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INTERNATIONAL DIMENSIONS OF DOMESTIC CRIMINAL LAW: EXTRATERRITORIALITY AND EXTRADITION

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*International Dimensions of Domestic Criminal Law:
Extraterritoriality and Extradition*
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EXECUTIVE SUMMARY

Domestic police, prosecutors and courts must operate within the confines of their territorial jurisdiction, but criminal behaviour knows no borders. Consequently, states have developed legal tools to deal with cases where one or more elements of a crime – such as location, the accused, evidence or proceeds – go beyond those borders.

To enforce domestic criminal laws outside their borders, states may choose to unilaterally assert jurisdiction beyond their borders through their own legislation. The most common and widely recognized basis for asserting this extraterritorial jurisdiction is the territorial principle. This principle extends to international crimes in which the essential constituent element is committed inside the asserting state's territory. In other circumstances, states may assert jurisdiction where offences are committed beyond national borders but have a significant or substantial connection in terms of national interest. Canada has often used these principles to justify the extraterritorial application of its criminal laws.

However, extraterritorial jurisdiction is difficult to exercise without international cooperation. As such, various mechanisms exist to facilitate interstate cooperation in order to repress transnational crime. Through extradition, under certain conditions, one state may surrender a person to another state, either for a trial or for enforcement of a sentence. In Canada, the government must take into account this individual's human rights during the extradition process. Over the last decade, controversial extradition cases have led legal experts to call on the Government of Canada to reform the *Extradition Act* of 1999 to make sure this condition is respected.

Mutual legal assistance also allows judicial systems to coordinate their respective processes, including for sharing evidence, transferring detained individuals and enforcing sentences. In recent years, a new generation of cross-border agreements has been developed to facilitate electronic data transfer as part of transnational criminal investigations.

INTERNATIONAL DIMENSIONS OF DOMESTIC CRIMINAL LAW: EXTRATERRITORIALITY AND EXTRADITION*

1 INTRODUCTION

Although domestic police, prosecutors and courts must operate within the confines of their territorial jurisdiction, criminal behaviour knows no borders. As such, states have developed legal tools to deal with cases in which one or more elements of a crime – such as location, the accused, evidence or proceeds – are located in another country.

The tools for recognizing and enforcing international aspects of national criminal law include the exercise of extraterritorial jurisdiction and various mechanisms for interstate cooperation in criminal matters, such as extradition, mutual legal assistance, seizure (including the forfeiture of criminal proceeds) and most recently, direct access to electronic data.

2 EXTRATERRITORIAL CRIMINAL JURISDICTION

2.1 OVERVIEW

International law allows states to claim jurisdiction beyond their borders. This is known as extraterritorial jurisdiction.¹ States can rely on various bases to justify enforcing their criminal legislation beyond their territory.

The most common and widely recognized basis for exercising jurisdiction over a crime is the territorial principle, which holds that every state assumes jurisdiction over the prosecution and punishment of crimes committed within its borders.² This is considered the “bedrock rule” and establishes that a state’s jurisdiction, for national interest and procedural reasons, extends by default to crimes whose essential constituent element was committed on its territory.³ This rule applies regardless of whether the crime was committed by residents of the state or by foreign nationals.⁴

In circumstances where offences are committed beyond national borders but have a “significant or substantial connection” to the prosecuting state, principles of “qualified territoriality” may be asserted. For example, under the nationality principle, states can assert jurisdiction over certain of their nationals who are accused of having committed crimes abroad.⁵ A state’s global criminal jurisdiction over its military personnel is a common example of this.⁶

The “passive nationality” principle may also be raised when the victim of a crime is a national of the prosecuting state. A form of passive national jurisdiction also exists

over crimes committed on ships and aircraft that are registered to one state, even when outside of national borders. More rarely, a state may exercise jurisdiction over matters that have a harmful effect on its national interests, known as the “protective principle” of jurisdiction.⁷ In Canada, offences that fall into this category include treason, espionage and counterfeiting of national currency and passports, and some immigration offences.

