions that may be imposed on its officers or agents who have committed or attempted to commit the offense.

According to the amendments of Law No. 15-53 of 20 May 2015 persuasion, incitement and provocation are punishable by five to ten years and a fine of 5,000 to 10,000 dirhams.<sup>420</sup> The penalties shall be doubled in the case of persuasion, incitement or provocation of a minor or when supervision of schools, institutes and centres of education or training, of whatever nature, has been exploited. Where the offender is a legal entity, it shall be liable to a fine of 1,000,000 to 10,000,000 dirhams and its dissolution as well as the security measures provided for in Article 62 of the Penal Code, subject to the rights of third parties and without prejudice to any sanctions that may be imposed on its officers or agents who have committed or attempted to commit the offense.

Anyone who makes apologies for acts constituting terrorist offenses, by speech, cries or threats made in public places or assemblies or in writing, by sold printed materials, distributed or offered for sale or exhibited in public places or assemblies or by posters displayed to the public by various audio-visual and electronic means of information, shall be punished with imprisonment of 2 to 6 years and with a fine of 10,000 to 200,000 dirhams.<sup>421</sup> Anyone who, by any of the above mentioned means, does propaganda, or makes apologies for or promotes a terrorist person, entity, organization, gang or group shall receive the same punishment. Where the offender is a legal entity, it shall be liable to a fine of 1,000,000 to 10,000,000 dirhams as well as its dissolution and the two security measures provided for in Article 62 of the Penal Code must be pronounced subject to the rights of third parties and without prejudice to the sanctions that may be imposed on its officers or agents who have committed or attempted to commit the offense.

Apart from other instances of complicity envisioned in the law, knowingly providing arms, ammunitions, instruments, pecuniary contributions, means of subsistence, correspondence or transport, a place for meetings, accommodation or hiding, help in disposing the proceeds of terrorist misdeeds, or knowingly providing any other assistance, is punishable by ten to twenty years of imprisonment.

However, the court may exempt the parents or relatives up to and including the fourth degree from the perpetrator, co-perpetrator or accomplice of a terrorist act if they have only provided to the latter accommodation or means of personal subsistence.<sup>422</sup>

## **5.4.7. Palestine**

### **Background**

In the context of the prevention of and fight against terrorism, a decree law No. 20 of 2015 was issued on combating money laundering and the financing of terrorism. Furthermore, a Presidential Decree No. 14 of 2015 was also issued in accordance with this law, on the implementation of Security Council resolutions,

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420. Art. 218-5 (according to the previous provision, persuasion, incitement and provocation were punishable by the same penalty as the main offence).

421. Art. 218-2.

422. Art. 218-6.

particularly UNSCRs 1267/1999 and 1988/2011. A Committee was formed under this decree to implement immediately the UNSCRs on the fight against the financing of terrorism and the UNSCR 2178 (2014) on tackling foreign terrorist combatants, as well as the establishment of a local list on terrorist persons and organizations who meet the criteria for the freezing of funds and assets. The Committee plays a role in the immediate freezing of funds belonging to terrorist persons, organizations and entities in addition to fulfilling its duty of submitting annual reports to the President of the State of Palestine on the implementation of the provisions of this decree.

The State of Palestine has signed the Arab Convention for the Suppression of Terrorism on April 1998. It grants the State of Palestine the right to request the extradition of any terrorist for the purpose of prosecution according to its applicable laws. Palestine also joined INTERPOL in order to be able to submit extradition requests for terrorists under its jurisdiction or extradite accused persons to other countries.

## Scope of Terrorism Offences and Criminalization of Terrorist Acts

Palestinian domestic law dealing with terrorist offences includes criminal acts within the scope of and as defined in the treaties listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism. The 1960 Jordanian Criminal Code No. 16 in force in the West Bank, identifies the offence of terrorism in Article 147 and imposes strict punishment on such acts under Article 148, particularly where such an offence results in death.

Article 147 identifies terrorism as all acts aimed at creating a state of panic and committed by means such as explosive devices, inflammable substances, toxic or incendiary products, and epidemiological or microbial factors that would pose a general danger. Furthermore, paragraph (4) of Article 148 stipulates that the death penalty shall be imposed if the act leads to the death of a person or the total or partial destruction of a building where one or several persons were inside.

Moreover, the State of Palestine has joined the Rome Statute of the International Criminal Court, which prohibits the targeting of civilians in armed conflicts.

## Foreign Terrorist Fighters

As far as foreign terrorist fighters are concerned, The Committee for the Implementation of Security Council resolutions mentioned above, has the duty to implement UNSCR 2178 (2014) as well as relevant resolutions against Al-Qaida, the Taliban and others. The Presidential Decree No. 14 defines terrorism and terrorist organizations, which includes Da'esh and sets out a number of measures the Committee must take against them. These measures include travel bans and other measures to prevent the transportation, recruitment, financing and aid. The Committee sets out a local list of names of terrorist persons and organizations who meet the criteria for the freezing of funds and assets. The Palestinian Ministry of Foreign Affairs receives requests from foreign countries for the freezing of funds and assets of persons residing in the State of Palestine pursuant to the Security Council resolutions. This means that there is, indeed, a systematic approach to dealing with these issues.

## 5.4.8. Tunisia

## Background

The Tunisian government has elaborated a plan of strategic action for the prevention and combatting of violent extremism. This mission has been entrusted since April 2016 to the National Commission for Combatting Terrorism, established in accordance with Article 66 of the Organic Law No. 26.

Anyone guilty of terrorist offences provided for in the Organic Law No. 26 is put under supervision for a minimum period of three years.

## Scope of Terrorism Offences and Criminalization of Terrorist Acts

The Tunisian Organic Law No. 2015-26 of 7 August 2015 on the Fight against Terrorism and the Suppression of Money-Laundering provides the legal criminal framework for terrorist offences.<sup>423</sup>

In Article 2 the law sets out generally the terrorist acts and the punishments provided.

According to Article 13 a person is guilty of a terrorist offence, if they commit (with intent)<sup>424</sup> by any means and for the execution of an individual or collective project, any of the acts referred to in Articles 14-36 and the act is by its nature or context aimed at spreading terror amongst the population or to compel a State or an international organization to do something relevant to their prerogatives or to abstain from doing so.

The relevant acts are then enumerated as:

1. Murder;
2. Injuring or beating or committing any other acts of violence as provided for in the Articles 218-319 of the Criminal Code
3. Injuring or beating or committing any other acts of violence not covered by the above paragraph
4. Causing damage to the headquarters of a diplomatic mission or international organization
5. Causing harm to food security and the environment by compromising the balance of alimentary and environmental systems or natural resources or endangering the life of habitants and their health
6. Intentionally opening dam barriers or dumping toxic chemical or biological products into these barriers or water installations with the purpose of endangering the population
7. Causing damage to private or public property, to means of transportation or communication, to information systems or to public services
8. Accusations of apostasy or calling to apostasy, or inciting to hatred, to animosity between the races, the doctrines and religions or giving apologies for this.

The death penalty and a fine of 200.000 dinars applies for the case of murder or if any of the other acts provided for have led to the death of a person.

Life imprisonment and a fine of 150.000 dinars applies for acts under the third paragraph or if the acts

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423. *Journal Officiel de la République Tunisienne* — 7 août 2015 N° 63 available at: <http://www.legislation.tn/sites/default/files/news/tf2015261.pdf>.

424. Note that the French version of the law lacks the words 'with intent'!

provided for in the fourth, fifth, sixth, seventh and eight paragraphs caused bodily harm such as provided for in the third paragraph.

Imprisonment of 20 years and a fine of 100.000 dinars applies, if the acts under the fourth, fifth, sixth, seventh or eighth paragraph caused bodily harm such as provided for in the second paragraph.

Imprisonment of 10-20 years and a fine of 50.000 dinars applies for acts under the fourth, fifth, sixth and seventh paragraph.

Imprisonment of 5 years and a fine of 5.000-10.000 dinars applies, for acts under the second or eight paragraphs.

The law has practically adopted all the offences designated in the treaties listed in the annex of the Convention on the Suppression of Financing of Terrorism, especially the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

Art. 15 of the law for example details some of the terrorist offences related to aviation:

'A person is guilty of terrorist offense and punishable by ten to twenty years' imprisonment and a fine of one hundred thousand dinars, if they commit intentionally one of the following acts:

1. Committing an act of violence against a person on board an aircraft in flight, if the act of violence falls within the provisions of Articles 218 and 319 of the Criminal Code and compromises the safety of the aircraft,
2. Seizing or taking control, by any means, of a civil aircraft in service or during a flight,
3. Destroying or causing damage to a civilian aircraft in service, resulting in its inability to fly that are likely to compromise its safety in flight,
4. Placing or causing to be placed on a civil aircraft in service, by any means, devices or substances likely to destroy it or cause it to be damaged resulting in its inability to fly or that are likely to compromise its safety in flight,
5. Destroying, damaging or impeding the operation of installations of airspace navigation, which is likely to jeopardize the safety of the civil aircraft in flight,
6. Operating a civil aircraft in service or in flight for the purpose of causing bodily harm or damaging to property or the environment or vital resources.

The penalty is twenty-five years of imprisonment and a fine of 120.000 dinars, if one of the acts provided for in the cases of 2 to 6 caused bodily harm within the scope of Articles 218 and 319 of the Criminal Code.

The penalty is life imprisonment and a fine of 150.000 dinars, if one of the acts provided for in the cases of 1 to 6 caused bodily harm, which does not fall within the scope of Articles 218 and 319 of the Criminal Code.

The penalty is the death penalty and a fine of 200.000 dinars, if one of these acts caused the death of a person.

Article 16 then enumerates the transportation of which substances and materials on board a civil aircraft is considered a terrorist offence and under what circumstances (including explosives, radioactive materials, biological or nuclear weapons, etc.). Article 17 relates to acts such as dropping throwing a biological, nuclear or chemical weapon, explosive or radioactive materials, etc. from a civil aircraft resulting in the death, injury or damage to property, the environment or vital resources and Article 18 relates to endangering the safety of a civilian airplane with the aid of an apparatus, substance or weapon.

Articles 19-20 deal with terrorist offences related to civilian ships, Article 21 relates to the safety of both civilian aircrafts and ships, Article 22 deals with taking possession or control of a fixed platform located on the continental shelf, Article 23 relates to delivering an explosive device aimed at defusing chemical or biological materials, or radiation, or radioactive materials or any other device causing death, personal injury, damage to property, the environment or to vital resources or to place, launch or explode said devices in or against a place receiving from the public or a State or public service, a public transport network or infrastructure, with intention to cause death or prejudice damage to property, property, property or the environment or vital resources; Article 24 enumerates acts related to stealing nuclear materials or obtaining them by fraud; Article 25 deals with violence against persons enjoying international protection which falls within the scope of Articles 218 and 319 of the Criminal Code; Article 26 deals with the removal of such persons, their unlawful capture, arrest or imprisonment; causing damage to official buildings or private dwellings or means of transportation whereby the life or liberty of persons enjoying international protections would be endangered; Article 27 relates to the murder of such persons. Article 29 sets out the punishments for the capture, arrest, imprisonment or sequestration of a person without legal authorization accompanied by threats to kill them or bring them harm or to continue the sequestration in order to constrain a third party, whether it be a State or an international organization or a physical or moral person or a group of persons, to do a particular act or to refrain from doing it as an express or tacit condition for the release of the hostage. Article 31 provides for a punishment of one up to five years imprisonment for whoever inside or outside the Republic, publicly and expressly gives apology for a terrorist offense, its perpetrators, an organization, alliance, its members, its activities or opinions and ideas related to terrorist offenses.

## Foreign Terrorist Fighters

Official figures announced by the Tunisian government provide that the number of foreign fighters does not exceed 2929.

Regarding the return of terrorist combatants, Organic Law No. 2015-26 sets out the punishment for any act that may have been committed abroad. Practice shows that many proceedings have taken place before judicial authorities, which decide on a case by case basis according to the evidence provided.

According to Article 32 anyone who, domestically or abroad, voluntarily adheres to an organization or terrorist alliance, under whichever title, in relation to terrorist offences or receives training domestically or abroad for the commission of terrorist offences provided for in this law will be punished by imprisonment of 6-12 years and in cases where the person formed the aforementioned organization or alliance, the punishment is 10-20 years imprisonment and a fine of 50.000 – 100.000 dinars.

Article 33 sets the punishment between 6-12 years of imprisonment and a fine of 20.000-50.000 dinars for recruiting and training for the commission of terrorist offences domestically or abroad; using Tunisian territory to commit a terrorist offence (or preparatory acts for such an offence) against another State or

its citizens; travelling abroad with a view to committing a terrorist attack or incite, receive or provide training for the commission; entering or crossing the territory of Tunisia with a view to travelling abroad for committing such acts or incite, receive or provide training for the commission.

Art. 35 deals with arranging and assisting the entry or exit from Tunisian territory for the commission of terrorist acts; obtaining materials, equipment and support to terrorists or terrorist organizations; providing them with skills and expertise in connection to terrorist offences; disclosing, providing or publishing information to the benefit of a terrorist organization or terrorists, to assist in the commission or concealment or to profit from such offenses or ensure the impunity of its authors; providing a meeting place for members of a terrorist organization or terrorist persons or to hide or promote their escape or provide them with refuge or ensure their impunity; or benefit from the proceeds of their offences; manufacturing or falsifying an identity card, passport, other permits or certificates for the benefit of a terrorist organization or terrorist persons.

Article 36 deals with donations or other means of providing funds to said organizations, individuals or the commission of said acts, including funds for the travel abroad with a view to joining a terrorist organization or committing a terrorist act.

In response to the UNSCR on foreign fighters, the government has recently announced a new program to rehabilitate fighters returning from terror zones which will be prepared by a group of ministries, including the ministries of justice, interior, foreign affairs and defense. The program will exclude terrorists found guilty of murder, slaughter or other acts that are classified as crimes against humanity.<sup>425</sup> According to the latest official statistics provided by the Tunisian Interior Ministry, the number of Tunisian terrorists abroad is estimated at 2,929 and not more than 2000 fighters are expected to return to Tunisia, since many would have been killed before.<sup>426</sup> Around 800 had already returned between 2012 and 2016.<sup>427</sup>

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425. Asharq Al-awsat English: Tunisia: Government Rehabilitation Program for Returning Terrorists, available at: <https://english.aawsat.com/almunji-alsaidani/news-middle-east/tunisia-govt-rehabilitation-program-returning-terrorists>.

426. *Ibid.*

427. *Ibid.*

## Annex A

### International Contacts and information

#### Interpol

Website – <http://www.interpol.int/>

Country weblinks – <http://www.interpol.int/Member-Countries/World>



Website – <https://www.europol.europa.eu/>



#### European Judicial Network, EJN

Website - [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_Home.aspx](https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx)

It includes full contact details of over 200 EJN contact points throughout the European Union, including languages spoken.

The Compendium provides details of Handbooks from States outside the EU MS.

The MLA Atlas identifies the competent local authority in each Member State to receive and execute a mutual legal assistance request. Enabling by this way the fulfilment of the principle of direct contacts between judicial authorities.



The *Fiches Belges* provides a concise legal and practical information on 43 investigation measures, in every Member State, as well as on their judicial and procedural systems.

Select one of eight topics (telecommunications, agents, examination and experts, documents, assets, places / search warrants, witnesses, cross-border operations).



Use a country (and can compare between two countries). Results will include the scope of options to a requesting State, the competent body, alternative measures and practical information.

#### European Union

Website - 'Europa, Gateway to the European Union' – [http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm)

#### Council of Europe

Website – <http://www.coe.int/DefaultEN.asp> Treaties, treaty office webpage – <http://conventions.coe.int/> Treaties, list of all treaties relating to co-operation in criminal matters, with links to the treaties, reservations





Signatories –

<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=20&CM=7&CL=ENG>

## The World Law Guide

Country specific information and links to legal texts for approximately 200 States

Legislation – <http://www.lexadin.nl/wlg/legis/nofr/legis.php>



Courts and cases – <http://www.lexadin.nl/wlg/courts/nofr/courts.htm>

## World Law Links

Links to legal systems, legislation, case-law of most States. Search page –

<http://www.worldlii.org/catalog/270.html>

## Organization for Security and Co-operation in Europe (OSCE)

Despite its name, the 56 member States include those from Central Asia and North America in addition to Europe. The legislative database contains country specific information, including treaties ratified, legal systems and links to criminal codes.



Homepage – <http://www.osce.org/>

## Legislative database

Use the 'Search by country' and 'Search by topic' options – <http://www.legislationline.org/>

## International Centre for Asset Recovery, Basel, Switzerland

Information both on asset recovery and excellent general MLA guides to specific States.

