Extradition law

Valorisation Addendum

1. *Relevance*

The factual conditions underpinning modern extradition law have changed drastically: distances became easier to travel, human conduct wider in reach; taking refuge abroad less intimidating, social distress at the escape of criminals often more intense. Today's world is a smaller one, where States and their communities are in many regards closer to each other and interdependent. Extradition is central for addressing these phenomena, since it empowers the State where the harm materialised to reach out to States where the authors of the acts are located. In a sense, extradition constitutes the nemesis of remote criminality, as it is itself remote: a remote criminal law tool through which national legal systems outreach their ordinary (territorial) area of influence; a long-armed tool against long-armed criminality.

However, extradition law persists to conceive them as isolated entities, displaying many of the attributes it was conferred on upon its inception at the end of the 18th century. Grounds for refusal – the key elements of extradition law – have not been subjected to a corresponding reform, producing a substantial lag between the reality and the law. Consequently, a mismatch currently exists between the scope and the rationale of several grounds for refusal – *i.e.* between the range of situations in which extradition is refused and those in which it should in effect be refused –, the latter being significantly narrower.

Drawing on this diagnosis, this study posits a set of normative propositions aimed at bridging the perceived gap. This is the aspect of this research which has more societal relevance: bridging that gap means creating the conditions for a more secure world. On the other hand, the manner in which this study seeks to do so does not involve the sacrifice to fundamental individual guarantees, nor does it conceive of a homogenisation of criminal justice among States. On the contrary, it seeks to safeguard and in fact to promote those guarantees, as well as to devise ways for national cultural biotopes to be preserved. In sum, this research attempts to strike a balance between the increased security concerns that characterise today's world, the imperative to remain faithful to paramount principles of justice and of protection of individuals against the potential abusiveness of States, and the preservation of local idiosyncrasies.

2. *Target Groups*

In addition to the academic community, this research can, in my view, be of interest to mainly two sets of entities. On the one hand, governmental and intergovernmental agencies with competence for enacting legislation or concluding international treaties and other types of normative instruments on extradition matters. This thesis is heavily reform-oriented and contains several initiatives to improve legislation in this field, both at the national and at the international levels. Therefore, this is would be my main target group. It would be particularly impactful if this research were to resonate with the Unit-

ed Nations agencies that develop the model instruments on international cooperation, as this in turn influences States' legislative and treaty-making activity in this field.

The other target group consists of practitioners in the legal area, including lawyers and judges. Indeed, although as noted this research is essentially reform-oriented, in that it advocates for the law as is currently in force to be modified, it can also guide in the interpretation and application of these norms within the present state of affairs. Although this research (necessarily) focuses on specified legal instruments, these have been selected as a sample of a broader normative paradigm, the goal of the study being to have virtually global applicability. Thus, the target groups indicated above are not limited to specific jurisdictions, but rather they might belong in any jurisdiction.

Within the ambit of international cooperation, the usefulness of this research is not necessarily limited to extradition, but rather it may extend to other forms of cooperation (such as the transfer of proceedings), because extradition has a paradigm-setting status in that ambit. However, its value is not necessarily limited to this ambit either. Extradition law constitutes an intersection of numerous sets and types of norms. As far as its sources are concerned, it involves: national norms, of both ordinary and constitutional rank, and of both the requested and the requesting States; international norms, of both general (customary and imperative) and conventional (bilateral and multilateral) character; in States included in legally and politically integrated regional organisations such as the EU, peculiar normative instruments such as Framework Decisions also apply. Thematically, these norms refer, *inter alia*, to: extradition law in a stricter sense, substantive criminal law (prescriptive and adjudicative), criminal procedure, rules on remand, human rights, diplomatic law, nationality and refugee law, and private international law. At the organic level, such norms are applied by multiple judicial bodies (national, regional and international) whose jurisprudence also constitutes a source of law and, in any case, co-determines the real scope of norms stemming from other sources. Moreover, extradition cases involve not only legal, but also political assessments, making them sensitive cases from the perspective of international relations.

Consequently, while this study ultimately intends to inspire legislative entities into shifting the current regulatory paradigm, it is quite comprehensive and may attract a much wider readership. For instance: (i) It provides a detailed analysis of human rights law and respective case law in removal cases (extradition, expulsion, deportation, asylum): mainly under the European Convention on Human Rights, but to some extent also the International Covenant on Civil and Political Rights and the American Convention on Human Rights. (ii) It contains a detailed analysis of EU law and of the case law of the Court of Justice of the EU (which erupted during the elaboration of the study) on extradition from Member States to third States. (iii) It addresses classic extradition as well as mutual recognition: mainly the European Arrest Warrant and respective case law (by the Court of Justice as well as by national courts), but to some extent also the Nordic Arrest Warrant and the Mercosur Arrest Warrant. (iv) Very importantly, it offers a complete analysis of the United Nations' model instruments on extradition (with additional references also to the model instruments on other forms of cooperation), which may be of interest for virtually any State. But it also provides information on numerous bilateral and multilateral treaties. (v) It offers a complete and comparative analysis of two national extradition systems (that of Portugal and that of the United Kingdom) which abide by two dis-

tinct paradigms and belong within two different legal families. But, again, it also conveys information on other extradition systems (*e.g.* that of the Netherlands). (vi) While it does not feature a historical chapter, it contains profuse information, dispersed by its different sections, on the history of this topic. (vii) Another relevant feature is that is looks at extradition law as a whole, rather than focusing on specific points: it looks into all grounds for refusal; mainly into its legal, but also into its political dimension; mainly into theoretical, but also into practical aspects; into extradition proper, but also into its interplay with substantive criminal law and criminal procedure. This research seeks to provide the reader with a wide field-of-view while attempting never to neglect detail.