Lastly, states may also assert universal jurisdiction over certain crimes that are considered “as an attack upon the international order,”⁸ such as genocide, crimes against humanity and war crimes. For example, the Government of Canada officially asserted its universal jurisdiction by criminalizing all international acts of genocide, crimes against humanity and war crimes in the *Crimes Against Humanity and War Crimes Act*.⁹

2.2 CANADIAN LAW AND EXTRATERRITORIAL JURISDICTION

For countries like Canada, where criminal law is based on traditions in English common law, the territorial principle of jurisdiction is the rule and extraterritorial jurisdiction is the exception. Section 6(2) of the *Criminal Code* (the Code) provides that, subject to the Code or other federal legislation to the contrary, no person may be convicted of an offence committed outside Canada.¹⁰ In comparison, many continental European states exercise general extraterritorial criminal jurisdiction over their citizens.¹¹ Other states have also chosen to exercise extraterritorial jurisdiction over their citizens when they are the victims of a crime.¹²

However, even for states such as Canada, there has been a progressive increase in assertions of extraterritorial criminal jurisdiction to deal with international and transnational crime. These assertions are often made in accordance with international treaty commitments, allowing states to cooperate with other governments and avoid conflicts over jurisdiction.

Extraterritorial jurisdiction is implemented in Canadian law in many contexts, including in the examples given in the tables that follow.

Table 1 – Examples of Crimes Committed Abroad That May Be Prosecuted in Canada Under the Nationality Principle

Offence	Legislative Provision
Offences committed by Canadian military personnel and other persons subject to the Code of Service Discipline	<i>National Defence Act</i> , ss. 67, 130 and 132
Indictable offences committed by a Canadian federal public servant	<i>Criminal Code</i> , s. 7(4)
Offences committed by a Canadian citizen who is outside the territory of any state	<i>Criminal Code</i> , s. 477.1(e)
Bigamy	<i>Criminal Code</i> , s. 290
Various offences involving cultural property	<i>Cultural Property Export and Import Act</i> , s. 36.1(3) <i>Export and Import Permits Act</i> , s. 14.2(3)
Various offences involving chemical weapons	<i>Chemical Weapons Convention Implementation Act</i> , s. 22
Various sexual offences against children	<i>Criminal Code</i> , s. 7(4.1)
Various offences in relation to trafficking in persons	<i>Criminal Code</i> , s. 7(4.11)
Various offences outside Canada	<i>Criminal Code</i> , s. 7(4.2)

Note: In the first two offences above, Canadian military personnel and public servants are presumed to be either permanent residents or citizens of Canada.

Sources: Table prepared by the Library of Parliament using information obtained from [National Defence Act](#), R.S.C. 1985, c. N-5; [Criminal Code](#), R.S.C. 1985, c. C-46; [Cultural Property Export and Import Act](#), R.S.C. 1985, c. C-51; [Export and Import Permits Act](#), R.S.C. 1985, c. E-19; and [Chemical Weapons Convention Implementation Act](#), S.C. 1995, c. 25.

Table 2 – Examples of Crimes Committed on Canadian Ships and Aircraft That May Be Prosecuted in Canada Under the Passive Nationality Principle

Offence	Legislative Provision
Indictable offences committed on or in respect of Canadian aircraft	<i>Criminal Code</i> , s. 7(1)(a)
Indictable offences committed on an aircraft in flight where the aircraft lands in Canada	<i>Criminal Code</i> , s. 7(1)(b)
Hijacking or endangering the safety of an aircraft or airport	<i>Criminal Code</i> , s. 7(2)
Seizing control, or endangering the safety of, a ship or fixed platform at sea	<i>Criminal Code</i> , ss. 7(2.1) and 7(2.2)
Various offences involving explosive or other lethal devices	<i>Criminal Code</i> , s. 7(3.72)(a) and 7(3.72)(b)
Offences committed in the course of “hot pursuit” from Canada	<i>Criminal Code</i> , s. 477.1(d) <i>Canadian Environmental Protection Act, 1999</i> , s. 271.1(2) <i>Migratory Birds Convention Act, 1994</i> , s. 18.3(2)

Sources: Table prepared by the Library of Parliament using information obtained from [Criminal Code](#), R.S.C. 1985, c. C-46; [Canadian Environmental Protection Act, 1999](#), S.C. 1999, c. 33; and [Migratory Birds Convention Act, 1994](#), S.C. 1994, c. 22.