'The International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance in Basel, Switzerland specializes in training and assisting developing countries in the practical work of tracing, confiscating and repatriating the proceeds of corruption, money laundering and related crimes.' (ICAR homepage)



Website – <http://www.assetrecovery.org> - Follow topic bar link to 'Country Profiles'.

## International Association of Prosecutors (IAP)

Website – <http://www.iap-association.org/>

See also the Global Prosecutors E-Crime Network (GPEN), which was developed by the IAP in response to the growing global impact of e-crime, <http://www.iap-association.org/Default.aspx>



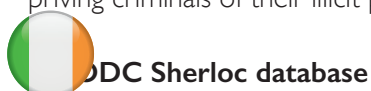
World Bank Website – <http://www.worldbank.org/en/country>

Camden Asset Recovery Inter-Agency Network, CARIN

For an information leaflet from Europol's website, google 'europol AND carin'. Direct link –

<https://www.europol.europa.eu/content/news/europol-targets-unexplained-wealth-1075>

CARIN is an informal network of contacts and a cooperative group in all aspects of tackling the proceeds of crime. Its stated aim is to increase the effectiveness of members' efforts, on a multi-agency basis, in depriving criminals of their illicit profits.



<https://www.unodc.org/cld/en/v3/sherloc/index.html>

For more information on UNODC MLA Request Writer Tool

<https://www.unodc.org/mla/en/index.html>

## Annex B

### Legal Instruments (conventions, treaties)



United Nations Treaty Collection – <http://treaties.un.org/Pages/Home.aspx?lang=en>

#### **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20th December 1988**

United Nations website with link to the convention – [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf)

#### **Status of convention and reservations etc.**



[treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en)

#### **United Nations Convention against Transnational Organized Crime, New York, 15th November 2000 (also referred to as the Palermo Convention as was opened for signature in Palermo, December 2000)**

United Nations Office of Drugs and Crime website with links to the convention, status, reservations etc.

<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

#### **United Nations Convention against Corruption, New York, 31st October 2003**

United Nations Office of Drugs and Crime (UNODC) website with links to the convention, status, reservations etc.

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>



## European Specific Information

Please note this is a general guide and could be subject to change – please review the EJM website for up to date information: [https://www.ejm-crimjust.europa.eu/ejm/EJM\\_Home.aspx](https://www.ejm-crimjust.europa.eu/ejm/EJM_Home.aspx) or the Council of Europe MLA Country Information: <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/MLA-country-information>



### ALBANIA

Ministry of Justice - <http://www.justice.gov.al/index.php?gj=gj2>

### AUSTRIA

A separate LOR is required for each province in which an enquiry is requested to be made. The name of the province should be added to the address. When more than one LOR is being sent to Austria in the same case, inform the competent judicial authority in each province that a corresponding LOR has been sent to another province.

Provinces – Burgenland, Carinthia (Kärnten), Lower Austria (Niederösterreich), Salzburg, Styria (Steiermark), Tyrol (Tirol), Upper Austria (Oberösterreich), Vienna (Wien), Vorarlberg.



### CZECH REPUBLIC

Disclosure obligations - in the Czech Republic the judicial authorities may have an obligation to inform an affected person after intrusive measures have been taken against that person. In these circumstances, the Central Authority must address these issues in advance, preferably via direct contact with the requested authorities in advance of sending the LOR, and supported by a suitable 'confidentiality request'.



### FINLAND

See Czech Republic 'Disclosure obligations' as similar obligations may arise in Finland.



Central Authority is:  
Ministry of Justice,  
International Affairs,  
PO Box 25,  
00023 Valtioneuvosto  
Finland

## FRANCE

For Guidance on MLA process see: [https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC\\_documents/8\\_MLA%20step-by-step\\_CN152011\\_CRP6\\_eVI182196.pdf](https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP6_eVI182196.pdf)

See the following link for the Penal Code and Code of Criminal Procedure – <http://195.83.177.9/code/index.phtml?lang=uk>

## GEORGIA

The Central Authority is:

Georgia Ministry of Justice  
24a Gorgasali



Tbilisi  
Georgia  
Phone: (995 + 32) 2 405 505  
E-mail: [press-center@justice.gov.ge](mailto:press-center@justice.gov.ge)

## GERMANY

For Guidance on MLA process see: [https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC\\_documents/8\\_MLA%20step-by-step\\_CN152011\\_CRP6\\_eVI182196.pdf](https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP6_eVI182196.pdf)

A separate LOR is required for each judicial authority (land) in which an enquiry is requested to be made.

When more than one LOR is sent to Germany in the same case, the prosecutor should inform the competent judicial authority in each area that a corresponding LOR has been sent to another area.

See also Czech Republic '*Disclosure obligations*' as similar obligations may arise in Germany.

## ICELAND

The Central Authority is:

Legal Affairs Department,

Ministry of Justice and Ecclesiastical Affairs,  
Skuggasundi,  
150-Reykjavik  
Iceland  
Tel: +354-545-9000  
Fax: +354-552-7340

## ISLE OF MAN

The Central Authority is:  
The Attorney General,  
Attorney General's Chambers,  
3rd Floor,  
St Mary's Court,  
Hill Street,  
Douglas IM1 1EU  
Isle of Man  
Tel: 01624 685452

## IRELAND

For statements from willing witnesses it is sometimes possible to obtain the statement without the need for LOR. Check in advance with the Irish Central Authority.

For evidence relating to telecommunications and banking, it is likely that this material will be obtained in Ireland via a production order. A supporting statement from an officer will be provided but it is unlikely that a statement will be provided from either the telecoms company or bank.

Ireland requires undertakings in a LOR relating to the following:

- The accused's right to challenge the admissibility of evidence provided at court;
- Using the evidence supplied;
- In requests for searches.

Undertakings in relation to 1. and 2. must always be provided; an undertaking in relation to 3. is only relevant where a search is requested see: Criminal Justice (Mutual Assistance) Act 2008 – <http://www.irishstatutebook.ie/2008/en/act/pub/0007/index.html>

The Central Authority for evidence is:  
Central Authority for Mutual Assistance  
Department of Justice, Equality and Law Reform  
51 St. Stephen's Green  
Dublin 2  
Ireland

Requests for enforcement of confiscation, securing restraint and asset tracing post making of confiscation order should be sent to:

Central Authority for Mutual Assistance  
Department of Justice, Equality and Law Reform  
51 St. Stephen's Green  
Dublin 2  
Ireland

## ITALY

For Guidance on MLA process see:

[https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC\\_documents/8\\_MLA%20step-by-step\\_CN152011\\_CRP6\\_eVI182196.pdf](https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP6_eVI182196.pdf)

## LIECHTENSTEIN

The Central Authority is:  
Ministry of Justice,  
Haus Greber,  
Herrengasse 8,  
FL-9490 Vaduz  
Liechtenstein

## LITHUANIA

Ministry of Justice - <http://tm.infolex.lt/default.aspx?lang=3>

Requests for evidence should be sent to:

Post-charge:  
Ministry of Justice,  
Gedimino Av. 30/1,  
2600 Vilnius,  
Lithuania

Pre-charge:  
General Prosecutor's Office,  
Rinktinės str. 5A  
LT-01515  
Vilnius  
Lithuania

Phone: +370 5 266 2305

Fax: +370 5 266 2317, E-mail: [generaline.prokuratura@prokuraturos.lt](mailto:generaline.prokuratura@prokuraturos.lt)

Requests for enforcement of confiscation, securing restraint and asset tracing post making of confiscation order  
Ministry of Justice,  
Gedimino Av. 30/1,  
2600 Vilnius,  
Lithuania

It is suggested that contact is made in advance with the prosecutor who is likely to execute your request

## MALTA

The Central Authority is:  
Office of the Attorney General  
International Co-operation in Criminal Matters Unit The Palace  
CMR 02 – Valletta  
MALTA

Phone: +356 21 238189 / 235315 / 225401 / 225402 / 221223  
Fax: +356 21 240738  
E-Mail: [ag@gov.mt](mailto:ag@gov.mt)

## NETHERLANDS

The Department for Legal Assistance in Criminal Matters (AIRS) of the Ministry of Justice is the central authority for international legal assistance in criminal matters.

Weblinks:

Dutch prosecution service – [http://www.om.nl/vast\\_menu\\_blok/english/](http://www.om.nl/vast_menu_blok/english/) Link from above site to information leaflet in English –

[http://www.om.nl/vast\\_menu\\_blok/english/@143912/brochure\\_national/](http://www.om.nl/vast_menu_blok/english/@143912/brochure_national/)

Ministry of Justice - <http://english.justitie.nl/>

Dutch judiciary - <http://www.rechtspraak.nl/english/Pages/default.aspx>

## PORTUGAL

Portuguese Central Authority is:  
Joanna Gomes Ferreira  
Public Prosecutor / Magistrat du Parquet Procuradoria Geral de la Republica  
Gabinete de Documentacao e Comparado Rua do Vale do Pereiro no.2  
1200 Lisboa

## SPAIN



There are national networks of both prosecutors and judges with special responsibility for MLA requests. See the Spanish prosecutors website at [www.prontuario.org](http://www.prontuario.org) (only in Spanish) **OR** contact: [internacional.fge@fiscal.es](mailto:internacional.fge@fiscal.es)

## SWITZERLAND

### IMPORTANT NOTE:

Requests to Switzerland should always be sent to an appropriate Swiss authority that deals with MLA requests. They should not be sent direct to Swiss corporations. Acting on Swiss territory without the agreement of the appropriate Swiss authority breaches Swiss sovereignty and may constitute an imprisonable offence. Requests pertaining to general criminality should be sent to the relevant canton. A canton is an administrative region with its own government.

A separate LOR is required for each canton in which an enquiry is to be made. The name of the canton should be added to the address.

When more than one LOR is being sent to Switzerland in the same case inform the competent judicial authority in each canton that a corresponding LOR has been sent to another canton.

If the LOR pertains to general criminality but does not involve or identify a canton, the request should be sent to the Federal Office of Justice, who will then designate a canton to lead the procedure. LORs in relation to terrorism, false money and serious organized crime, or involving customs or other federal agencies, should also be sent to the Federal Office of Justice - Website – <http://www.eLORge.admin.ch/eLORge/e/>

## UNITED KINGDOM

### England and Wales and Northern Ireland

The UK Home Office deals with MLA requests in England, Wales and Northern Ireland (except tax and fiscal customs matters, see below):

For Guidance on Procedure see: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415038/MLA\\_Guidelines\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2015.pdf)

### MLA requests in England, Wales and Northern Ireland relating to tax and fiscal customs matters

Subject to the treaty basis or the type of investigative measure requests, these MLA requests should be sent to HM Revenue and Customs:

Criminal Law and Benefits and Credits Advisory Team HM Revenue and Customs - Solicitor's Office  
1st Floor (South)  
Bush House S/W Wing  
The Strand  
London

WC2B 4RD  
Tel: +44 (0)3000 586324  
Email: mla@hmrc.gsi.gov.uk

## **All MLA requests relating to Scotland**

Requests seeking assistance solely from Scotland should be sent directly to the Crown Office in Edinburgh, unless the treaty states that requests should be sent to the Home Office.

International Co-operation Unit  
Crown Office  
25 Chambers Street  
Edinburgh  
EH1 1LA

Tel: +44 (0)131 243 8152  
Fax: +44 (0)131 243 8153  
Email: coicu@copfs.gsi.gov.uk

## Annex D

### Precedent Letter of Request

**Text in red is Guidance for the preparation of the LOR**  
**Text in black is precedent wording for drafting the LOR**  
**Headings are in bold and underlined**

Insert Country name and Address

Your ref:

Our ref:

Date:

Dear Sir or Madam

**[CONFIDENTIAL / URGENT] LETTER OF REQUEST:**  
**[insert NAME OF OPERATION OR SUBJECT(S)]**

#### **Urgency**

[Please consider if the request is truly urgent – over use can cause difficulties and delays other cases – if so, confirm reasons i.e. immediate threat to life or serious physical harm]

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

I have the honour to request your assistance in relation to *[EITHER]* a criminal investigation being conducted by [insert name of police force or investigating authority] into [insert name]

*[OR]*

a criminal prosecution being conducted by the [insert name of Competent Authority] against the persons noted below for offences of [insert brief description of the offence/s]

- Indicate stage of investigation or proceedings (e.g. not yet charged or trial fixed for X)
- If applicable, indicate the date by which the assistance to be provided. Do not say it is urgent unless it is and explain why. If a false date imposed, a risk no action will be taken after that date
- Insert details of any previous communication with law enforcement or prosecutors in the requested jurisdiction

## Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. where no Treaty and ratified UNTOC: I make this request pursuant to Article 18 of the UN Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by State X on X date. This Request recognizes the principles of reciprocity and mutuality between State X and [Insert requested State]

## Purpose of the Request

This is a request for [please insert a very brief description of what type of evidence is sought, e.g. banking evidence, telecommunications data, a suspect to be interviewed, written statements from witnesses, search of premises to obtain evidence, surveillance of suspects]; for use in [EITHER] the investigation into and any subsequent prosecution of (including any related restraint, confiscation and enforcement proceedings and any ancillary proceedings related thereto) the following: [OR] the prosecution (including any related restraint, confiscation and enforcement proceedings and any ancillary proceedings related thereto) of the following: [OR] confiscation proceedings (including any related restraint and enforcement proceedings and any ancillary proceedings related thereto) being conducted in respect of the following: [OR] proceedings to enforce an outstanding confiscation order made against the following:

SUBJECT	DATE of BIRTH	PLACE of BIRTH	NATIONALITY	ADDRESS
First names lower case Surname in blocks	XX Month YYYY		Also add any further ID information e.g. passport	

concerning/who has/have been convicted/investigated of the following offences:

[List all the charges and/or offences under investigation as already noted above and briefly describe the relevant law, citing the law. If the law can be noted succinctly, do so; if not, refer to an annex. Remember to include the maximum penalty that can be imposed for each offence.]

Extracts of the applicable law are appended to this request at Annex A

## Summary of Facts

- Use numbered paragraphs
- Do not just cut and paste a police case summary
- Avoid irrelevant detail
- Avoid jargon and use plain language
- A summary only is required but remember that the LOR is a stand-alone document and the requested State receiving it knows nothing about the case.
- It is vital that the nexus between the facts and the enquiries requested is established; this is particularly so if the request asks for coercive measures that are only likely to be granted by the requested Competent Authority if they are considered necessary and proportionate to the investigation/prosecution.

*The following are suggestions for the information required in a summary for specific requests*

## Witness

Include the following:

1. A brief chronology of the proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges
3. Outline for each witness what evidence they will provide that is relevant to the offence alleged.

## Suspect Interview

Include the following:

1. A brief chronology of the proceedings to date [include when charged, and when any trial date is fixed].
2. A summary of the evidence in support of the investigation
3. Confirm why the suspect will have knowledge of matters relevant to determining whether an offence was committed by him or her.

## Search

Include the following:

1. A brief chronology of the proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges
3. Outline:
  - Supporting information that item/s to be seized will show evidence of a crime
  - If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)
  - Justify why this evidence, based on the supporting information, is in the location to be searched

## Special Investigation Techniques (SITs)

Include the following:

1. Justify why this SIT, based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date c. A summary of the evidence in support of the investigation/charges
3. Outline:
  - Supporting information that the SIT will show evidence of a crime
  - If source of information has a criminal record or is anonymous – further information to show

credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

## DNA and/or Fingerprints

Include the following:

1. A brief chronology of the proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges
3. Outline:
  - Supporting information that samples [confirm type i.e. intimate, DNA or fingerprint] will show evidence of a crime
  - If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)
  - Justify that taking a sample is a proportional way to secure the evidence (particularly if an intimate sample - explain why this evidence is necessary and cannot be obtained through a less intrusive method such as a DNA sample)
  - Justify why this evidence, based on the supporting information, will be obtained through taking the sample

## Telephone Evidence

Include the following:

1. A brief chronology of the proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges
3. Demonstrate what evidence the telephone provider has that is relevant and material to the offence alleged.

## Banking Evidence

Include the following:

1. A brief chronology of the proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges
3. Confirm what evidence is requested in EACH bank account
4. Provide supporting information to confirm the evidence requested in EACH bank account is relevant to determine whether an offence listed in the LOR was committed. IF THE EVIDENCE IS NEEDED FOR A CONFISCATION INVESTIGATION Identify specific bank accounts that are owned by an accused or provide supporting facts to demonstrate that the accused is concealing his/

her assets in someone else's account

5. If any supporting information is intelligence confirm why it is reliable and credible.
6. If a date range is requested confirm the relevance to the investigation/prosecution of the offence/s in the LOR.