In sum, this book can be of interest to different types of readers: scholars or students, practitioners or policy makers; to readers interested in the specific normative systems of the United Nations, the United Kingdom or Portugal, but also to any reader interested in extradition, international cooperation or transnational criminal law; to readers more interested in traditional extradition, but definitely also to readers focused on mutual recognition and EU law; to readers more interested in human rights, other fundamental guarantees in transnational criminal proceedings, or refugee law, but also to readers more keen on systemic perspectives concerned with tackling emerging threats. It may be of interest to someone researching these matters, but it may also serve as a textbook to be consulted.

3. *Activities/Products*

First and foremost, this research will be published as a monograph (Brill|Nijhoff, 2019). The book has been peer-reviewed by this publisher and accepted unconditionally – that is, without any modifications of substance being considered required. This means that this research will be published with virtually the exact same content as that which will be brought to public defence at Maastricht University.

This book is a thesis in the proper sense of the term, in that it attempts to answer a given research question, it is structured in such a way as to accomplish that goal, and it seeks at all times to avoid unnecessary digressions. Nevertheless, as mentioned above, in the process the book came to organise and review the fundamental concepts of the legal area where it belongs, and it became quite comprehensive. This may confer on it the potential to be used as a textbook type of read for possibly any lawyer. It is my intention to continue to update and further develop this book in the future, should it indeed be able to attract such a readership.

In the shorter term, I will be looking to promoting the book next to the identified target groups, through conferences and publications (articles as well as blogs) summarising and expanding further on certain aspects covered therein, or addressing new developments related to it. I intend to bring forward these presentations and publications in different fora and in different languages, to different individuals and entities within the broader target group.

I will also try to draw attention to this research in university courses and training programs for professionals, whenever such opportunities arise. I will moreover seek to put into practice the knowledge I acquired by conducting this research, to channel it onto my professional activities and to pass it on to my colleagues. Although such an impact is extremely difficult to measure, I think this intensive research experience will influence

me throughout my entire life, especially if – as I hope – I have more opportunities to conduct research, in this or in another area.

4. *Innovation*

This study tries to offer new insights on extradition law, and, thereby, to some extent, on transnational criminal law more broadly. One of its innovative traits should be the *parallel established between transnational criminal law and private international law*. The latter area of the law is already frequently called into consideration in this context, but generally in a rather scant and unstructured manner: attention is generally limited to the concept of *ordre public*, and even so it does not in effect look into the role and functioning of the concept within its own natural environment; it does not explore either, to their full extent, the structural implications of this concept when applied in criminal law. Consequently, it prevents this application from achieving its full potential.

Another central idea of this study which arguably possesses some originality concerns the *duty of non-interference* reigning in international law: in the field of extradition, this duty tends to be honoured in its negative dimension only, as a prohibition to unilaterally seize individuals located in the territory of other States; this study argues that it should also be credited a positive role, as a duty to grant extradition where this is necessary for another State to assert its sovereignty over acts of which it is the main injured party.

Yet another key view posited in this study is that, since the globalisation processes that took place after the birth of the classic paradigm of international cooperation befell at a pace which was not entirely accompanied by national (social, cultural, political) structures, at present, *even greater primacy should be given to territorial jurisdiction*. Indeed, paradoxical as it may seem, at present globalisation calls for more territoriality, because it is still States that bear the responsibility to tackle most criminality, even transnational one.

Notwithstanding, this study is grounded on the premise that international cooperation cannot be sustainably enhanced in detriment of *national cultural identities* – and this view separates this study from many scholarly and legislative efforts to enhance international cooperation. Instead, this study aims to overcome the obsolete classic cooperation paradigm without succumbing to the view that globalisation requires States to abandon their legal traditions almost entirely.

The increase in international cooperation envisaged in this study is more *qualitative* than quantitative, which also contrasts with several such scholarly and legislative efforts. The goal was to develop conceptual bases for a more solidary approach to cooperation in the field of criminal justice. The model defended here translates into a principle, not of mutual trust, but of mutual *understanding*; not of mutual recognition, but of mutual *respect*.

5. *Schedule & Implementation*

I intend to make a strong promotion of this research with the first few years following the defence (*e.g.* until 2023), through the activities and products indicated *supra*, § 3. The objective is to draw attention to my research results and as much feedback thereon as possible, with a view to revisiting and improving my own ideas.

Drawing on that feedback, I plan to continuously develop this very book throughout my career (*e.g.* as of 2025), although this will naturally depend on its success next to

the envisaged target groups and other editorial considerations, as well as on my professional availability, since at this point it is uncertain whether I will follow an academic, or a different career instead.

Should I have other opportunities to conduct in-depth research (*e.g.* post-doctoral), I will be looking into moving on to new topics within the ambit of criminal justice, while bringing into this context the experience gathered during my doctoral research. The plan is not to engage in radically different topics, but rather to build on acquired knowledge, so as to develop solid areas of expertise. This may consist either of narrowing my focus to specific areas involved in my doctoral research (*e.g.* EU criminal law, foundational issues of substantive criminal law or procedure); or, instead, of taking on an even more general research topic (*e.g.* conceptual structures in transnational criminal justice [possibly by exploring further the reference to private international law and/or to constitutional law], classic theory of punishment). I would like to engage in one such large research project as of 2027, at most.