Table 3 – Examples of Crimes Committed Abroad That May Be Prosecuted in Canada Under the Protective Principle

Offence	Legislative Provision
High treason or treason against Canada	<i>Criminal Code</i> , s. 46(3)
Piracy	<i>Criminal Code</i> , ss. 74 and 75
Forgery or fraud in relation to a Canadian passport	<i>Criminal Code</i> , s. 57
Fraudulent use of Canadian certificate of citizenship	<i>Criminal Code</i> , s. 58
Immigration offences	<i>Immigration and Refugee Protection Act</i> , s. 135

Sources: Table prepared by the Library of Parliament using information obtained from [Criminal Code](#), R.S.C. 1985, c. C-46; and [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.

Table 4 – Examples of Crimes Committed Abroad That May Be Prosecuted in Canada Under the Universal Jurisdiction Principle

Offence	Legislative Provision
Genocide, crimes against humanity or war crimes	<i>Crimes Against Humanity and War Crimes Act</i> , ss. 6 and 8
Breach of command responsibility in relation to genocide, a crime against humanity or a war crime	<i>Crimes Against Humanity and War Crimes Act</i> , ss. 7 and 8
Torture	<i>Criminal Code</i> , s. 269.1
Hostage-taking	<i>Criminal Code</i> , s. 7(3.1)
Terrorism	<i>Criminal Code</i> , ss. 7(3.73), 7(3.74) and 7(3.75)

Sources: Table prepared by the Library of Parliament using information obtained from [Crimes Against Humanity and War Crimes Act](#), S.C. 2000, c. 24; and [Criminal Code](#), R.S.C. 1985, c. C-46.

3 INTERSTATE COOPERATION IN CRIMINAL LAW MATTERS

3.1 EXTRADITION

Extradition is the cooperative process whereupon one state surrenders a person to another state for trial and/or the enforcement of a sentence. Extradition obligations are generally set out in bilateral treaties or multilateral conventions, although internally, the extradition process is governed by domestic laws.¹³

3.1.1 The Process

First, when a state receives a formal request for extradition from a state or international tribunal, it must consider the merits of the extradition. For example, states are generally not obliged to extradite someone for conduct that is also not a crime under its own laws. This rule is known as the dual criminality requirement.¹⁴

Furthermore, as discussed previously, states that exercise general extraterritorial criminal jurisdiction over their nationals rarely extradite them, but will instead prosecute them at home.¹⁵

In Canada, extradition has been governed by the *Extradition Act* since 1999.¹⁶ The federal Minister of Justice and the International Assistance Group (IAG) are responsible for administering the law, implementing the relevant treaties and dealing with requesting partners.¹⁷ Created in 1988, the IAG is a specialized office within Canada's Department of Justice, that works to ensure that all relevant considerations are taken into account in the extradition process.

In Canada, there are three broad phases in responding to an extradition request from a foreign state:¹⁸

- **First phase – authority to proceed:** The federal Department of Justice determines whether the request is made in accordance with an applicable treaty and whether it falls within the scope of section 3 of the *Extradition Act*, which includes whether the offence satisfies the dual criminality requirement. If so, authority to proceed may be granted.¹⁹
- **Second phase – extradition hearing:** A superior court judge determines whether sufficient evidence exists that the person committed the offence in question. If so, the person is committed for surrender. The judge's decision may be appealed.²⁰
- **Third phase – decision on surrender:** After giving the parties an opportunity to make submissions, the Minister of Justice decides, based on the requirements of the *Extradition Act*, whether the person should be surrendered. The minister's decision to surrender a person is subject to judicial review.²¹

Conversely, in situations where Canadian prosecutors attempt to extradite individuals from abroad for trial or sentencing in Canada, a competent authority (usually a provincial attorney general) makes a request to the federal Minister of Justice, who passes the request on to the IAG for review.²² If the extradition request is approved, the IAG sends the request to the state concerned, which uses its own processes to respond to the request.²³ If extradited, the person is brought to Canada by Canadian officers or agents of the state concerned.