## Communication Service Provider Evidence

Include the following:

1. A brief chronology of the investigation/proceedings to date [include when arrested, charged, and when any trial date is fixed if known].
2. A summary of the evidence in support of the investigation/charges
3. If only Basic Subscriber Information (BSI) requested: Confirm with supporting information that BSI is relevant and related
4. If only transactional information requested (specify date range) or real-time collection of non-content: Confirm with supporting information that transactional information is relevant and material (with justification why relevant and material to investigation)
5. Outline for EACH EMAIL OR SOCIAL MEDIA ACCOUNT for content:
  - How the account is attributed to the user
  - What evidence is in the account
  - Supporting information (confirming source) that content will show evidence of a crime **PLEASE NOTE** that if child exploitation offence a description of the type of images (at least 3) and confirmation that the child is a minor in requested State
  - If source of information has a criminal record or is anonymous – further information to show credibility and reliability (i.e. proximity to criminality (if this will not disclose the source)
  - Justify why this evidence, based on the supporting information, is contained in the email account/social media account/website
  - Justify the date range required

**! IMPORTANT NOTE:** for each email or social media account include confirmation of the preservation information as follows:

A preservation request in relation to the above account was made by the [insert relevant Law Enforcement Agency] and was granted on [insert date] and will expire on [insert date] and has reference number [insert reference number]

## Restraint/Freezing or Confiscation

Include the following:

A summary of the proceedings to date applying the requested States' law and procedure – also include the following:

1. Evidence establishing the connection between the property to be forfeited and criminal activity of the accused
2. Charges/Indictment
3. A detailed description and location of the property, such as:
  - For Bank Accounts: Branch, Address, account number, account holder's name;
  - For Real Property: Value, details of any mortgages or co-owners
  - Explanation of any connection between the accused and any corporate entities in whose name the assets may be held.

**! IMPORTANT NOTE:** for an urgent request to prevent dissipation of assets the requested State should be contacted immediately to determine what information should be included in the LOR

## Assistance Requested and Format of the Evidence

- Use numbered paragraphs
- State in each individual type of assistance requested.
- Ensure that for each individual piece of assistance requested the nexus between the summary of facts and the request is clear especially where execution of the request will require the use of coercive powers.
- Avoid jargon such as 'witness statement'. A 'written statement' or 'statement in writing' will be more widely understood.
- If evidence is required in a particular format this should be clearly set out together with an explanation of why the particular format is necessary – include a blank format in an Annex if necessary
- Unless it is essential that evidence is gathered in a particular way (for example interview under caution, or a production order) set out here what is needed rather than how to do it.
- If the format or method is important, be specific. For example, if a written statement from a witness is needed, should the statement be obtained from a Judicial Authority? In which case, the requested State will have to summons the witness. Or is it sufficient that the police, or prosecutor, in the requested State take the statement? The latter being likely to be a quicker process.

*Depending on what is needed, the following more common, requests may be of assistance*

### Witness Statements

*Following paragraph can be used as a precedent*

1. To obtain a written statement from an appropriate employee of xxx. The statement should address the matters set out below. If the maker of the statement includes in the statement information that obtained from others, the source of the information should be stated. Please could the witness sign and date the statement and state that the contents of the statement are true to the best of the maker's knowledge and belief. If the person making the statement is under 18 that person should state their age.
2. Please would the maker of the statement produce the following documents as exhibits to their statement [insert list]



When producing exhibits - that is a document, item or other thing – the witness should describe that exhibit in his statement and give it an exhibit number. The exhibit number should consist of the witness's initials and a sequential number, for example DG001. A witness should state how he obtained an exhibit, what he did with it, and how he disposed of it. If a witness passes on an exhibit to a second person, that second person should also provide a witness statement describing in the same manner his treatment of the exhibit. Where a witness produces a number of exhibits, a single statement will suffice for all of them.

## Business Documents

For example, where a company officer is examining records to provide a narrative account - consider including the following - amended as applicable to your law - to allow the court to admit the statement in evidence:

- I occupy the position of *(job title)* in the employment of *(business/organization)* located at *(address)*
- By virtue of my position I can state that each of the records referred to and produced in this statement are the originals or the duplicate of the original records in the custody of *(business/organization)*.
- The documents that I have referred to were created or received by a person in the course of a trade, business, profession or other occupation or as the holder of a paid or unpaid office.
- The person who supplied the information contained in the documents (the 'relevant person') had or may reasonably be supposed to have had personal knowledge of the matters dealt with.
- Each person (if any) through whom the information was supplied from the relevant person received the information in the course of a trade, business, profession or other occupation or as the holder of a paid or unpaid office.
- The relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the documents, having regard to the length of time since he supplied the information and all other circumstances.

## Compelling a Witness

*Following paragraph can be used as a precedent*

It is requested that a subpoena or other court order necessary is obtained and served on the witness at [insert last known address] to compel attendance to give testimony under oath or affirmation on [insert date and location]

## General Considerations

1. To provide contact details for each witness and ask each witness whether they would be willing to give evidence in the [x Country] , or via videolink from their country, including any dates in which they would be unavailable.
2. To advise whether it is possible to arrange for the evidence of the witness(es) to be given via video link and details of the appropriate person to contact to make arrangements
3. To invite [xxx] to attend a voluntary interview in order to establish whether [xxx]. A list of the

questions to be asked, which is not intended to be exhaustive, is attached at Annex B

Make it clear to the requested State if the person is a suspect or whether unsure as to their status even if no intention to bring proceedings against them.

If there is a possibility of prosecuting the interviewee at a later stage consider including the following:

## Suspects

1. It is requested that [xxx] be interviewed as a suspect. Include any specific requests that will ensure the procedure is compliant with the requested States process for example: Please ensure that the interview should be tape recorded and copies of the tapes provided to me.
2. Include a paragraph listing the questions to be asked of the suspect
3. Include a request for all officers of requested State attending the interview to provide a witness statement confirming their role and producing any written or recorded copies of the interview

## Search of Premises

*Following paragraph can be used as a precedent*

1. It is requested that a search warrant or other court order necessary is obtained to search [insert address] to seize the following: List items
2. The making of statements by all persons who seize any item pursuant to paragraph 1 above, referring to the items so seized as exhibits.
3. The transmission of the items seized pursuant to the request made in paragraph 1 above [insert who evidence will be sent to]
4. The making of statements by any person receiving the custody of the items seized stating to whom he or she transferred them.

## DNA and/or fingerprint samples

*Following paragraph can be used as a precedent*

1. It is requested that a search warrant or other court order necessary is obtained to take a [insert type of sample] from [insert name, address and date of birth of person]
  - a. The making of statements by all persons who seize any item pursuant to paragraph 1 above, referring to the items so seized as exhibits.
  - b. The transmission of the items seized pursuant to the request made in paragraph 1 above [insert who evidence will be sent to]
  - c. The making of statements by any person receiving the custody of the items seized stating to whom he or she transferred them.

## Telephone evidence

*Following paragraph can be used as a precedent*

I. It is requested that a subpoena or other court order necessary is obtained and served on [insert name of telephone provider and address] to produce the following evidence:

[Include as much detail about telephone e.g. number, subscriber details if known, integrated circuit card identifier (ICCID) mobile station international subscriber directory number (MSISDN), international mobile station equipment number (IMEI), international mobile subscriber identity (IMSI) and SIM Card number] covering the following points [delete if not relevant]:

- a. The date of purchase
- b. Any customer information provided at purchase
- c. Activation details
- d. Subscriber details
- e. Payment details
- f. Service provider
- g. PIN and PUK codes
- h. Top up history
- i. Copies of any customer notes held
- j. Download of any SMS or other instant messaging [insert dates that are relevant and material to the offence alleged]
- k. Incoming and outgoing call data with geo-locations/cell site data for [insert dates that are relevant and material to the offence alleged]

### Communication Service Provider (CSP) Evidence

The Guide to Obtaining Communication Service Provider Evidence will assist with requests to specific providers – the following is a precedent for generic requests:

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain a witness statement in writing from an administrator at:

[Insert Address and name of CSP] setting out all of the [insert if BSI, Transactional Information and/or Content] held by them relating to the account [insert username or email address] for the period commencing [insert date] to the date of preservation including, but not limited to:

### For Basic Subscriber Information:

- The subscriber's account or login name;
- The subscriber's name and street address;
- The subscriber's telephone number or numbers;
- The subscriber's email address;
- The Internet Protocol (IP) address used by the subscriber to register the account or otherwise initiate service;
- All IP addresses used by the subscriber to log into the account;
- Session times, dates and durations; and
- Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other iden-

tifying information).

## For Transactional Information:

Connection information for other systems to which user connected via the email account (or into the web host account) including:

1. Connection destination or source of connection
2. Connection time and date;
3. Disconnect time and date;
4. Method of connection to system (e.g., telnet, ftp, http);
5. Data transfer volume (e.g., bytes); and
6. Any other relevant routing information;
7. Source or destination of any electronic mail messages sent from or received by the account (known as the header of the email or the 'To' and 'From' fields), and the date, time, and length of the message;
8. Information pertaining to any image(s) or other documents uploaded to the account (or the website), including the dates and times of uploading, and the sizes of the files but not including the contents of such files;
9. Name and other identifying details of individuals that accessed a specific image/file/web page between a specified period of time, on a specified date

## For Content:

1. Any content of emails/messages available in the user's mail account, including the IP address of the computer used to send the mail/message;
2. Any attachments, photos and contact lists;
3. Any draft emails;
4. Any available deleted emails;
5. Any other records and other evidence relating to the requested account. Such records and other evidence include, without limitation, correspondence and other records of contact by any person or entity about the above-referenced account, the content and connection logs associated with or relating to postings, communications and any other activities to or through the requested account, whether such records or other evidence are in electronic or other form.

## For Forensic Image:

1. To obtain a forensic image of the server [insert – IP Address/Net Name/Owner]
2. To provide all of the customer records, data and information that is held about any customer who has rented the server as listed on above. This should include:
  - a. Full account holder details
  - b. When the account was opened
  - c. Any linked accounts
  - d. The method and details of payments
  - e. All communication addresses or identification details held or registered against the account OR linked accounts

- f. All telecommunication numbers and email accounts given by the account holder
  - g. Any customer service logs held in relation to the servers
  - h. All email or other recorded communication held between the account holder and host company
3. To provide all 'NetFlow data' for the servers (NetFlow data covers IP network traffic, comprising details of which other IP addresses are contacting servers and which they are contacting).
  4. To provide all IP log in history for the servers in question

## Banking Evidence

*Following paragraph can be used as a precedent*

- I. For the [insert name of Bank] Account [insert Bank Account number]; [insert Branch/address]
  - a. Details and copies of signatories to the Account
  - b. Any information or copy identification documents held relating to the Bank Account holder/s or signatories as part of the 'Know your customer' requirements
  - c. Account statements [insert dates remembering to ensure they are relevant to the request and justify that the evidence required will be obtained during this time frame]
  - d. The amounts of and dates of withdrawals and deposits during [insert dates remembering to ensure they are relevant to the request and justify that the evidence required will be obtained during this time frame] together with identification of the receiving or sending financial institution/individual
  - e. The current balance on the Account
  - f. Details of any correspondence to and from the Account holder to the Bank [insert dates remembering to ensure they are relevant to the request and justify the evidence required will be obtained during this time frame]
  - g. Information about the conduct of the Account [insert dates remembering to ensure they are relevant to the request and justify the evidence required will be obtained during this time frame] including any:
    - Direct debits
    - Standing orders
    - inter account transfers
    - Wires
    - SWIFT
    - CHAPS
    - Paid cheques
    - Returned cheques
    - Foreign drafts
    - Vouchers (both credit and debit)
    - Signature cards
    - Application forms

- References
  - Internal memoranda
  - Head Office or Manager Notes
- h. Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the Bank on behalf of [insert name of accused/suspect]
- i. Confirmation if any safety deposit box/es or other material are held by the Bank in the name of [insert name of accused/suspect] and any inventory of the contents [If the contents to be seized refer to the requirements for an LOR for a search above]
- j. Evidence of any linked Bank Accounts by name, signatory, or contact details

## Restraint or Freezing of Assets

*Following paragraph can be used as a precedent (for non-urgent requests)*

It is requested that

- a. All such steps be taken in accordance with the law of the requested State as are necessary to prevent [insert name] from disposing of or otherwise dealing with realisable property and to give full legal effect in your jurisdiction to the annexed restraint order. I confirm that a request will be submitted for registration and enforcement of any confiscation order as soon as practicable after the confiscation order has been made.
- b. That all necessary steps be taken in accordance to freeze any and all money, property and bank accounts in the requested State held, whether owned legally or beneficially, by [insert name] with particular reference to the [description of asset] referred to above.
- c. To the extent that any third parties assert an interest in any proceedings brought in the requested State as a result of this request, the requesting State is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.
- d. The need to preserve the availability of [insert address of property (including any co- owners and mortgages with Bank details) or description of asset e.g. Bank Account number, Branch and Address] through a restraint order outweighs the hardship on any party against whom the order is to be entered as:
- [if relevant [insert name] has been convicted of [insert offences] and benefitted from these offences]
  - A confiscation order will be sought [insert date if fixed] [insert benefit figure if known];
  - [insert address of property or description of asset e.g. Bank Account number, Branch and Address] will be required to satisfy this order; and
  - There is a risk of dissipation or destruction if the property is not preserved, [insert any supporting evidence i.e. by the fact the accused has not disclosed the existence of this property in advance of his confiscation hearing]

## Confiscation of Assets

*Following paragraph can be used as a precedent*

It is requested that:

1. That all necessary steps be taken in accordance with the law of the requested State to register and enforce the outstanding amount of the confiscation order made on [insert date] by realising realisable property held by [insert name] in [insert description of asset and location in the requested State] applying the proceeds in accordance with the law of the requested State.
2. That if property is realized to provide me with a certificate stating the following:
  - a. The property that has been realized
  - b. The date of the realization
  - c. The monetary sum obtained by the realization
3. To the extent that any third parties assert an interest in any proceedings brought in the requested State as a result of this request, the requested State is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.

### Special Investigation Techniques (SITs)

#### *Telephone Interception*

Include the following:

1. Confirmation that a lawful interception order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law
2. Information for the purpose of identifying the subject of the requested interception
3. The desired duration of the interception
4. If possible, the provision of sufficient technical data, in particular the relevant network connection number; communications address or service identifier to ensure that the request can be met
5. Confirmation if a live feed required or recordings provided with supporting statements

#### *Covert Probe (Audio and or Video) and/or a tracker*

Include the following:

1. Confirmation that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law
2. Information for the purpose of identifying the property where the probe and/or tracker should be inserted
3. Requested for a search warrant or other court order necessary is obtained to insert the probe and or tracker
4. The desired duration of the electronic monitoring
5. Confirmation if a live feed required or recordings provided with supporting statements

#### *Undercover Officer (UCO)*

Include the following:

1. Confirmation that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law
2. Confirmation of any arrangements to allow the UCO to operate in the requested State – e.g. do they have to be an a Police Officer in the requested State
3. Arrangements to protect the identity of the UCO
4. Confirmation of arrangements to task the UCO and ensure actions are lawful

*Surveillance/observation*

Include the following:

1. Confirmation that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law
2. Information for the purpose of identifying the subject of the observation – may have to request tracing or identification
3. The desired duration of the observation
4. Transmission of statements of officers making observations, any logs of live observations and any media recordings of observations

*Controlled Delivery*

Include the following:

1. Confirmation of requirement for replacement of contraband
2. Any court orders required to search, seize and replace contraband
3. Request for controlled delivery to pass the border
4. Consideration of any other SITs needed such as UCO, surveillance and covert probes/tracker

Generic paragraphs for inclusion in most requests:

1. That such other enquiries be made, persons interviewed and evidence secured as appears to you to be necessary in the course of executing this request.
2. I additionally request that any requisite court order or other order necessary to enable the provision of the above requested assistance be sought.
3. Unless you indicate otherwise, any evidence obtained pursuant to this request may be used in any criminal prosecution and related ancillary proceedings (including trials, restraint, confiscation and enforcement hearings) arising in whole or in part from the above noted investigation/prosecution, whether relating to the above names subject(s) or to any other persons who may become a subject of this investigation/prosecution. Unless otherwise informed we understand that you have no objection to the evidence obtained being kept at the conclusion of the proceedings.
4. Should you consider that the presence of the prosecutor and/or the investigating officer would be helpful in the execution of this request, I would be grateful if you could inform the prosecutor whose details appear at the top of this Letter of Request [do not include if already requested attendance].