3.1.2 Human Rights and Diplomatic Assurances

The IAG has “a fundamental and constitutional obligation to protect the rule of law and the interests of justice in the extradition process.”²⁴ As such, Canada, may need to seek diplomatic assurances to ensure that sentences, such as the death penalty and corporal punishment, will not be imposed if a person in Canada is surrendered to another state.²⁵ Assurances are intended to give Canada the necessary flexibility to make sure it is not handing people over to foreign countries to suffer treatments or punishments that are unacceptable by Canadian or international human rights standards, while at the same time ensuring that offenders do not escape justice entirely.

The Canadian courts have ruled that the government must seek diplomatic assurances from other countries if extradition could lead to a violation of the individual's right to life, liberty and security under section 7 of the *Canadian Charter of Rights and Freedoms*.²⁶ In particular, the Supreme Court of Canada has held that causing an individual to face the death penalty in the context of extradition “shocks the conscience” of Canadians, given the growth of abolitionism internationally as a principle of fundamental justice. On the other hand, the courts have ruled that lengthy mandatory jail terms for drug offenders do not “shock the conscience” of Canadians.²⁷ Other types of assurances sought by the Government of Canada, much rarer and difficult to enforce, include those relating to penitentiary conditions and those guaranteeing access to consular services for extradited Canadian citizens.²⁸

Except for diplomatic assurances made to prevent death sentences, these assurances have been used in a relatively sparing manner so far.²⁹ One concern, if such assurances are sought too readily on behalf of foreign fugitives, is that Canada could become a destination of choice, or safe haven, for the world's worst criminals.³⁰

3.1.3 Movement for Reform of Canada's *Extradition Act*

In the wake of controversial extradition cases in Canada,³¹ legal experts have called on the government to reform the 1999 *Extradition Act*, in order to restore the balance between “the prompt compliance with Canada's international obligations to its extradition partners, and the protection of the rights of the person sought”.³² In October 2021, the Halifax Colloquium on Extradition Law Reform published a report outlining proposals for extradition law reform. The report presented 12 proposals for the possible reform of extradition laws, outlining three general principles to guide the review: fundamental fairness, transparency and the re-balancing of roles between the executive and the judiciary.³³

According to experts involved in the Halifax Colloquium, the Act currently grants an extremely favourable evidentiary presumption to requesting states, and does not offer a real possibility for individuals sought for extradition to present an adequate defence in Canada before being extradited.³⁴ These experts also called for the Act to be amended to allow courts to ensure that the Minister of Justice seeks diplomatic assurances for certain extradition cases, such as when there would be an obligation under international human rights law to protect the human rights of the individual sought.³⁵

The House of Commons Standing Committee on Justice and Human Rights undertook a study on this issue and tabled its report in June 2023. The report included 20 recommendations to modernize the current system so that the civil liberties of Canadians and permanent residents of Canada are upheld in extradition proceedings.³⁶ The Minister of Justice presented a response to the report, indicating

that it was “moving forward with new or existing processes to respond” to some of the committee’s recommendations.³⁷

3.2 MUTUAL LEGAL ASSISTANCE AND OTHER FORMS OF COOPERATION IN CRIMINAL LAW ENFORCEMENT

3.2.1 Mutual Legal Assistance

In addition to the extradition mechanisms, mutual legal assistance also allows for cooperation between judicial systems. Canada’s *Mutual Legal Assistance in Criminal Matters Act*³⁸ provides for many forms of assistance, such as conducting searches and seizures, having witnesses examined under oath, providing for witness testimony in foreign proceedings via audiovisual link, transferring detained persons outside Canada for foreign criminal investigations or proceedings, lending exhibits of evidence from Canadian court proceedings and enforcing foreign fines.³⁹

Bilateral or multilateral agreements are usually required to give effect to requests for legal assistance. These agreements set out Canada’s obligations to assist partners on a reciprocal basis and for lawful execution by the Canadian courts and federal and provincial law enforcement authorities.⁴⁰ Foreign states that do not have a treaty with Canada can also request legal assistance from Canada by way of a letters rogatory request under the *Canada Evidence Act*,⁴¹ or they can file a non-treaty letter of request.⁴²

International mutual legal assistance treaties, such as the *United Nations Convention against Transnational Organized Crime*⁴³ and the *United Nations Convention against Corruption*,⁴⁴ have established obligations for states to cooperate in investigating and prosecuting specific categories of international crimes. More recently, Canada supported the *Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes* along with 79 other states in 2023, and the instrument is now open for signatures.⁴⁵ This agreement will provide a comprehensive framework for interstate cooperation to fight against impunity for those responsible for the most serious international law crimes, such as atrocity crimes.⁴⁶

3.2.2 Other Forms of Cooperation

For law enforcement, police forces from different countries collaborate either on an ad hoc bilateral basis, or multilaterally through the International Criminal Police Organization.⁴⁷ INTERPOL facilitates the sharing of information between law enforcement agencies that deal with transnational crimes.⁴⁸

Furthermore, Canada’s *Criminal Code* provisions that govern the seizure and forfeiture of proceeds of crime extend to crimes committed outside of Canada.⁴⁹ Section 11 of the

Seized Property Management Act also permits Canada to share forfeited proceeds with foreign governments on a reciprocal basis, where their law enforcement agencies have assisted in the investigation of the offences that led to forfeiture.⁵⁰

3.2.3 New Generation of Cross-Border Agreements

In recent years, a new generation of cross-border agreements has been developed to complement mutual legal assistance and to facilitate the transfer of electronic data in the context of transnational criminal investigations.⁵¹

In the United States, the *Clarifying Lawful Overseas Use of Data (CLOUD) Act* (the CLOUD Act)⁵² creates a “direct access” mechanism between trusted partner countries, allowing them to request the disclosure of electronic data held by foreign service providers. Using this mechanism, investigating bodies may file a request before their national courts and request the issuance of an extraterritorial order to obtain content data, subscriber information, and transmission data that relate to serious crime.⁵³

The Council of Europe’s *Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence* also gives effect to and expedites foreign data production orders between partners, albeit with a comprehensive set of safeguards to protect human rights and fundamental freedoms.⁵⁴

Canadian prosecutors may soon access both of these new tools. In 2022, the government entered into formal negotiations with the United States in regard to a forthcoming bilateral agreement under the CLOUD Act.⁵⁵ Furthermore, in June 2023, Canada signed the second additional protocol, and the Department of Justice is currently consulting relevant stakeholders in order to determine how this treaty could be best implemented within the country.⁵⁶

4 CONCLUSION

Extraterritorial jurisdiction, extradition and mutual legal assistance have become increasingly important in a world that deals with international criminality daily. Hence, Canada needs to work with its international partners to achieve the overarching objectives of criminal justice in the country. Thankfully, this is made possible through interstate cooperation mechanisms at every step of the judicial process.

NOTES

- * Previous versions of this document were prepared by Laura Barnett and David Goetz of the Library of Parliament.
1. See Robert J. Currie and Joseph Rikhof, "Jurisdiction Over International and Transnational Crime," *International and Transnational Criminal Law*, 2020, p. 55 [SUBSCRIPTION REQUIRED]