## **Undertakings and Matters Certified** [delete where not applicable]

### **Confidentiality**

[Do NOT include if unnecessary – a confidentiality requirement may delay or prevent compliance with the request, if the need for confidentiality passes before the requested authority should be notified immediately]

In order not to prejudice the investigation, I request that no person including any of the above subjects is notified by the Competent Authorities in your country of the existence and contents of this Letter of Request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reason[s] for requesting confidentiality [is / are] that it is feared that, if the above subject[s] or an associated party became aware of the existence of this request or of action taken in response to it, [insert reasons for confidentiality including any time limit]

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this Letter of Request.

### **Transmission of Evidence**

Please send any evidence to the x Central Authority and advise the Central Authority if you wish to have any part of the evidence returned to you at the conclusion of the proceedings in Country x.

When you send the evidence, I would be grateful if you would also email me at [insert email address] to confirm that the evidence has been dispatched.

### **Reciprocity**

I confirm that the assistance requested above may be obtained under current [x law] if in a like case a request for such assistance were made to the authorities in [insert requesting State]

OR where reciprocity absent for part of the requests

I confirm that, other than for request number .... the assistance requested above may be obtained under current x law if in a like case a request for such assistance were made to the authorities in [insert requesting State] [An unqualified undertaking as to reciprocity must not be given if it is inaccurate; should the requesting State be unable to provide similar assistance - that fact should be stated.]

### **Contacts**

I confirm that I can be contacted if you have queries relating to this request. My full contact details are noted below:

Address:

Telephone: [insert direct landline]

Email:

Languages Spoken:

The lead investigator in this case is [insert name] from the [insert agency]

Address:

Telephone: (direct line)

Email:

Languages Spoken: (if request translated)

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully,

# Annex E

Mutual Legal Assistance Checklist	
<b>Operation Name:</b>	
<b>Subjects:</b> 1. 2. 3. 4.	
<b>Reference:</b>	
<b>Have alternatives to an LOR been assessed by the prosecutor</b>	<p>Can the evidence requested be obtained through informal assistance e.g. voluntary witness or by consent from the holder of the evidence</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If No confirm reasons:</p> <p>Is there or has there been an overseas investigation allowing sharing of evidence on a law enforcement to law enforcement basis</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the evidence a public record and can be obtained without an LOR</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
<b>Correct Opening Paragraph</b> I am <b>[insert name and job title]</b> from <b>[insert agency]</b> and I am designated to transmit this letter by the <b>[insert designating authority i.e. Attorney General and any relevant enabling legislation]</b>	<p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
<b>Correct Treaty Reference</b> I make this request pursuant to Article 18 of the UN Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified on <b>[insert date]</b> . <b>Or insert relevant bilateral or multilateral Treaty</b>	<p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
<b>Urgency</b> If an urgent request provide details of why (e.g. imminent trial date, facts included to support serious risk of harm) and any dates when the evidence is required by.	<p>Is this an Urgent LOR</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If Yes are there sufficient reasons stated in the LOR</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Confirm further detail required if insufficient reasons:</p>

<p><b>Confidentiality</b></p> <p>If notification to the subject and/or disclosure of the application to the public would prejudice the investigation – include this section and reasons why notification or disclosure would hamper the investigation e.g. destruction of evidence or suspect would flee.</p>	<p>Required</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Are reasons clearly included to justify confidentiality</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the correct paragraph used:</p> <p>In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this Letter of Request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.</p> <p>If the above subjects or an associated party became aware of the existence of sensitive material, namely [<b>identify the sensitive material – either the entire request or confirm the relevant part</b>] or of action taken in response to it, it is reasonably justifiable to believe that disclosure of the fact of an investigation to the subjects will result in [<b>insert as appropriate destruction of evidence as supported by [describe conduct in support i.e. deletion of accounts]; disclosure of the identity of the confidential informant has the potential to place his life in danger or risk of serious injury [describe conduct in support i.e. if informant close to subject and subject has a history of violence]</b>].</p> <p>If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this Letter of Request.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
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<p><b>Purpose of the Request</b></p>	<p>Is this set out clearly i.e. insert type of evidence requested</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Does the LOR state that the evidence will be for use in the prosecution (including any related restraint, confiscation and enforcement proceedings and any related ancillary proceedings)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Are all subjects listed:</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>With:</p> <p>Full name</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Date of Birth</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Place of Birth</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Nationality</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If subject details not known is there sufficient information provided (for example IP address, hosting company, email address, username, known alias, known address or other identifying information)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Confirm further details required:</p>
<p><b>Law</b></p>	<p>Are the offences each suspect/accused has been charged with listed</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>If pre-charge are the offences being investigated listed</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>Is the relevant section and statute listed for each offence</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the maximum sentence for each offence provided</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the relevant statute for each offence provided in an annex to the LOR</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Have any de minimis requirements been confirmed</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is dual criminality a requirement?</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If dual criminality a requirement has contact been made with the requested State to confirm that requirements satisfied?</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>

<p><b>Factual Summary</b></p> <p>The summary of facts must be relevant to the required assistance. Therefore, provide facts to show a crime has been committed but <b>not</b> a summary of the complete investigation. Include those facts that are relevant to the evidence required. Also confirm the source of any supporting facts.</p>	<p>Is there a brief chronology of the investigation/proceedings to date (i.e. insert when arrested, charged, and when any trial date is fixed if known)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Do the facts demonstrate a prima facie case that each named accused or suspect has committed the identified criminal offences, or that a criminal offence has been committed.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Searches</b></p> <p>Details of how the place to be searched is connected with the suspected or accused person</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Why the evidence is thought to be on the particular premises or in the possession of the particular person concerned</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the search is requested and why the evidence is relevant</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation as to why the material could not be produced by less coercive measures.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>How it is reasonably suspected that the evidence will be at the location <b>(PLEASE NOTE different legal standards may apply in requesting State and the LOR will need to apply those standards)</b></p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Witness evidence</b></p> <p>Is there an indication of their willingness to provide evidence</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is relevant</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation as to why the material could not be produced by less coercive measures.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
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	<p><b>Suspect Interview</b></p> <p>Is there an indication of their willingness to provide evidence</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is there a reciprocal power to compel the suspect to attend an interview</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is relevant</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Are any other measures required such as taking DNA and/or fingerprints - if so:</b> An explanation of why the material requested is relevant</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation as to why the material could not be produced by less coercive measures.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is all information necessary to assist the requested State in connection with the execution of the request included (e.g. what should be done with the evidence once seized)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Banking Evidence</b></p> <p>Does the summary of facts clearly indicate why such evidence is relevant to the investigation or prosecution</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the material requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If any intelligence material is referred to in the LOR has permission been received to include this</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Restraint and Confiscation</b></p> <p>If the investigation is still covert is it appropriate to restrain assets disclosing the operation</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
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	<p>If an urgent request has the requested State been contacted to confirm procedure</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is a domestic order in place</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Does this need to be signed and/or sealed for registration/enforcement in the requested State</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is information included about the location of the asset/s</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>The location must include the following information:</p> <p>For Bank Accounts: Branch, Address, account number, account holder's name</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>For Real Property: Value, details of any mortgages or co-owners</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Explanation of any connection between accused and any corporate entities in whose name the assets may be held</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>If this is on the basis of intelligence – has this been verified and can it be disclosed</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is there evidence establishing the connection between the property to be restrained and criminal activity of the accused</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is the risk of dissipation confirmed for restraint</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Are there any third-party issues that need to be detailed</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Has a request been made that if any third parties assert an interest in any proceedings brought in the requested State the requesting State is informed and to see copies of the evidence on which they rely and to be given the opportunity (either directly or through the requested State) to contest their claims</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Has confirmation been provided that the need to preserve the availability of the assets through a restraint order outweighs the hardship on any party against whom the order is to be entered</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p>
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	<p><b>Communication Service Provider Evidence</b></p> <p>Are all relevant accounts preserved If an account isn't preserved there will be no certainty there is evidence to seize and the LOR will not be executed.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the date of preservation included</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the expiry date of preservation included</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the reference number of preservation included</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If only Basic Subscriber Information (BSI) requested has an informal approach been attempted to secure the evidence (see CSP Guide at Part 2 paragraph 4)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>If No confirm reasons:</p> <p>If LOR required is there sufficient supporting information to show that BSI is relevant and related to the offences being investigated/prosecuted (see CSP Guide at Part 3 paragraph 3.1)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>If only transactional Information requested has an informal approach been attempted to secure the evidence</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>If No confirm reasons:</p> <p>If LOR required is there sufficient supporting information to show that transactional information is relevant and material (specify date range – with justification why relevant and material to investigation) (see CSP Guide at Part 3 paragraph 3.5)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>If an LOR is required for content has the author:</p> <p>Provided facts to attribute each account to the user</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If answered No - list accounts where attribution is still required:</p> <p>If No confirm reasons other ways to attribute:</p> <p><b>Note:</b> <i>If multiple accounts requested confirm for each account</i></p> <p>Detailed the type of content to be seized (e.g., an email communication)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Provide the reason why the content is relevant to the criminal offence being investigated.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
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	<p>Provide specific facts of the types of communications or specific examples supporting the belief that the evidence (content) sought will be found among the records of the Communication Service Provider</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Provide specific facts and their source to support the belief that the evidence (content) relates to a crime.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If source of information has a criminal record or is anonymous – has further information been provided to show credibility and reliability</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p>Has the date range for content been provided and justified on the facts</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>If there are any relevant consents have these been included in an annex</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No                      <input type="checkbox"/> N/A</p> <p><b>Telephone Evidence</b></p> <p>An explanation of why the evidence requested is relevant</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation of why the evidence requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>An explanation as to why the evidence could not be produced by less coercive measures.</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is all information necessary to assist the requested State in connection with the execution of the request included</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Special Investigation Techniques (SIT)s</b></p> <p>Is the use of the SIT proportional i.e. are there less coercive measures that can be taken</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the use of the SIT reasonable in the circumstances i.e. an explanation of why the evidence is important to the investigation</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the use of the SIT necessary i.e. is this the only way the evidence can be obtained</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>For all other Requests</b></p> <p>An explanation of why the evidence requested is relevant</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
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	<p>An explanation of why the evidence requested is important evidence to the investigation or proceedings</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>An explanation as to why the evidence could not be produced by less coercive measures.</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is all information necessary to assist the requested State in connection with the execution of the request included</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>If there is insufficient nexus - confirm information still required:</p>
<p><b>Assistance Requested</b></p>	<p><b>Searches</b></p> <p>Full address or other sufficient details of location to be searched included</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Confirm the owner/suspected owner or provenance</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Details of how the place to be searched is connected with the suspected or accused person</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Confirmation of evidence to be seized</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is all information necessary to assist the requested State in connection with the execution of the request included (e.g. what should be done with the evidence once seized)</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p><b>Witness evidence</b></p> <p>Full details of the witness (e.g. name and date of birth)</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Confirmation of where they can be located</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is a list of questions to be asked and topics to be covered included</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p><b>Suspect Interview</b></p> <p>Full details of the suspect (e.g. name and date of birth)</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Confirmation of where they can be located</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p> <p>Is there an indication of their willingness to provide evidence</p> <p><input type="checkbox"/> Yes            <input type="checkbox"/> No</p>

	<p>Is a list of questions to be asked and topics to be covered included</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the attendance of a domestic law enforcement necessary</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Confirmation of the domestic procedure to confirm if any elements (such as recording the interview on tape/DVD/CD) can be complied with)</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>DNA and/or fingerprints</b></p> <p>Is there an indication of their willingness to provide evidence</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Is the attendance of a domestic law enforcement necessary</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Confirmation of the domestic procedure to confirm if any elements can be complied with</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Procedure to ensure integrity and continuity of samples taken</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p><b>Banking Evidence</b></p> <p>Bank Address included</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Relevant account numbers including IBAN number</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>Confirm if following required:</p> <p>a. Any information or copy identification documents held relating to the Bank Account holder/s or signatories as part of the 'Know your customer' requirements</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>b. Details and copies of signatories to the Account</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>c. Account statements - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>d. The amounts of and dates of withdrawals and deposits during together with identification of the receiving or sending financial institution/ individual - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p> <p>e. The current balance on the Account</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
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f. Details of any correspondence to and from the Account holder to the Bank - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame  
 Yes  No

g. Information about the conduct of the Account - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame - for the following:

• Direct debits	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Standing orders	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• inter account transfers	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Wires	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• SWIFT	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• CHAPS	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Paid cheques	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Returned cheques	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Foreign drafts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Vouchers (both credit and debit)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Signature cards	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Application forms	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• References	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Internal memoranda	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Head Office or Manager Notes	<input type="checkbox"/> Yes	<input type="checkbox"/> No

h. Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the Bank on behalf of  
 Yes  No

i. Confirmation if any safety deposit box/es or other material are held by the Bank in the name of and any inventory of the contents [If contents to be seized then refer to the requirements for an LOR for a Search]  
 Yes  No

j. Evidence of any linked Bank Accounts by name, signatory, or contact details  
 Yes  No

**Telephone Evidence**  
**What evidence is required:**  
 Subscriber information i.e. to whom a particular phone is registered  
 Yes  No  
 If incoming/outgoing call data requested is a date range specified  
 Yes  No  
 Confirm if following required:

a. Any customer information provided at purchase  Yes  No  
 b. The date of purchase  Yes  No

c. Activation details	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. Subscriber details	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. Payment details	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. PIN and PUK codes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. Top up history	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. Copies of any customer notes held	<input type="checkbox"/> Yes	<input type="checkbox"/> No
i. Download of any SMS or other instant messaging	<input type="checkbox"/> Yes	<input type="checkbox"/> No
j. Incoming and outgoing call data with geo-locations/cell site data for	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Special Investigation Techniques (SITs)</b>		
Has the requested State been contacted to confirm if SIT is legal		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is there a domestic requirement for authorisation of the SIT		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
See specific requirements for each SIT in the precedent LOR		
<b>Communication Service Provider Evidence</b>		
Is the correct address of the CSP included		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the username/URL/email account/social media account confirmed		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the required date range confirmed		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the required date range correct for content and transactional information?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
If no confirm reasons:		
Does the LOR confirm what type of stored evidence is required for each account (i.e. BSI and/or transactional and/or content)?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the list of required evidence list the evidence required for each account according to what is available from each CSP (see Annex A of the CSP Guide for precedent paragraphs for each)		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	
If No confirm evidence that still needs to be requested:		
<b>Confirm if the following is requested from CSPs</b>		
For Basic Subscriber Information:		
I. The subscriber's account or login name	<input type="checkbox"/> Yes	<input type="checkbox"/> No

	<p>2. The subscriber's name and street address <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. The subscriber's telephone number or numbers <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. The subscriber's email address <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. The Internet Protocol (IP) address used by the subscriber to register the account or otherwise initiate service <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. All IP addresses used by the subscriber to log into the account <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Session times, dates and durations <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>For Transactional Information:</p> <p>Connection information for other systems to which user connected via the email account (or into the web host account) including:</p> <p>1. Connection destination or source of connection <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Connection time and date <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Disconnect time and date <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Method of connection to system (e.g., telnet, ftp, http) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. Data transfer volume (e.g., bytes) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>6. Any other relevant routing information <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Source or destination of any electronic mail messages sent from or received by the account (known as the header of the email or the 'To' and 'From' fields), and the date, time, and length of the message <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>8. Information pertaining to any image(s) or other documents uploaded to the account (or the website), including the dates and times of uploading, and the sizes of the files but not including the contents of such files <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Name and other identifying details of individuals that accessed a specific image/file/web page between a specified period of time, on a specified date <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>For Content:</p> <p>1. Any content of emails/messages available in the user's mail account, including the IP address of the computer used to send the mail/message <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. Any attachments, photos and contact lists <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. Any draft emails <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>4. Any available deleted emails <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
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	<p>Is it confirmed that if property is realised to provide the requested State with a certificate stating the following:</p> <p>a. The property that has been realised <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>b. The date of the realisation <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>c. The monetary sum obtained by the realisation <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>For all requests</b></p> <p>Is there a catchall paragraph re any other enquiries and preservation of evidence</p> <p>'Unless you indicate otherwise, any evidence obtained pursuant to this request may be used in any criminal prosecution and related ancillary proceedings (including trials, restraint, confiscation and enforcement hearings) arising in whole or in part from the above noted investigation / prosecution, whether relating to the above named subject(s) or to any other persons who may become a subject of this investigation / prosecution.'</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a paragraph included to confirm the following:</p> <p>After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain a witness statement in writing from <b>[insert relevant official]</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a paragraph included to confirm the following</p> <p>Such other enquiries are made, persons interviewed and exhibits secured as appear to be necessary in the course of the investigation</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a paragraph included to confirm the following</p> <p>Any records are produced as exhibits in any statements together with an explanation of the technical terms used in the records.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a paragraph included to confirm the following</p> <p>Any information held on computer in any form be preserved and secured from unauthorized interference and made available to the requested State for use at any subsequent trial.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is a paragraph included to confirm the following</p> <p>The above enquiries are made and that permission be given for the original or signed and certified copies of any statements made and documents or other items secured during the course of the enquiries to be removed to the requested State for use in any criminal proceedings, trial, confiscation and enforcement proceedings.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<b>Legalisation</b>	<p>Is an Apostille or other form of legalisation of the LOR required</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<b>Form in which evidence is requested</b>	Is the information provided sufficient for admissibility (i.e. include a form the evidence is required in) <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reciprocity</b>	Is the following standard paragraph included:  I confirm that the assistance requested above may be obtained under current law of <b>[insert name of requesting State]</b> if in a like case a request for such assistance were made to the authorities in <b>[insert name of requesting State]</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Transmission of Evidence</b>	Is the following standard paragraph included:  It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in <b>[insert name of requesting State]</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Confirmation of Approval</b>	Can this LOR be approved <input type="checkbox"/> Yes <input type="checkbox"/> No  If no - detail further action required ( <i>Use a separate sheet if necessary</i> ):  1.  2.  3.  Additional sheet required <input type="checkbox"/> Yes <input type="checkbox"/> No  Date to re-submit Signature: Date Print Name: Title/Position:

# Annex F

## Bilateral Treaties

ALGERIA	
Mutual Legal Assistance	
Belgium	Convention of 12 June 1970 regarding extradition and mutual legal assistance in criminal matters between The Kingdom of Belgium and the Democratic People's Republic of Algeria (Title II, MLA , art. 18-31)
Bosnia-Herzegovina	Convention on Mutual Assistance in Criminal Matters <b>SIGNED BUT NOT RATIFIED</b>
Bulgaria	Agreement for judicial and legal assistance on Civil, Commercial, Family and Criminal Matters between the People's Republic of Bulgaria and Algerian Democratic People's Republic dated 1975 (in force since 1 April 1985)
Chad	Convention on Mutual Assistance in Criminal Matters <b>SIGNED BUT NOT RATIFIED</b>
China	Convention on Mutual Assistance in Criminal Matters (OJ No. 38, year 2007)
Croatia	Agreement on legal assistance in civil and criminal matters between Socialist Federal Republic of Yugoslavia and Democratic People's of Algeria signed on 31 March 1982. (Articles 27-30), entered into force on 20 December 1984
Cuba	Convention on Legal and Judicial Cooperation (J.O No. 18, year 2002)
Czech Republic	Treaty between the Czechoslovak Socialist Republic and Algerian Democratic and Popular Republic on Legal Assistance in Civil, Family and Criminal Matters, Alger, 17 February 1981, entry into force 23 November 1983
Egypt	Convention on Mutual Assistance and Legal and Judicial Cooperation (J.O No. 76, year 1966)
France	'Protocole judiciaire' of 28 August 1962 entered into force on 30 August 1962 completed by one 'échange de lettres' of 18 September 1980 - Convention on Mutual Assistance in Criminal Matters <b>SIGNED BUT NOT RATIFIED</b>
Hungary	Treaty on Mutual Assistance in Civil, Family and Criminal Matters, Algiers, 7 February 1976; promulgated as law-decree no.15 of 1985, applied since 13 May 1984
Iran	Convention on Mutual Assistance in Criminal Matters (J.O No. 9, year 2006)
Italy	Bilateral Convention on judicial cooperation in criminal matters between the Government of the Republic of Italy and the Government of the Democratic and Popular Republic of Algeria, concluded in Algiers on 22 July 2003. Entry into force: 25 November 2008
Jordan	Convention on legal and judicial co-operation 25 June 2001
Kuwait	Convention on Mutual Assistance in Criminal Matters (J.O No. 53 year 2015)
Libya	Convention on judicial cooperation (OJ No. 69, year 1995)
Mali	Convention on Mutual Assistance and Judicial and Legal Cooperation. (J.O No. 26, year 1983)
Mauritania	Convention on judicial cooperation. (J.O No. 14, year 1970)

ALGERIA	
Morocco	Convention on Mutual Assistance and Judicial Cooperation, supplemented by the Protocol signed at Ifran on 15 January 1969 Ratified on 2 September 1969 (J.O No. 77, year 1969)
Niger	Convention on Cooperation and Legal Aid (J.O No. 18, 1985)
Poland	Agreement on legal assistance in civil and criminal matters from 9 November 1976, entered into force 26 February 1982
Portugal	Convention on Mutual Assistance in Criminal Matters between the Portuguese Republic and the Democratic and Popular Republic of Algeria, concluded in Algiers on 22 January 2007. It came into force in 11 February 2009. See text in <i>Diário da República</i> (Official Gazette) of 16 September 2008
Romania	Convention on Mutual Legal Assistance in Civil, Family and Criminal Matters 28 June 1979
Russia	Convention on Mutual Assistance in Criminal Matters <b>SIGNED BUT NOT RATIFIED</b>
Slovakia	Treaty between the Czechoslovak Socialist Republic and Algerian Democratic and Popular Republic on Legal Assistance in Civil, Family and Criminal Matters, Alger, 1981. Entry into force: 23 November 1983
Slovenia	Treaty of 31 March 1982 on Mutual Legal Assistance in Civil and Criminal Matters between the Socialist Federal Republic of Yugoslavia and Democratic People's Republic of Algeria (Official Gazette of SFRY no. 2/83), entry into force: 26 February 1983
South Africa	Convention on judicial cooperation in criminal matters (J.O No. 37, year 2005)
South Korea	Convention on Mutual Assistance in Criminal Matters (OJ No. 6, 2007)
Spain	Convention on Mutual Assistance in Criminal Matters 7 October 2002
Sudan	Convention on Judicial and Legal Cooperation (J.O No. 68, year 2007)
Switzerland	Convention on Mutual Assistance in Criminal Matters (J.O No. 83, year 2006)
Syria	Convention on judicial and legal cooperation. (J.O No. 8, year 1983) and Additional Agreement to the Judicial and Legal Cooperation Convention (J.O No. 19, year 2001)
Tunisia	Convention on Mutual Assistance and Judicial and Legal Co-operation 28 July 1963
The United Kingdom	The Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Democratic Republic of Algeria on Mutual Legal Assistance in Criminal Matters Date of Signature: 11 July 2006, entered into force 27 March 2007
Turkey	Convention on judicial cooperation (J.O No. 69, year 2000)
United Arab Emirates	Convention on judicial cooperation in notifications, letters rogatory, exequatur and extradition (OJ No 67, 2007)
United States of America	Agreement on Mutual Assistance in Criminal Matters (OJ No. 30, 2011)
Vietnam	Convention on Mutual Assistance in Criminal Matters (OJ No. 64, 2013)
Yemen	Judicial and Legal Cooperation Agreement (J.O No. 19, year 2003)
Extradition	
Belgium	Convention of 12 June 1970 regarding extradition and mutual legal assistance in criminal matters between The Kingdom of Belgium and the Democratic People's Republic of Algeria (Title I, Extradition, art. 1-17)
Bosnia-Herzegovina	Convention on Extradition <b>SIGNED BUT NOT RATIFIED</b>

ALGERIA	
Bulgaria	Agreement for judicial and legal assistance on Civil, Commercial, Family and Criminal Matters between the People's Republic of Bulgaria and Algerian Democratic People's Republic dated 1975 (in force since 1 April 1985)
Chad	Convention on Extradition <b>SIGNED BUT NOT RATIFIED</b>
China	Convention on Extradition (OJ No. 38, 2007)
Croatia	Agreement on legal assistance in civil and criminal matters between Socialist Federal Republic of Yugoslavia and Democratic People's of Algeria signed on 31 March 1982 (Articles 31-50), entered into force on 20 December 1984
Czech Republic	Treaty between the Czechoslovak Socialist Republic and Algerian Democratic and Popular Republic on Legal Assistance in Civil, Family and Criminal Matters, Alger, 17 February 1981, entry into force 23 November 1983
France	Bilateral convention on exequatur and extradition of 27 August 1964 (Official Journal August 17, 1965, p.7269); entered into force on 17 August 1965
Iran	Convention on extradition (J.O No. 16, year 2006)
Kuwait	Convention on extradition (J.O No. 53 year 2015)
Nigeria	Convention on extradition (J.O No. 38, year 2005)
Pakistan	Convention on extradition (J.O No. 27, year 2004)
Poland	Agreement on legal cooperation in civil and criminal matters from 9 November 1976; entered into force 26 February 1982
Portugal	Extradition Convention between the Portuguese Republic and the Democratic and Popular Republic of Algeria concluded in Algiers on 22 January 2007 and entered into force on 13 November 2008. See text in <i>Diário da República</i> (Official Gazette), n. o 199 of 14 October 2008
Romania	Treaty in place
Saudi Arabia	Convention on extradition (J.O No. 43 year 2015)
Slovakia	Treaty between the Czechoslovak Socialist Republic and Algerian Democratic and Popular Republic on Legal Assistance in Civil, Family and Criminal Matters, Algeria, 1981 Entry into force: 23 November 1983
Slovenia	Treaty of 31 March 1982 on Mutual Legal Assistance in Civil and Criminal Matters between the Socialist Federal Republic of Yugoslavia and Democratic People's Republic of Algeria (Official Gazette of SFRY no. 2/83), entry into force: 26 February 1983
South Africa	Convention on extradition (J.O No. 9, year 2003)
South Korea	Convention on Extradition (OJ No. 59, year 2007)
Spain	Convention on Extradition 12 June 2006
United Arab Emirates	Convention on judicial cooperation in notifications, letters rogatory, exequatur and extradition (OJ No 67, 2007)
The United Kingdom	Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Democratic Republic of Algeria on Extradition <i>Date of signature</i> : 11 July 2006, entered into force 27 March 2007
Vietnam	Convention on Extradition (OJ No. 64, 2013)
<b>Transfer of Criminal Proceedings</b>	
Poland	Agreement on legal cooperation in civil and criminal matters from 9 November 1976

<b>EGYPT</b>	
<b>Mutual Legal Assistance</b>	
<b>Algeria</b>	Convention on Mutual Assistance and Legal and Judicial Cooperation (J.O No. 76, year 1966)
<b>Cyprus</b>	Agreement between the Republic of Cyprus and the Government of the Arab Republic of Egypt on Judicial and Legal Assistance in Civil and Criminal Matters, signed on 8 July 1992, in force since 27 February 1994
<b>France</b>	Bilateral convention on judicial cooperation in criminal matters of 15 March 1982 (Official Journal 19 July 1983 p. 2228); entered into force on 7 August 1983
<b>Greece</b>	Bilateral treaty of 22 December 1986 between the Governments of the Hellenic Republic and the Arabic Republic of Egypt on mutual legal assistance in criminal matters, in force since 1 April 1990 (ratification law 1760/1988)
<b>Hungary</b>	Treaty on Mutual Assistance in Criminal Matters, Transfer of Persons in Custody for the Purpose of Executing Judicial Decisions in Criminal Procedures, and Extradition, Cairo, 14 December 1987; promulgated as law-decree no.11 of 1989, applied since 4 October 1988
<b>Poland</b>	Agreement on legal assistance in criminal matters, transfer of sentenced and extradition from 17 May 1992; entered into force 21 February 1993
<b>Romania</b>	2001 Treaty
<b>Extradition</b>	
<b>Cyprus</b>	Agreement between the Republic of Cyprus and the Government of the Arab Republic of Egypt on the Extradition of Offenders, signed on 25 March 1996, in force since 26 November 1998.
<b>France</b>	Bilateral convention on judicial cooperation in criminal matters of 15 March 1982 (Official Journal 19 July 1983 p. 2228); entered into force on 7 August 1983
<b>Greece</b>	Bilateral treaty of 24 February 1986 between the Hellenic Republic and the Arabic Republic of Egypt on extradition, in force since 11 July 1987 (ratification law 1689/1987)
<b>Hungary</b>	Treaty on Mutual Assistance in Criminal Matters, Transfer of Persons in Custody for the Purpose of Executing Judicial Decisions in Criminal Procedures, and Extradition, Cairo, 14 December 1987; promulgated as law-decree no.11 of 1989, applied since 4 October 1988
<b>Malta</b>	Bilateral Agreement between Malta and Egypt on Extradition – Signed on 20 May 2004
<b>Poland</b>	Agreement on legal assistance in criminal matters, transfer of sentenced and extradition from 17 May 1992, entered into force 21 February 1993
<b>Romania</b>	Treaty in place
<b>Transfer of Criminal Proceedings</b>	
<b>Greece</b>	Bilateral treaty of 22 December 1986 between the Governments of the Hellenic Republic and the Arabic Republic of Egypt on transfer of sentenced persons, in force since 22 January 1987 (ratification law 1765/1988)
<b>Poland</b>	Agreement on legal assistance in criminal matters, transfer of sentenced and extradition from 17 May 1992
<b>Transfer of Sentenced Persons</b>	
<b>Hungary</b>	Treaty on Mutual Assistance in Criminal Matters, Transfer of Persons in Custody for the Purpose of Executing Judicial Decisions in Criminal Procedures, and Extradition, Cairo, 14 December 1987; promulgated as law-decree no.11 of 1989, applied since 4 October 1988
<b>Poland</b>	Agreement on legal assistance in criminal matters, transfer of sentenced and extradition from 17 May 1992; entered into force 21 February 1993
<b>Spain</b>	Treaty on transfer of sentenced persons 1994

ISRAEL	
Mutual Legal Assistance	
All EU Member States	No bilateral agreements but Israel is a party to the European Convention on Mutual Assistance in Criminal Matters
Germany	<ul style="list-style-type: none"> <li>• Agreement of 20 July 1977 between the Federal Republic of Germany and the State of Israel to Supplement the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters and to Facilitate its Application (entry into force: 6 March 1981)</li> <li>• Arrangement of 20 July 1977 between the Government of the Federal Republic of Germany and the Government of the State of Israel on the German-Israeli Agreement to Supplement the European Convention on Mutual Assistance in Criminal Matters and to Facilitate its Application</li> <li>• Arrangement of 16/27 April 1981 between the Government of the Federal Republic of Germany and the Government of the State of Israel on the German-Israeli Agreement to Supplement the European Convention on Mutual Assistance in Criminal Matters and to Facilitate its Application</li> </ul>
Extradition	
All EU Member States	No bilateral agreements but Israel is a party to the European Convention on Extradition

JORDAN	
Mutual Legal Assistance	
Algeria	Convention on legal and judicial co-operation 25 June 2001
Transfer of Sentenced Persons	
Cyprus	Agreement between the Government of the Republic of Cyprus and the Hashemite Kingdom of Jordan on the Transfer of Sentenced Persons, signed on 25 January 1995, in force since 7 March 2001

LEBANON	
Mutual Legal Assistance	
Belgium	Extradition Treaty between Belgium and Lebanon, 24 December 1953, Additional Agreement, 8 March 1968 (re. drug offences). Articles 16-19 regard MLA
Bulgaria	Agreement between the government of the Republic of Bulgaria and the government of the Republic of Lebanon for mutual assistance in Criminal Matters from 20 March 2001, in force since 10 April 2004
Greece	Bilateral treaty of 5 April 1975 between the Hellenic Republic and the Republic of Lebanon on mutual legal assistance in civil, commercial and criminal matters, in force since 4 August 1986 (ratification law 1099/1980)
Italy	Bilateral Convention on mutual judicial assistance in Civil, Commercial and Criminal Matters, Execution of Judgments, Arbitration decisions and Extradition, concluded in Beirut on 10 July 1970. Entry into force: 17 May 1975
Extradition	
Belgium	Extradition Treaty between Belgium and Lebanon, 24 December 1953, Additional Agreement, 8 March 1968 (re. drug offences)
Bulgaria	Agreement between the government of the Republic of Bulgaria and the government of the Republic of Lebanon for Extradition from 20 March 2001, in force since 10 April 2004

LEBANON	
Greece	Bilateral treaty of 5 April 1975 between the Hellenic Republic and the Republic of Lebanon on mutual legal assistance in civil, commercial and criminal matters (extradition included), in force since 4 August 1986 (ratification law 1099/1980)
Italy	Bilateral Convention on mutual judicial assistance in Civil, Commercial and Criminal Matters, Execution of Judgments, Arbitration decisions and Extradition, concluded in Beirut on 10 July 1970. Entry into force: 17 May 1975
Transfer of Sentenced Persons	
Cyprus	Agreement between the Republic of Cyprus and the Republic of Lebanon on the Transfer of Sentenced Persons, signed on 21 October 1994, in force since 18 April 1997