No principle of international law prohibits ab initio the establishment of extraterritorial jurisdiction by a state, but attempts to exercise it will usually engage the sovereign interests of other states that are also connected to the relevant exercise by events, persons, or places.
 2. James Crawford, *Brownlie's Principles of Public International Law*, 2019, p. 448 [SUBSCRIPTION REQUIRED]. The territory of the state is considered to also include maritime ports, territorial sea and the Exclusive Economic Zone.
 3. *Ibid.*, p. 442.
 4. Robert J. Currie and Joseph Rikhof, "[Jurisdiction Over International and Transnational Crime](#)," *International and Transnational Criminal Law*, 2020, p. 63 [SUBSCRIPTION REQUIRED].
 5. *Ibid.*, pp. 65–69.
 6. *Ibid.*, p. 71. Section 67 of the *National Defence Act*, which deals with service offences under the Code of Service Discipline, gives jurisdiction "whether the alleged offence was committed in Canada or outside Canada," and section 273 gives criminal jurisdiction where a person covered by the Code of Service Discipline commits an offence "while outside Canada" that would be an offence if committed in Canada. [National Defence Act](#), R.S.C. 1985, c. N-5, ss. 67 and 273.
 7. Robert J. Currie and Joseph Rikhof, "[Jurisdiction Over International and Transnational Crime](#)," *International and Transnational Criminal Law*, 2020, pp. 71–73 [SUBSCRIPTION REQUIRED].
 8. James Crawford, *Brownlie's Principles of Public International Law*, 2019, p. 451 [SUBSCRIPTION REQUIRED].
 9. [Crimes Against Humanity and War Crimes Act](#), S.C. 2000, c. 24.
 10. [Criminal Code](#), R.S.C. 1985, c. C-46, s. 6(2).
 11. For example, continental European states with civil law traditions, such as France and Germany. See France, [Code de procédure pénale](#), art. 689; and Germany, Federal Ministry of Justice, [German Criminal Code](#), s. 7.
 12. For example, Australia, Attorney-General's Department, "[15.1 Extended Geographical Jurisdiction Category A](#)," *The Commonwealth Criminal Code: A Guide for Practitioners*.
 13. This is the case for countries with a dualist approach to international law, such as Canada. See Laura Barnett, [Canada's Approach to the Treaty-Making Process](#), Publication no. 2008-45-E, Library of Parliament, 1 April 2021.
 14. [Extradition Act](#), S.C. 1999, c. 18, s. 3.
 15. For example, under French law, an extradition request is not granted when the person sought is a French national. France, [Code de procédure pénale](#), art. 696-4.
 16. [Extradition Act](#), S.C. 1999, c. 18. The mandate and powers of the International Assistance Group (IAG) of the Department of Justice Canada are explained in detail in Government of Canada, [International Assistance Group Deskbook](#). According to the Minister of Justice, "work is ongoing to ... [update] the IAG's existing public-facing Deskbook. When completed, the updated Deskbook will serve to increase public awareness of the extradition regime and improve transparency." See Arif Virani, Minister of Justice and Attorney General of Canada, [Government's response to the thirteenth report of the Standing Committee on Justice and Human Rights on Reforming Canada's Extradition System, tabled on June 7, 2023](#).
 17. [Extradition Act](#), S.C. 1999, c. 18, s. 7.
 18. Government of Canada, [Infographic: Extradition in Canada](#).
 19. The offence must be punishable by a maximum term of imprisonment of two years or more, and in the case of a specific agreement about these terms, a term of imprisonment of five years or more.

20. [Extradition Act](#), S.C. 1999, c. 18, s. 49.
21. *Ibid.*, ss. 44–48 (these sections set out mandatory and discretionary grounds for refusal to surrender).
22. Government of Canada, [Extradition Requests by Canada](#).
23. See Government of Canada, “[3.6 Outgoing Requests for Assistance](#),” *International Assistance Group Deskbook*.
24. Robert J. Currie, [Changing Canada’s Extradition Laws: The Halifax Colloquium’s Proposals for Law Reform](#), Canadian Partnership for International Justice, October 2021, p. 11.
25. [Extradition Act](#), S.C. 1999, c. 18, s. 40.
26. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

The Court recognized that the Minister’s discretion was limited by the Charter, and that the Charter required a balancing on the facts of each case of the applicable principles of fundamental justice. ... Our analysis will lead to the conclusion that in the absence of exceptional circumstances, which we refrain from trying to anticipate, assurances in death penalty cases are always constitutionally required. ... An extradition that violates the principles of fundamental justice will always shock the conscience. The important inquiry is to determine what constitutes the applicable principles of fundamental justice in the extradition context.

See [United States v. Burns](#), 2001 SCC 7.
27. See *Johnson v. United States of America* (1997), O.J. No. 3778 (Ont. C.A.), leave to appeal refused 111 O.A.C. 396 (note) (S.C.C.); [United States of America v. Whitley](#), [1996] 1 S.C.R. 467; and [United States of America v. Lake](#), 2006 ONCA 29924 (CanLII).
28. [India v. Badesha](#), 2017 SCC 44.
29. In 2018, the United Nations Committee against Torture commented on diplomatic assurances during its last periodic review of Canada, stating that

diplomatic assurances should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention [against torture and other cruel, inhuman or degrading treatment or punishment]. The State party should thoroughly consider the merits of each individual case, including the overall situation with regard to torture in the country of return.

See United Nations, “[Committee against Torture: Concluding observations on the seventh periodic report of Canada](#),” *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 21 December 2018, paras. 28 and 29.
30. [United States v. Burns](#), 2001 SCC 7.
31. Hassan Diab, a Canadian citizen, was extradited to France in 2014, after being accused of participating in a 1980 terrorist attack that took place outside a synagogue in Paris. Diab was held for three years in a maximum-security prison before being released without trial. Following his return to Canada, the Paris Court of Appeal overturned the dismissal of the case by the investigating judge and ordered a trial *in absentia*. See [France v. Diab](#), 2014 ONCA 374.

The former Attorney General of Canada, the Honourable Jody Wilson-Raybould, commissioned an external review of Hassan Diab’s extradition in May 2018. In his final report, Murray D. Segal concluded that the Crown complied with the Act, despite the consequences Mr. Diab faced. See Murray D. Segal, [Independent Review of the Extradition of Dr. Hassan Diab](#), May 2019; and [United States v. Meng](#), 2020 BCSC 785.
32. [M.M. v. United States of America](#), 2015 SCC 62, para. 1.
33. The Halifax Colloquium is an independent group comprising academics, defence lawyers and human rights organizations. See Robert J. Currie, [Changing Canada’s Extradition Laws: The Halifax Colloquium’s Proposals for Law Reform](#), Canadian Partnership for International Justice, October 2021.
34. Robert J. Currie, “[Wrongful Extradition: Reforming the Committal Phase of Canada’s Extradition Law](#),” *Manitoba Law Journal*, Vol. 44, No. 6, 2021, p. 23.
35. Joanna Harrington, “[Expanding the Role for the Minister of Foreign Affairs in a World of Conditional Extradition](#),” *Transnational Criminal Law Review*, Vol. 1, No. 1, 2022.