MOROCCO	
Mutual Legal Assistance	
Algeria	Convention on Mutual Assistance and Judicial Cooperation, supplemented by the Protocol signed at Ifran on 15 January 1969 Ratified on 2 September 1969 (J.O No. 77, year 1969)
Belgium	Convention 7 July 1997 between the Kingdom of Belgium and the Kingdom of Morocco regarding Mutual Legal Assistance in Criminal Matters and Additional Protocol 19 March 2007
Bulgaria	Agreement for legal assistance in Criminal Matters between the Republic of Bulgaria and the Kingdom of Morocco, signed in 15 March 2005 (not yet in force)
France	Bilateral convention on mutual assistance, 18 April 2008 (Official Journal, 18 August 2011 p13986), entered into force 1 June 2011
Germany	Exchange of notes of 14/17 July 1958
Italy	Bilateral Convention on mutual judicial assistance, Execution of Judgements and Extradition, concluded in Rome on 12 February 1975 Entry into force: 22 May 1975
The Netherlands	Agreement between the Kingdom of the Netherlands and the Kingdom of Morocco on mutual legal assistance in criminal matters (20 September 2010)
Poland	Agreement on legal assistance in civil and criminal matters from 21 May 1979; entered into force 27 November 1982
Portugal	Convention between the Portuguese Republic and the Kingdom of Morocco on Legal Assistance in Criminal Matters concluded at Evora on November 14, 1998 and entered into force on 1 September 2001. See text in <i>Diário da República</i> (Official Gazette), n.o 55, of 6 March 2000
Romania	Treaty of 1972
Spain	Treaty between the Kingdom of Spain and the Kingdom of Morocco on Mutual Legal Assistance in Criminal Matters 2009
United Kingdom	Convention on mutual legal assistance in criminal matters 8 July 2013
Extradition	
Belgium	Convention 7 July 1997 between the Kingdom of Belgium and the Kingdom of Morocco regarding Extradition
Bulgaria	Agreement for extradition between the Republic of Bulgaria and the Kingdom of Morocco, signed in 15 March 2005 not yet if force
France	Bilateral convention on extradition of 18 April 2008 (Official Journal, 8 August 2011 p 13990)
Italy	Bilateral Convention on mutual judicial assistance, Execution of Judgements and Extradition, concluded in Rome on 12 February 1975 Entry into force: 22 May 1975
Poland	Agreement on legal assistance in civil and criminal matters from 21 May 1979; entered into force 27 November 1982



## MOROCCO

<b>Portugal</b>	Convention on Extradition between the Portuguese Republic and the Kingdom of Morocco, concluded at Rabat on 17 April 2007 and entered into force on 5 May 2011. See text in <i>Diário da República</i> (Official Gazette), n.o 40, of 26 February 2009
<b>Romania</b>	Treaty in force
<b>Spain</b>	Treaty on Extradition between the Kingdom of Spain and the Kingdom of Morocco 2009
<b>United Kingdom</b>	Convention on extradition 5 August 2013
<b>Transfer of Criminal Proceedings</b>	
<b>Poland</b>	Agreement on legal assistance in civil and criminal matters from 21 May 1979; entered into force 27 November 1982
<b>Transfer of Sentenced Persons</b>	
<b>Belgium</b>	Convention 7 July 1997 between the Kingdom of Belgium and the Kingdom of Morocco regarding Assistance to Detained Persons and the Transfer of Sentenced Persons and Additional Protocol 19 March 2007
<b>France</b>	Bilateral convention of 10 August 1981, completed by the agreement of 31 July 1985 (Official Journal 14 January 1986 p.650) completed by one « échange de lettres of 31 July 1985 » entered into force on 1 October 1985
<b>The Netherlands</b>	Agreement between the Kingdom of the Netherlands and the Kingdom of Morocco on the Transfer of Sentenced Persons (30 November 1999). Entered into force 1 May 2001
<b>Poland</b>	Agreement on legal assistance in civil and criminal matters from 21 May 1979; entered into force 27 November 1982
<b>Portugal</b>	Convention between the Portuguese Republic and the Kingdom of Morocco on the Assistance to Detained Persons and the Transfer of Sentenced Persons concluded in Évora on 14 November 1998 and entered into force on 1 October 2000. See text in <i>Diário da República</i> (Official Gazette), n. 55, of 6 March 2000

## TUNISIA

### Mutual Legal Assistance

<b>Algeria</b>	Convention on Mutual Assistance and Judicial and Legal Co-operation 28 July 1963
<b>Belgium</b>	Convention 27 April 1989 between the Kingdom of Belgium and the Tunisian Republic regarding Extradition and Mutual Legal Assistance in Criminal Matters (Title II MLA, art. 20-32)
<b>Bulgaria</b>	Agreement between the People's Republic of Bulgaria and the Republic of Tunisia for legal assistance in Civil and Criminal Matters from 16 October 1975, in force since 31 August 1976
<b>Czech Republic</b>	Treaty between the Czechoslovak Socialist Republic and the Republic of Tunisia on Mutual Legal Assistance in Civil and Criminal Matters, on Recognition and Execution of Judicial Decisions and on Extradition, signed 12 April 1979, entry into force 21 February 1981
<b>Germany</b>	Agreement of 19 July 1966 on Extradition and Mutual Assistance in Criminal Matters (entry into force 13 March 1970)
<b>Greece</b>	Bilateral treaty of 6 July 1994 between the Hellenic Republic and the Republic of Tunisia on extradition and mutual legal assistance in criminal matters, in force since 3 December 1995 (ratification law 2312/1995)

<b>TUNISIA</b>	
<b>Hungary</b>	Treaty on Mutual Assistance in Civil and Criminal Matters, Recognition and Execution of Judicial Decisions, and Extradition, Budapest, 6 December 1982; promulgated as law-decree no.2 of 1985, applied since 24 November 1984
<b>Italy</b>	Bilateral Convention on mutual judicial assistance in Civil, Commercial and Criminal Matters, Recognition and Execution of Judgments and Extradition, concluded in Rome on 15 November 1967. Entry into force: 19 April 1972
<b>Poland</b>	Agreement on legal assistance in civil and criminal matters from 22 March 1985; entered into force 11 December 1986
<b>Portugal</b>	Treaty of Mutual Legal Assistance in Criminal Matters between the Portuguese Republic and Republic of Tunisia, concluded in Tunes on 11 May 1998, entry into force in 4 August 2000. See text in <i>Diário da República</i> (Official Gazette), n.o 76, of 30 March 2000
<b>Romania</b>	Treaty of 1971
<b>Spain</b>	Treaty on Mutual Legal Assistance on Criminal Matters between the Kingdom of Spain and Tunisia 2001
<b>Slovakia</b>	Treaty between the Czechoslovak Socialist Republic and the Republic of Tunisia on Mutual Legal Assistance in Civil and Criminal Matters, on Recognition and Execution of Judicial Decisions and on Extradition, 1981. Entry into force: 21 February 1981
<b>Extradition</b>	
<b>Belgium</b>	Convention 27 April 1989 between the Kingdom of Belgium and the Tunisian Republic regarding Extradition and Mutual Legal Assistance in Criminal Matters (Title II MLA, art. 1-19)
<b>Bulgaria</b>	Agreement between the People's Republic of Bulgaria and the Republic of Tunisia for legal assistance in Civil and Criminal Matters from 16 October 1975, in force since 31 August 1976
<b>Czech Republic</b>	Treaty between the Czechoslovak Socialist Republic and the Republic of Tunisia on Mutual Legal Assistance in Civil and Criminal Matters, on Recognition and Execution of Judicial Decisions and on Extradition, signed 12 April 1979, entry into force 21 February 1981
<b>Germany</b>	Agreement of 19 July 1966 on Extradition and Mutual Assistance in Criminal Matters (entry into force 13 March 1970)
<b>Hungary</b>	Treaty on Mutual Assistance in Civil and Criminal Matters, Recognition and Execution of Judicial Decisions, and Extradition, Budapest, 6 December 1982; promulgated as law-decree no.2 of 1985, applied since 24 November 1984
<b>Malta</b>	Bilateral Agreement between Malta and Tunisia on Extradition – Signed on 14 December 2006
<b>Poland</b>	Agreement on legal assistance in civil and criminal matters from 22 March 1985; entered into force 11 December 1986
<b>Portugal</b>	Extradition Treaty between the Portuguese Republic and the Republic of Tunisia, concluded in Tunis on 11 May 1998 and entered into force on 10 January 2002. See text in <i>Diário da República</i> (Official Gazette), n.o 76, of 30 March 2000
<b>Romania</b>	Treaty in force
<b>Slovakia</b>	Treaty between the Czechoslovak Socialist Republic and the Republic of Tunisia on Mutual Legal Assistance in Civil and Criminal Matters, on Recognition and Execution of Judicial Decisions and on Extradition, 1981. Entry into force: 21 February 1981
<b>Transfer of Criminal Proceedings</b>	
<b>Poland</b>	Agreement on legal assistance in civil and criminal matters from 22 March 1985

# Annex G

## International Conventions

ALGERIA	
United Nations Convention Against Transnational Organized Crime	Ratification 7 October 2002
Trafficking in Persons Protocol	Ratification 9 November 2003
Migrants Protocol	Ratification 9 November 2003
Firearms Protocol	Acceded 25 August 2004
United Nations Convention Against Corruption	Ratification 25 August 2004
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	Ratification 9 May 1995
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005)	Ratification 3 November 2010
International Convention for the Suppression of Bombings	Ratification 23 December 2000
Convention on the Marking of Plastic Explosives and Sheets for Detection, made in Montreal on March 1 1991	Ratification 10 February 1996
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, done at Oslo on 18 September 1997	Ratification 17 December 2000
International Convention for the Suppression of the Financing of Terrorism	Ratification 23 December 2000
International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations December 17, 1979	Ratification 23 April 1996
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including the diplomatic agents, signed in New York on 14 December 1973	Ratification 2 September 1996
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done in Rome on March 10 1988	Ratification 30 September 1997
Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at London on October 14, 2005	Ratification 3 November 2010
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done in London on October 14 2005	Ratification 3 November 2010
Arab Convention against Terrorism (Cairo 1998)	Ratification 7 December 1998

ALGERIA	
Arab Convention against Transnational Organized Crime	Ratification 8 September 2014
Arab Convention Against Corruption (Cairo 2010)	Ratification 8 September 2014
Arab Convention Combatting Information Technology Offences (Cairo 2010)	Ratification 8 September 2014
Arab Convention against Money Laundering and the Financing of Terrorism (Cairo 2010)	Ratification 8 September 2014
Riyadh Arab Convention on Mutual Legal Assistance (Riyadh)	Ratification 11 February 2001
Convention on Judicial and Legal Cooperation between the States of the Arab Maghreb Union signed at Ras Lanouf (Libya) on March 9 and 10, 1991	Ratification 27 June 1994
African Union Convention on Preventing and Combating Corruption (Maputo 2003)	Ratification 10 April 2007
African Union Convention on the Prevention and Combating of Terrorism (Algiers 1999)	Ratification 9 April 2000
Protocol to the OAU Convention on Preventing and Combating Terrorism (Addis Ababa 2004)	Ratification 6 June 2007
Convention of the Organization of the Islamic Conference to Combat International Terrorism (Ouagadougou 1999)	Ratification 23 September 2007
Convention of the Organization of the Islamic Conference to Combat International Terrorism (Ouagadougou 1999)	Ratification 23 September 2007
Convention on Slavery, 1926, as amended by the Protocol of 7 December 1953	Ratification 11 September 1963
ILO Convention (No. 105) concerning the abolition of forced labor	Ratification 22 May 1969
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery	Ratification 11 September 1963
Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others	Ratification 11 September 1963

EGYPT	
United Nations Convention Against Transnational Organized Crime	Ratification 5 March 2004
Trafficking in Persons Protocol	Ratification 5 March 2004
Migrants Protocol	Acceded 1 March 2005
United Nations Convention Against Corruption	Ratification 25 February 2005
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	Ratification 15 March 1991
Arab Convention Combatting Information Technology Offences (Cairo 2010)	Ratification

## ISRAEL

<b>United Nations Convention Against Transnational Organized Crime</b>	Ratification 27 December 2006
<b>Trafficking in Persons Protocol</b>	Ratification 23 July 2008
<b>United Nations Convention Against Corruption</b>	Ratification 4 February 2009
<b>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</b>	Ratification 20 March 2002
<b>Budapest Convention on Cybercrime</b>	Ratification 9 May 2016

## JORDAN

<b>United Nations Convention Against Transnational Organized Crime</b>	Ratification 22 May 2009
<b>Trafficking in Persons Protocol</b>	Acceded 11 June 2009
<b>United Nations Convention Against Corruption</b>	Ratification 24 February 2005
<b>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</b>	Ratification 16 April 1990
<b>Arab Convention Combatting Information Technology Offences (Cairo 2010)</b>	Ratification

## LEBANON

<b>United Nations Convention Against Transnational Organized Crime</b>	Ratification 5 October 2005
<b>Trafficking in Persons Protocol</b>	Ratification 5 October 2004
<b>Migrants Protocol</b>	Ratification 5 October 2004
<b>Firearms Protocol</b>	Ratification 13 November 2006
<b>United Nations Convention Against Corruption</b>	Acceded 22 April 2009
<b>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</b>	Acceded 11 March 1996

## MOROCCO

<b>United Nations Convention Against Transnational Organized Crime</b>	Ratification 19 September 2002
<b>Trafficking in Persons Protocol</b>	Acceded 25 April 2011

<b>Firearms Protocol</b>	Acceded 8 April 2009
<b>United Nations Convention Against Corruption</b>	Ratification 9 May 2007
<b>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</b>	Ratification 28 October 1992
<b>Budapest Convention on Cybercrime</b>	Ratification 2012

## PALESTINE

<b>United Nations Convention Against Transnational Organized Crime</b>	Acceded 2 January 2015
<b>Arab Convention Combatting Information Technology Offences (Cairo 2010)</b>	Ratification
<b>Riyadh Arab Convention on Mutual Legal Assistance (Riyadh)</b>	Ratification

## TUNISIA

<b>United Nations Convention Against Transnational Organized Crime</b>	Ratification 19 June 2003
<b>Trafficking in Persons Protocol</b>	Ratification 14 July 2003
<b>Migrants Protocol</b>	Ratification 14 July 2003
<b>Firearms Protocol</b>	Ratification 10 April 2008
<b>United Nations Convention Against Corruption</b>	Ratification 23 September 2008
<b>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</b>	Ratification 20 September 1990

# Annex H

## National Links

National judicial authorities ALGERIA	National Links
Ministry of Justice	<a href="http://www.mjustice.dz">http://www.mjustice.dz</a>
General Prosecutor's Office	There is no General Prosecutor's Office as a separate institution but there is the Supreme Court General Prosecutor and a General Prosecutor in each local Court.
Supreme Court	<a href="http://www.coursupreme.dz">http://www.coursupreme.dz</a>
High Judicial Council ( <i>Conseil Supérieur de la magistrature</i> )	No website
The Centre of Legal and Judicial Studies	<a href="https://crji.mjustice.dz">https://crji.mjustice.dz</a>
Judicial Training Institute	<a href="http://www.esm.dz">http://www.esm.dz</a>
National Office on drug control and drug addiction	<a href="https://onlctd.mjustice.dz">https://onlctd.mjustice.dz</a>
National Links	National judicial authorities EGYPT
<a href="http://www.jp.gov.eg/ar/Default.aspx">http://www.jp.gov.eg/ar/Default.aspx</a>	Egyptian Ministry of Justice
<a href="http://ppo.gov.eg/webcenter/portal/oracle/webcenter/page/scopedMD/sbb668c6c_8fd5_4f65_bad0_ed3c4a419705/PortalHome.jsp?wc.contextURL=%2Fspaces%2FProsPortal&amp;_adf.ctrl-state=19pd1pffxn_5&amp;_afirLoop=952935183978266#!">http://ppo.gov.eg/webcenter/portal/oracle/webcenter/page/scopedMD/sbb668c6c_8fd5_4f65_bad0_ed3c4a419705/PortalHome.jsp?wc.contextURL=%2Fspaces%2FProsPortal&amp;_adf.ctrl-state=19pd1pffxn_5&amp;_afirLoop=952935183978266#!</a>	General Prosecutor's Office
<a href="http://hccourt.gov.eg/">http://hccourt.gov.eg/</a>	Constitutional Court – Supreme Court
<a href="http://www.cc.gov.eg/index.html">http://www.cc.gov.eg/index.html</a>	High Judicial Council – Court of Cassation
<a href="http://www.jp.gov.eg/ncjs/l.aspx">http://www.jp.gov.eg/ncjs/l.aspx</a>	Judicial Training Institute
<a href="http://www.ecs.eg/">http://www.ecs.eg/</a>	Egyptian Council of State
<a href="http://www.ap.gov.eg/">http://www.ap.gov.eg/</a>	Administrative Prosecution Authority
<a href="http://www.sla.gov.eg/index.aspx">http://www.sla.gov.eg/index.aspx</a>	Egyptian State Lawsuits Authority
<a href="http://www.asa.gov.eg/page.aspx?id=1">http://www.asa.gov.eg/page.aspx?id=1</a>	Accountability State Authority
<a href="http://www.parliament.gov.eg/home/">http://www.parliament.gov.eg/home/</a>	Egyptian Parliament
<a href="http://www.egypt.gov.eg/English/Home.aspx">http://www.egypt.gov.eg/English/Home.aspx</a>	Egyptian Government Website - Information & Online Services