36. Recommendation 20 calls for the federal government to “undertake comprehensive reform of the *Extradition Act* as soon as possible and consider making changes to the extradition process not requiring legislation, in the interim, in order to avoid further injustices in extradition proceedings.” See House of Commons, Standing Committee on Justice and Human Rights, [Reforming Canada’s Extradition System](#), Thirteenth report, June 2023, p. 40.
37. Arif Virani, Minister of Justice and Attorney General of Canada, [Government’s response to the thirteenth report of the Standing Committee on Justice and Human Rights on Reforming Canada’s Extradition System, tabled on June 7, 2023](#).
38. [Mutual Legal Assistance in Criminal Matters Act](#), R.S.C. 1985, c. 30 (4th Supp.).
39. The agreements concluded under the *Mutual Legal Assistance in Criminal Matters Act* closely follow the provisions of the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. See United Nations, [United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#), 20 December 1988.
40. Upon approval by the Minister of Justice. See Robert Goldstein and Nancy Dennison, “[Mutual Legal Assistance in Canadian Criminal Courts](#),” *Criminal Law Quarterly*, Vol. 45, 2002, p. 126.
41. [Canada Evidence Act](#), R.S.C. 1985, c. C-5, s. 51(2).
42. Department of Justice Canada, [Requesting Mutual Legal Assistance from Canada: A Step-by-Step Guide](#), 2013; and Government of Canada, “[Chapter 3: Mutual Legal Assistance in Criminal Matters](#),” *International Assistance Group Deskbook*.
43. United Nations Office on Drugs and Crime, [United Nations Convention against Transnational Organized Crime and the Protocols Thereto](#), 2004.
44. United Nations Office on Drugs and Crime, [United Nations Convention against Corruption](#), 2004.
45. For a list of 80 supporting states, see Republic of Slovenia, [Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes: Supporting States as of 12/5/2023](#), 5 December 2023. Thirty-four countries have signed on to the Convention so far. See Republic of Slovenia, [The Ljubljana-The Hague Convention is signed in The Hague after a decade of effort](#), 14 February 2024.
46. About international law crimes included in the Convention, see Republic of Slovenia, *MLA Initiative Explanatory*, p. 3. See Bruno de Oliveira Biazatti and Ezéchiél Amani, “[The Ljubljana – The Hague Convention on Mutual Legal Assistance: Was the Gap Closed?](#),” *EJIL: Talk!*, 12 June 2023. See also Fisseha Tekle, “[The Ljubljana – The Hague Convention: A step forward in Combating Impunity for Atrocity Crimes](#),” *International Law Blog*, 18 September 2023.
47. The assistance of the International Criminal Police Organization (INTERPOL) may be required to facilitate the arrest of an individual located abroad. It will publish red notices to seek the arrest of a wanted person for whom a domestic arrest warrant has been issued, and where extradition may be requested. See Royal Canadian Mounted Police, [INTERPOL](#). INTERPOL is also involved in extradition processes for requests from countries other than the United States. See Government of Canada, [International Assistance Group Deskbook](#).
48. Giulio Calcara, “[Balancing International Police Cooperation: INTERPOL and the Undesirable Trade-Off Between Rights of Individuals and Global Security](#),” *Liverpool Law Review*, Vol. 42, No. 2, 2021 [SUBSCRIPTION REQUIRED]. See also Margaret E. Beare, “[Interpol](#),” *Encyclopedia of Transnational Crime and Justice*; and INTERPOL, [Operations](#).
49. See the definition of “proceeds of crime” in [Criminal Code](#), R.S.C. 1985, c. C-46, s. 462.3(1).
50. [Seized Property Management Act](#), S.C. 1993, c. 37.
51. United States, [Clarifying Lawful Overseas Use of Data Act \(CLOUD Act\)](#), H.R. 4943. See also Tim Cochrane, “[The Presumption Against Extraterritoriality, Mutual Legal Assistance, and the Future of Law Enforcement Cross-Border Evidence Collection](#),” *Modern Law Review*, Vol. 85, No. 2, March 2022.
52. Two agreements have been signed so far, one in 2019 with the United Kingdom and one with Australia in 2021. See United States, Department of Justice, Criminal Division, [Cloud Act Agreement between the Governments of the U.S., United Kingdom of Great Britain and Northern Ireland](#), 3 October 2019; and United States, Department of Justice, Criminal Division, [Cloud Act Agreement Between the Governments of the U.S. and Australia](#), 15 December 2021.

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53. The order will need to be recognized in the partner's jurisdiction and cannot be enforced by the requesting state. See United States, Department of Justice, [Promoting Public Safety, Privacy, and the Rule of Law Around the World: The Purpose and Impact of the CLOUD Act](#), White paper, April 2019.
54. Council of Europe, [Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence](#), Council of Europe Treaty Series, No. 224, 2022.
55. United States, Department of Justice, Office of Public Affairs, [United States and Canada Welcome Negotiations of a CLOUD Act Agreement](#), News release, 22 March 2022.
56. Government of Canada, [Council of Europe Second Additional Protocol to the Convention on Cybercrime on Enhanced Cooperation and Disclosure of Electronic Evidence: Consultations, 2023](#).