National judicial authorities PALESTINE	National Links
Ministry of Justice	<a href="http://www.moj.pna.ps">www.moj.pna.ps</a>
General Prosecutor's Office	<a href="http://www.pgp.ps">www.pgp.ps</a>
Supreme Court	<a href="http://www.courts.gov.ps">http://www.courts.gov.ps</a>
High Judicial Council ( <i>Conseil Supérieur de la magistrature</i> )	<a href="http://www.courts.gov.ps">www.courts.gov.ps</a>
Judicial Training Institute	<a href="http://www.pji.pna.ps">http://www.pji.pna.ps</a>
Palestinian Anti-Corruption Commission	<a href="http://www.pacc.pna.ps">http://www.pacc.pna.ps</a>

# Annex I

## Precedent Joint Investigation Team Agreement

### In accordance with:

[Please indicate here the applicable legal bases, which may be taken from – but not limited to — the instruments listed below]

- *Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000;*
- *Council Framework Decision of 13 June 2002 on joint investigation teams;*
- *Article 9(1)(c) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988);*
- *Article 19 of the United Nations Convention against Transnational Organized Crime (2000);*
- *Article 49 of the United Nations Convention against Corruption (2003);*
- *Article 27 of the Police Cooperation Convention for South East Europe (2006).]*

### 1. Parties to the Agreement

The following parties have concluded an agreement on the setting up of a joint investigation team, hereafter referred to as 'JIT':

- [Insert name of the first competent agency/administration of a State as a Party to the agreement] And
- [Insert name of second competent agency/administration of a State as a party to the agreement]

The parties to this agreement may decide, by common consent, to invite other States' agencies or administrations to become parties to this agreement.

### 2. Purpose of the JIT

This agreement shall cover the setting up of a JIT for the following purpose:

[Please provide a description of the specific purpose of the JIT]

*This description should include the circumstances of the crime(s) being investigated in the States involved (date, place and nature) and, if applicable, reference to the ongoing domestic procedures. References to case-related personal data are to be kept to a minimum.*



*This section should also briefly describe the objectives of the JIT (including e.g. collection of evidence, coordinated arrest of suspects, asset freezing ...). In this context, Parties should consider including the initiation and completion of a financial investigation as one of the JIT objectives.]*

### **3. Period covered by this agreement**

The parties agree that the JIT will operate for [please indicate specific duration] starting from the entry into force of this agreement.

This agreement shall enter into force when the last party to the JIT has signed it. This period may be extended by mutual consent.

### **4. States in which the JIT will operate**

The JIT will operate in the States of the parties to this agreement.

The team shall carry out its operations in accordance with the law of the States in which it operates at any particular time.

### **5. JIT Leader(s)**

The leaders of the team shall be representatives of the competent authorities participating in criminal investigations from the States in which the team operates at any particular time, under whose leadership the members of the JIT shall carry out their tasks. The parties have designated the following persons to act as leaders of the JIT:

Name	Position/Rank	Authority/Agency	State

Should any of the abovementioned persons be unable to carry out their duties, a replacement will be designated without delay. Written notification of such replacement shall be provided to all concerned parties and annexed to this agreement.

### **6. Members of the JIT**

In addition to the persons referred to in point 5, a list of JIT members shall be provided by the parties in a dedicated annex to this agreement.

Should any of the JIT members be unable to carry out their duties, a replacement will be designated without delay by written notification sent by the competent leader of the JIT.

### **7. Participants in the JIT**

Parties to the JIT agree to involve [Insert here] as participants in the JIT. Specific arrangements related to the participation of [Insert name] are to be dealt with in the relevant appendix to this agreement.

## **8. Gathering of information and evidence**

The JIT leaders may agree on specific procedures to be followed regarding the gathering of information and evidence by the JIT in the States in which it operates.

The parties entrust the JIT leaders with the task of giving advice on the obtaining of evidence.

## **9. Access to information and evidence**

The JIT leaders shall specify the processes and procedures to be followed regarding the sharing between them of information and evidence obtained pursuant to the JIT in each SPC.

*[In addition, parties may agree on a clause containing more specific rules on access, handling and use of information and evidence. Such clause may in particular be deemed appropriate when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Article 13(10) of the Convention).]*

## **10. Exchange of information and evidence obtained prior to the JIT**

Information or evidence already available at the time of the entry into force of this agreement, and which pertains to the investigation described in this agreement, may be shared between the parties in the framework of this agreement.

## **11. Information and evidence obtained from States not participating in the JIT**

Should a need arise for a mutual legal assistance request to be sent to a State that does not participate in the JIT, the requesting State shall consider seeking the agreement of the requested State to share with the other JIT party/parties the information or evidence obtained as a result of the execution of the request.

## **12. Specific arrangements related to seconded members**

*[When deemed appropriate, parties may, under this clause, agree on the specific conditions under which seconded members may:*

- *carry out investigations – including in particular coercive measures — in the State of operation (if deemed appropriate, domestic legislations may be quoted here or, alternatively, annexed to this agreement)*
- *request measures to be carried out in the State of secondment*

- *share information collected by the team*
- *carry/use weapons]*

## **13. Amendments to the agreement**

This agreement may be amended by mutual consent of the parties. Unless otherwise stated in this agreement, amendments can be made in any written form agreed upon by the parties.

## **14. Consultation and coordination**

The parties will ensure they consult with each other whenever needed for the coordination of the activities of the team, including, but not limited to:

- the review of the progress achieved and the performance of the team
- the timing and method of intervention by the investigators
- the best manner in which to undertake eventual legal proceedings, consideration of appropriate trial venue, and confiscation.

## **15. Communication with the media**

If envisaged, timing and content of communication with the media shall be agreed upon by the parties and followed by the participants.

## **16. Evaluation**

The parties may consider evaluating the performance of the JIT, the best practice used and lessons learned. A dedicated meeting may be arranged to carry out the evaluation.

## **17. Specific arrangements**

*[Please insert, if applicable. The following sub-chapters are intended to highlight possible areas that may be specifically described.]*

### **17.1. Rules of Disclosure**

*[Parties may wish to clarify here applicable national rules on communication to the defense and/or annex a copy or a summary of them]*

### **17.2. Management of assets/asset recovery arrangements**

### **17.3. Liability**

*[Parties may wish to regulate this aspect, particularly when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Articles 15 and 16 of the Convention)]*

## **18. Organizational arrangements**

*[Please insert, if applicable. The following sub-chapters are intended to highlight possible areas that may be specifically described]*

### **18.1. Facilities (office accommodation, vehicles, other technical equipment)**

### **18.2. Costs/expenditures/insurance**

### **18.3. Financial support to JITs**

*[Under this clause, Parties may agree on specific arrangements concerning roles and responsibilities within the team concerning the submission of applications for EU funding]*

### **18.4. Language of communication**

Done at [place of signature], [date]

[Signatures of all parties]

## **Appendix I**

### **Agreement to extend a joint investigation team**

The parties have agreed to extend the joint investigation team (hereinafter 'JIT') set up by agreement of [insert date] done at [insert place of signature] a copy of which is attached hereto.

The parties consider that the JIT should be extended beyond the period for which it was set up [insert date on which period ends] since its purpose as established in Article [insert article on purpose of JIT here] has not yet been achieved.

The circumstances requiring the JIT to be extended have been carefully examined by all parties. The extension of the JIT is considered essential to the achievement of the purpose for which the JIT was set up.

The JIT will therefore remain in operation for an additional period of [please indicate specific duration] from the entry into force of this agreement. The above period may be extended further by the parties by mutual consent.

Date/signature

## Appendix II

The parties have agreed to amend the written agreement setting up a joint investigation team (hereinafter 'JIT') of [insert date] done at [insert place] a copy of which is attached hereto.

The signatories have agreed that the following articles shall be amended as follows:

I. (Amendment ...)

The circumstances requiring the JIT agreement to be amended have been carefully examined by all parties. The amendment(s) to the JIT agreement is/are deemed essential to achieve the purpose for which the JIT was set up.

Date/signature

## Annex J

### Precedent Request for Extradition<sup>428</sup>

Excellency,

Subject. Request for extradition of **[insert name of the wanted person]**

I, the undersigned **[insert name and position of the person who has the authority to make the request]**, of **[insert name of the requesting State]**, have the honour to request the competent authority of **[insert name of the requested State]** in accordance with the Extradition Treaty between **[insert name of the requesting State]** and **[insert name of the requested State]**, which entered into force on **[insert date of the entry into force of the Treaty]** or, in the absence of an extradition treaty, the legal basis on which a request is made: Security Council resolution, multilateral treaty, arrangement or reciprocity for the extradition of **[insert name of the wanted person and his nationality]** to **[insert name of the requesting State]**.

**[insert name of the wanted person and personal details to identify him or her (if known)]** is believed to be currently residing at **[insert address or whereabouts of the wanted person]**.

Paragraph 1, in the case of a request for extradition in order to prosecute:

**[insert name of the requested person]** is suspected of **[insert name of the offence(s)]**, which *[is/are]* punishable under the laws of the **[insert name of requesting State]** by the following sentence(s) [...].

**[insert name of the court]** summons him/her for such crime(s) on **[insert date of summons]**.

The Competent Authority under the law of **[insert name of the requesting State]** has already issued an arrest warrant for **[insert name of the wanted person]**.

Paragraph 2, in the case of a request for extradition for the purpose of enforcement of a sentence:

**[insert name of the wanted person]** has been convicted of **[insert name of the offence(s)]**, which *[is/are]* punishable under the laws of the **[requesting State]** for a period of at least [...] year(s). (A copy of the court judgement is attached.)

**[insert name of requesting State]** seeks the surrender of **[insert name of the wanted person]** to serve the **[insert remainder of the]** sentence handed down.

A summary of the facts of the case and the applicable criminal statute(s) of **[insert name of the requesting State]**, as well as all supporting documents, are attached for the information and consideration of **[insert name of the requested State]**.

428. Manual on International Cooperation in Criminal Matters related to Terrorism, p. 150

# EUROMED JUSTICE

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I attest that **[insert name of the wanted person]** will not be prosecuted for crimes other than that/those stated in the present request.

Please contact **[insert name and contact details for the case officer, including telephone number, facsimile number and e-mail address]** of the requesting State if you require further information.

[Please rest assured that **[insert name of the requesting State]** will provide the same assistance for extradition requests from **[insert name of the requested State]** in the future.

Accept, Excellency, the assurances of my highest consideration.

Date:

Place:

Signature:

Seal:



## Annex K - EU cooperation with third countries

### INTRODUCTION

The mechanisms for cross-border judicial cooperation were developed several decades ago.

There are co-existing levels of regulations, which can be used as appropriate by the competent EU and third countries judicial authorities: EU law; national rules of the EU Member States governing criminal investigations; international treaties, regional conventions, and bilateral agreements. The agreements concluded by the EU with some third countries can be found in the EuroMed CrimEx Legal and Gaps Analyses and in the judicial library that can be accessed via the homepage of the European Judicial Network in criminal matters (EJN):

<https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx><sup>429</sup>

EU judicial and police cooperation in criminal matters include:

- Cooperation between national police forces, customs services, and other law enforcement agencies (such as Financial Intelligence Units);
- Cooperation between national judicial authorities (central authorities, courts, and prosecution offices);
- Cooperation with EU agencies in the area of Justice and Home Affairs (such as the EU law enforcement agency *Europol*, the EU agency for the management of operational cooperation at the external borders *Frontex*, the EU judicial cooperation agency *Eurojust*, the European police college *CEPOL*, the EU agency for large-scale IT systems *eu-LISA*, and the European Monitoring Centre for Drugs and Drug Addiction *EMCDDA*). The European Public Prosecutor's Office (EPPO) established through the Regulation (EU) 2017/1939 to investigate and prosecute the financial crimes related to the EU budget and VAT fraud is in a process of institutionalisation.
- Cooperation with third countries and international organisations.

The main European Union legal instruments used by EU Member States to request cooperation in criminal matters are the following:

- *Framework Decision 2002/584/JHA on the European arrest warrant (EAW)*,<sup>430</sup>
- *Directive 2014/41/EU regarding the European Investigation Order in criminal matters (EIO Directive)*,<sup>431</sup>

429. Last visited on 18 January 2019

430. 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant (EAW) and the surrender procedures between Member States OJ L 190/1, 18.07.2002

431. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014,



- *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*<sup>432</sup>,
- *Regulation (EU) 2018/1727* of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing *Council Decision 2002/187/JHA* setting up Eurojust<sup>433</sup> (will be in force at the end of 2019),
- *Regulation (EU) 2016/794* on Europol<sup>434</sup>,
- *Council Framework Decision 2002/465/JHA* on joint investigation teams<sup>435</sup>,
- *Council Regulation 2017/1939*<sup>436</sup> establishing the *European Public Prosecutor's Office (EPPO)* having jurisdiction on the frauds committed against EU funds.
- Bilateral or multilateral agreements between the Union and non-EU countries<sup>437</sup>.

In relation to third countries and international organisations, the EU applies the classical *Mutual Legal Assistance* mechanisms. The most common legal basis for assistance and cooperation in legal matters are the Mutual Legal Assistance (MLA) bilateral treaties and multilateral conventions that provide for mutual assistance (such as the 2000 UN Convention on Transnational Organised Crime or the 2001 Council of Europe Convention on Cybercrime - known as the Budapest Convention).

Among EU Member States, the *Mutual Recognition* tools for judicial decisions and judgements in criminal matters are applicable, such as the *European Arrest Warrant*, the *European Investigation Order* or the *European Protection Order*. The general principle of mutual recognition means that all judicial decisions in criminal matters taken in one EU Member State will normally be directly recognised and enforced by another Member State. The cornerstone for the proper functioning of the mutual recognition principle is the link between mutual trust and the rule of law. Direct communication and direct contacts between national judicial authorities represent the main channels of the mutual recognition regime. Regarding police and judicial cooperation, the gathering of admissible evidence is key to achieve effective and efficient cross-border criminal justice responses, investigations and prosecutions. Therefore, evidence has to be collected in full respect with the rule of law and human rights and shared in a timely manner.

## countries

EU cooperation in criminal matters is implemented with the support of the EU agencies in the area of Justice and Home Affairs. These agencies play a crucial role in supporting operational cooperation between the EU and national judicial and police authorities.

432. Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

433. *Regulation (EU) 2018/1727* of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replaced and repealed Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime. In 2013, the Commission adopted a proposal for a Regulation to reform Eurojust (Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), COM/2013/0535 final).

434. *Regulation (EU) 2016/794* of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA.

435. Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.

436. OJ L 283/1, 31.10.2017

437. Agreement on Mutual Legal Assistance ('MLA') between the EU and the US - Council Decision 2009/820/CFSP of 23 October 2009 and the Agreement on MLA between the EU and Japan Council Decision 2010/616/EU of 7 October 2010

## 1. Eurojust<sup>438</sup>

### 1.1. Cooperation

Eurojust should maintain cooperative relations with other Union institutions, bodies, offices and agencies, with the EPPO, with the competent authorities of third countries and with international organisations, to the extent required for the fulfilment of its tasks.

In accordance with Article 52 of the Regulation (EU) 2018/1727 (which will enter into force at the end of 2019), in relation with third countries and international organisations, Eurojust has the following attributions:

- may establish and maintain cooperation with the authorities of third countries and international organisations,
- may conclude working arrangements,
- may designate contact points in third countries in agreement with the competent authorities concerned;

The Eurojust College may post liaison magistrates to a third country subject to the existence of a working arrangement with the competent authorities of that third country (Article 53 of Eurojust Regulation).

### 1.2. Personal data

Eurojust may transfer operational personal data to a third country or international organisation, subject to compliance with EU data protection rules and only where the following conditions are met (Article 56):

- a. the transfer is necessary for the performance of Eurojust's tasks;
- b. the authority of the third country or the international organisation to which the operational personal data are transferred is competent in law enforcement and criminal matters;
- c. the transfer received a prior authorisation of the competent authority of the Member State from which the data originate - in urgent cases Eurojust may transfer operational personal data without prior authorisation if the transfer of the operational personal data is necessary for the prevention of an immediate and serious threat to the public security of a Member State or a third country or to the essential interests of a Member State, and where the prior authorisation cannot be obtained in time;
- d. Member States and Union institutions, bodies, offices and agencies may transfer operational personal data they have received from Eurojust onward to a third country or an international organisation only in cases where Eurojust has authorised it after taking into due account the seriousness of the criminal offence, the purpose for which the operational personal data were originally transmitted and the level of personal data protection.

438. Eurojust web site <http://www.eurojust.europa.eu/Pages/home.aspx>

Subject to the conditions set out in the paragraph above, Eurojust may transfer operational personal data to a third country or to an international organisation only where one of the following requirements is met:

- a. the Commission has decided pursuant to Article 57 that the third country or international organisation in question ensures an adequate level of protection, or in the absence of such an *adequacy decision*, *appropriate safeguards* have been provided for or exist in accordance with Article 58(1), or in the absence of both an *adequacy decision* and of such *appropriate safeguards*, a *derogation* may apply for the following specific situations (Article 59) only on the condition that the transfer is necessary:
  - in order to protect the vital interests of the data subject or another person;
  - to safeguard legitimate interests of the data subject;
  - for the prevention of an immediate and serious threat to public security of a Member State or a third country; or
  - in individual cases for the performance of the tasks of Eurojust, unless Eurojust determines that the fundamental rights and freedoms of the data subject concerned override the public interest in the transfer.
- b. a *cooperation agreement* allowing for the exchange of operational personal data has been concluded before 12 December 2019 between Eurojust and that third country or international organisation, in accordance with Article 26a of Decision 2002/187/JHA; or
- c. an *international agreement* has been concluded between the Union and the third country or international organisation pursuant to Article 218 TFEU that provides for adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.

## - Joint Action 98/428 JHA of 29 June 1998<sup>441</sup>

### 2.1. Cooperation

The EJN's aim is to facilitate bilateral cooperation through judicial networks and contacts and the practical implementation of the legally binding framework for judicial cooperation and speed up the procedures. In the event that a third country does not belong to any judicial network, the direct nomination of contact points can fulfil the same purpose. Such nominations may take place also in case there is a particular need, e.g. in relation to countries with which the EU Member States cooperate on a more regular basis.

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439. Presentation Brochure in Arabic [https://www.ejn-crimjust.europa.eu/ejnupload/StaticPages/Leaflet\\_Arabic.pdf](https://www.ejn-crimjust.europa.eu/ejnupload/StaticPages/Leaflet_Arabic.pdf)

440. <https://www.ejnforum.eu/cp/network-atlas>

441. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998F0428&from=EN>

## European Agency for Law Enforcement Cooperation (Europol)<sup>442</sup>

On 4 June 2018, the Council approved the Commission's proposal to strengthen Europol's cooperation with third countries and fight terrorism and other serious transnational crime more effectively. The Council authorised the opening of negotiations for cooperation agreements between the EU and Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia, and Turkey on the transfer of personal data between Europol and these countries to prevent and combat terrorism and serious crimes.

## 4. The European Public Prosecutor's Office (EPPO)

Established through the *Regulation (EU) 2017/1939* to investigate and prosecute the financial crimes related to the EU budget and VAT fraud is in a process of institutionalisation. On 12 September 2018, on the occasion of the State of the Union Address, Commission's officials proposed to extend the tasks of the newly established EPPO to include the fight against terrorist offences affecting more than one Member State.

### 4.1. Cooperation

EPPO relations with third countries and international organisations (Article 104) follow the same rules as Eurojust. EPPO should be able to establish and maintain cooperative relations with the authorities of third countries and international organisations. European Delegated Prosecutors may use their status as national prosecutor toward third countries, provided that they inform and, where appropriate, endeavour to obtain consent from the authorities of third countries that the evidence collected from these third countries on the basis of the international agreements, will be used in investigations and prosecutions carried out by the EPPO.

The EPPO should also be able to rely on reciprocity or international comity *vis à-vis* the authorities of third countries. This should however be carried out on a case-by-case basis, within the limits of the material competence of the EPPO and subject to possible conditions set by the authorities of the third countries.

The EPPO and Eurojust should become partners and should cooperate in operational matters in accordance with their respective mandates. The operational cooperation may also involve third countries that have a cooperation agreement with Eurojust.

*Article 84* specifically refers to the transfers of operational personal data to recipients established in third countries.

442. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0794&from=EN>

## III. EU Law in selected areas

### I. Anti-Money Laundering

The main Union AML instrument is the **Directive (EU) 2018/843**<sup>443</sup> of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, *and amending Directives 2009/138/EC and 2013/36/EU*.

This 5th EU AML Directive is partly a response to the terrorist attacks of 2015 and 2016 in Paris and Brussels, as well as to the Panama Papers leaks.

Europol maintains the secretariats of the **Anti-Money Laundering Operational Network (AMON)** and **Camden Asset Recovery Inter-Agency Network (CARIN)**.

Recital (3) of the 5th EU AML Directive mentions that the United Nations, INTERPOL and Europol have been reporting on the increasing convergence between organised crime and terrorism. The nexus between organised crime and terrorism and the links between criminal and terrorist groups constitute an increasing security threat to the Union. Therefore, preventing the use of the financial system for the purposes of money laundering or terrorist financing is an integral part of any strategy addressing that threat.

Recital (18) requests the Financial Intelligence Units (FIU) to rapidly, constructively and effectively ensure the widest range of international cooperation with third countries' FIUs in relation to money laundering, associated predicate offences and terrorist financing in accordance with the FATF Recommendations and Egmont Principles for Information Exchange between Financial Intelligence Units.

Referring to the high risk third countries - Recital (12) stipulates that business relationships or transactions involving high-risk third countries should be limited when significant weaknesses in the AML/CFT regime of the third-countries concerned are identified, unless adequate additional mitigating measures or counter-measures are applied. When dealing with such cases of high-risk and with such business relationships or transactions, EU Member States should require obliged entities to apply enhanced customer due diligence measures to manage and mitigate those risks. Each Member State therefore determines at national level the type of enhanced due diligence measures to be taken with regard to high-risk third countries.

**2. Directive (EU) 2017/1371** of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law.<sup>444</sup> As regards the subjects of criminal offences of passive corruption and misappropriation, the Directive includes in the definition of public officials, all relevant officials, whether holding a formal office in the Union, in the Member States or in *third countries*. The directive will enter into force on 6 July 2019.

**3. Directive (EU) 2017/541**<sup>445</sup> of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, actually duplicates the wording of Security Council Resolution 2178 and 2178 (2014).

443. OJ L 156/43, 19.06.2018

444. OJ L 198/29, 28.07.2017

445. OJ L 88/6, 31.03.2017

Recital (7) of the Directive 2017/541 mentions that the cross-border nature of terrorism requires a strong coordinated response and cooperation within and between the Member States, as well as with and among the competent Union agencies and bodies to counter terrorism, including Eurojust and Europol. To that end, efficient use of the available tools and resources for cooperation should be made, such as *joint investigation teams* and coordination meetings facilitated by Eurojust. The global character of terrorism necessitates an international answer, requiring the Union and its Member States to *strengthen cooperation with relevant third countries*. A strong coordinated response and cooperation is also necessary with a view to securing and obtaining electronic evidence.

Recital (22) considers that an effective means of combating terrorism on the internet is to remove online content constituting a public provocation to commit a terrorist offence at its source. Member States should use their best endeavours *to cooperate with third countries* in seeking to secure the removal of online content constituting a public provocation to commit a terrorist offence from servers within their territory.

**4. Council Decision (2001/887/JHA)<sup>446</sup>** of 6 December 2001 on the protection of the euro against counterfeiting. Member States shall ensure that the national central offices<sup>447</sup> communicate to Europol (in accordance with the Europol Convention), centralised information on investigations into counterfeiting and offences related to counterfeiting of the euro, including information obtained from *third countries*.

**5. Directive 2014/62/EU<sup>448</sup>** of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA.

In order to pursue the objective of fighting the counterfeiting of euro notes and coins, the *conclusion of agreements with third countries*, in particular those countries that use the euro as a currency should be pursued in accordance with the relevant EU Treaty procedures.

According to Article 8, on jurisdiction, each Member State whose currency is the euro shall take the necessary measures to establish its jurisdiction over the offences committed outside its territory. For the purpose of prosecution of the offences, jurisdiction should not be subordinated to the condition that the acts constitute an offence at the place where they were committed. When exercising such jurisdiction, Member States should take into account whether the offences are being dealt with by the criminal justice system of the country where they were committed, and should respect the principle of proportionality, in particular with regard to convictions by a third country for the same conduct.

**6. Directive 2014/42/EU<sup>449</sup>** of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

The main motive for cross-border organised crime, including mafia-type criminal organisation, is financial gain. Consequently, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime.

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446. OJ L 329/1, 14.12.2001

447. referred to in Article 12 of the International Convention for the Suppression of Counterfeiting Currency, signed at Geneva on 20 April 1929 and its Protocol

448. OJ L 151/1, 21.05.2014

449. OJ L 127/39, 29.04.2014

Organised criminal groups operate without borders and increasingly acquire assets in Member States other than those in which they are based and in third countries. There is an increasing need for effective international cooperation on asset recovery and mutual legal assistance.

Eurojust contact points in third States, as established channels of communication, provide information on the legal requirements regarding the execution of a foreign freezing order; and refer cases to Eurojust<sup>450</sup>. Eurojust's casework shows that the role of Liaison Prosecutors from third States posted at Eurojust is vital in speeding up the execution of Letters of Request (LORs) seeking freezing measures. In some cases, Eurojust assisted in the clarification of legal requirements in the different jurisdictions involving third States: whether an LOR sufficed or whether enclosing the freezing order, which might include detailed relevant facts, was also necessary; whether a general search was possible; whether a specific bank account number was needed; whether precautionary measures were possible, even before an LOR was submitted, to preventing assets from being dissipated; and whether the LOR should be sufficiently specific to include the required description of the facts to allow the requested State to scrutinise whether the dual criminality requirement was met.

**7. Directive 2011/92/EU<sup>451</sup>** of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

Rules on jurisdiction of EU Member States should ensure that sexual abusers or sexual exploiters of children from the Union face prosecution even if they commit their crimes outside the Union, in particular via so-called sex tourism.<sup>452</sup> Where child sex tourism takes place outside the Union, Member States are encouraged to seek to increase, through the available national and international instruments including bilateral or multilateral treaties on extradition, mutual assistance or a transfer of the proceedings, cooperation with third countries and international organisations with a view to combating sex tourism. Member States should foster open dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside the Union borders for the purposes of child sex tourism.

Child pornography, which constitutes child sexual abuse images, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child sexual abuse material by making it more difficult for offenders to upload such content onto the publicly accessible web. Action is therefore necessary to remove the content and apprehend those guilty of making, distributing or downloading child sexual abuse images. With a view to supporting the Union's efforts to combat child pornography, Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory.

**8. Directive 2011/36/EU<sup>453</sup>** of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. This Directive is part of global action against trafficking in human beings, which includes action involving third countries. In this con-

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450. Report on Eurojust's Casework in Asset Recovery, February 2019, [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Report%20on%20Eurojust%20casework%20in%20asset%20recovery%20\(Febbruary%202019\)/2019-02-12\\_EJ-Casework-Asset-Recovery\\_full-report\\_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Report%20on%20Eurojust%20casework%20in%20asset%20recovery%20(Febbruary%202019)/2019-02-12_EJ-Casework-Asset-Recovery_full-report_EN.pdf)

451. OJ L 335/I, 17.12.2011

452. Child sex tourism should be understood as: the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children.

453. OJ L 101/I, 15.04.2011

text, action should be pursued in third countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation.

In order to ensure effective prosecution of international criminal groups whose centre of activity is in a EU Member State and which carry out trafficking in human beings in third countries, the Directive established jurisdiction over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State.

Similarly, jurisdiction could also be established where the offender is an habitual resident of a Member State, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.

## 9. Joint Investigations Teams (JITs) - third countries participation to JITs

In accordance with Article 13 of the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000* and the *Council Framework Decision of 13 June 2002 on joint investigation teams*, the parties to a JIT Agreement may decide in common to invite other Member States' agencies/administrations to become parties to JIT agreements.

Article 13 paragraph 8 of the Convention on MLA: when the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

For possible arrangements with third countries, the bodies competent by virtue of the provisions adopted within the framework of the Treaties and the international bodies involved in the activities of the JITs will be used.

## of the suspected or arrested persons

- I. The procedural rights of the suspected and arrested persons<sup>454</sup> Articles 47-49 of the EU Charter of fundamental rights protect the following rights:
  - right to an effective remedy and to a fair trial,
  - presumption of innocence and right of defence,
  - principles of legality and proportionality of criminal offences and penalties.

Much progress has been made to date, as the EU has adopted 6 directives on procedural rights for suspects and accused persons as set out in the roadmap of 2009. The EU established rules on:

454. [https://ec.europa.eu/info/sites/info/files/factsheet\\_procedural\\_rights\\_package\\_en.pdf](https://ec.europa.eu/info/sites/info/files/factsheet_procedural_rights_package_en.pdf)



- the right to information which applies across the EU since 2 June 2014,
  - the right to interpretation and translation which applies across the EU since 27 October 2015,
  - the right to have a lawyer, which applies across the EU since 27 November 2016,
  - the right to be presumed innocent and to be present at trial,
  - special safeguards for children suspected and accused in criminal proceedings, and
  - the right to legal aid.
2. The EU data protection reform package refers in particular to:
- a. General Data Protection Regulation (EU) 2016/679<sup>455</sup> (GDPR) - in force since 25 May 2018, which lays down the general rules to protect natural persons in relation to the processing of personal data. GDPR recital (19) stipulates that this Regulation **should not apply** to processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and the free movement of such data, which are the subject of a more specific Union legal act, namely Directive (EU) 2016/680 of the European Parliament and of the Council.
  - b. The Directive (EU) 2016/680<sup>456</sup> (DPDC) - in force since 6 May 2018, *on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.*
    - b.1. Subject matter and objectives  
The DPDC lays down the special rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities in the areas of criminal matters and public security.
    - b.2. Transfers of personal data to third countries or international organisations (DPDC art 35, 36, 37, 38, 39, 40).

Where personal data are transferred **from the EU to Interpol, and to third countries** that have delegated members to Interpol, the DPDC, in particular the provisions on international transfers, should apply. The DPDC applies the specific rules laid down in Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61) and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

A transfer to a third country or to an international organisation takes place only if the controller in the third country or international organisation is an authority competent within the meaning of the Directive. Such a transfer may take place in cases:

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455. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

456. <https://publications.europa.eu/en/publication-detail/-/publication/182703d1-11bd-11e6-ba9a-01aa75ed71a1/language-en>

- Where the Commission has decided - adequacy decision- that the third country or international organisation in question ensures an adequate level of protection,
- Where appropriate safeguards have been provided in a legally binding instrument such as bilateral agreements, or
- Where derogations for specific situations apply - to protect the vital interests of the data subject or another person, or to safeguard legitimate interests of the data subject for the prevention of an immediate and serious threat to the public security of a EU Member State or a third country; in an individual case for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security; or in an individual case for the establishment, exercise or defence of legal claims

Where personal data are transferred from a EU Member State to third countries or international organisations, such a transfer should, in principle, take place only after the EUMS from which the data were obtained has given its authorisation to the transfer.

Onward transfers of personal data should be subject to prior authorisation by the competent authority that carried out the original transfer.

Where there is an urgent need to transfer personal data to save the life of a person who is in danger of becoming a victim of a criminal offence or in the interest of preventing an imminent perpetration of a crime, including terrorism - in specific individual cases, when the regular procedures requiring contacting such an authority in the third country may be ineffective or inappropriate, in particular because the transfer could not be carried out in a timely manner; or because that authority in the third country does not respect the rule of law or international human rights norms and standards - the competent authorities of EU Member States could decide to transfer personal data directly to recipients established in those third countries.

Article 61. Relationship with previously concluded international agreements in the field of judicial cooperation in criminal matters and police cooperation International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to 6 May 2016 and which comply with Union law as applicable prior to that date shall remain in force **until amended, replaced or revoked.**











