

THE OBLIGATION TO EXTRADITE OR PROSECUTE (*AUT DEDERE AUT JUDICARE*)

[Agenda item 6]

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Comments and observations received from Governments

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Multilateral instruments cited in the present report

Source

International Convention for the Suppression of the Traffic in Women and Children (Geneva, 30 September 1921)	League of Nations, <i>Treaty Series</i> , vol. IX, No. 269, p. 415.
International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (Geneva, 12 September 1923)	<i>Ibid.</i> , vol. XXVII, No. 685, p. 213.
Code of Private International Law (Bustamante Code) (Convention on Private International Law) (Havana, 20 February 1928)	<i>Ibid.</i> , vol. LXXXVI, p. 254.
International Convention for the Suppression of Counterfeiting Currency (Geneva, 20 April 1929)	<i>Ibid.</i> , vol. CXII, No. 2623, p. 371.
Optional Protocol regarding the Suppression of Counterfeiting Currency (Geneva, 20 April 1929)	<i>Ibid.</i> , vol. CXII, No. 2624, p. 395.
Convention on Extradition (Montevideo, 26 December 1933)	<i>Ibid.</i> , vol. CLXV, No. 3803, p. 45.
Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs (Geneva, 26 June 1936)	<i>Ibid.</i> , vol. CXCVIII, No. 4648, p. 299.
Convention on the Prevention and Punishment of the Crime of Genocide (New York, 9 December 1948)	United Nations, <i>Treaty Series</i> , vol. 78, No. 1021, p. 277.
International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and as amended by the Protocol (Lake Success, New York, 4 May 1949)	<i>Ibid.</i> , vol. 92, No. 1257, p. 19.
International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, and as amended by the Protocol (Lake Success, New York, 4 May 1949)	<i>Ibid.</i> , vol. 98, No. 1358, p. 101.
Geneva Conventions for the protection of war victims (Geneva, 12 August 1949)	<i>Ibid.</i> , vol. 75, Nos. 970–973, pp. 31, 85, 135 and 287.
Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field	
Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea	
Geneva Convention relative to the treatment of prisoners of war	
Geneva Convention relative to the protection of civilian persons in time of war	

Source

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (Geneva, 8 June 1977) *Ibid.*, vol. 1125, No. 17512, p. 3.
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (New York, 2 December 1949) *Ibid.*, vol. 96, No. 1342, p. 271.
- Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) *Ibid.*, vol. 213, No. 2889, p. 221.
- Slavery Convention, signed at Geneva on 25 September 1926, and amended by the Protocol (New York, 7 December 1953) *Ibid.*, vol. 212, No. 2861, p. 17.
- European Convention on Extradition (Paris, 13 December 1957) *Ibid.*, vol. 359, No. 5146, p. 273.
- Additional Protocol to the European Convention on Extradition (Strasbourg, 15 October 1975) *Ibid.*, vol. 1161, No. A-5146, p. 450.
- Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17 March 1978) *Ibid.*, vol. 1496, No. A-5146, p. 328.
- Convention on the High Seas (Geneva, 29 April 1958) *Ibid.*, vol. 450, No. 6465, p. 11.
- Single Convention on Narcotic Drugs, 1961 (New York, 30 March 1961) *Ibid.*, vol. 520, No. 7515, p. 151.
- Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961 (New York, 8 August 1975) *Ibid.*, vol. 976, No. 14152, p. 105.
- Convention on offences and certain other acts committed on board aircraft (Tokyo, 14 September 1963) *Ibid.*, vol. 704, No. 10106, p. 219.
- International Covenant on Civil and Political Rights (New York, 16 December 1966) *Ibid.*, vol. 999, No. 14668, p. 171.
- Convention for the suppression of unlawful seizure of aircraft (The Hague, 16 December 1970) *Ibid.*, vol. 860, No. 12325, p. 105.
- Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance (Washington, 2 February 1971) *Ibid.*, vol. 1438, No. 24381, p. 191.
- Convention on psychotropic substances (Vienna, 21 February 1971) *Ibid.*, vol. 1019, No. 14956, p. 175.
- Convention for the suppression of unlawful acts against the safety of civil aviation (Montreal, 23 September 1971) *Ibid.*, vol. 974, No. 14118, p. 177.
- Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the above-mentioned Convention (Montreal, 24 February 1988) *Ibid.*, vol. 1589, No. 14118, p. 474.
- International Convention for the Prevention of Pollution from Ships (London, 2 November 1973, as amended by the Protocol of 1978 (London, 17 February 1978) *Ibid.*, vol. 1340, No. 22484, pp. 62 and 184.
- International Convention on the Suppression and Punishment of the Crime of Apartheid (New York, 30 November 1973) *Ibid.*, vol. 1015, No. 14861, p. 243.
- Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (New York, 14 December 1973) *Ibid.*, vol. 1035, No. 15410, p. 167.
- European Convention on the suppression of terrorism (Strasbourg, 27 January 1977) *Ibid.*, vol. 1137, No. 17828, p. 93.
- Protocol amending the European Convention on the Suppression of Terrorism (Strasbourg, 15 May 2003) Council of Europe, *European Treaty Series*, No. 190.
- Convention on the Physical Protection of Nuclear Material (Vienna, 26 October 1979) United Nations, *Treaty Series*, vol. 1456, No. 24631, p. 101.
- International Convention against the taking of hostages (New York, 17 December 1979) *Ibid.*, vol. 1316, No. 21931, p. 205.
- United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982) *Ibid.*, vol. 1833, No. 31363, p. 3.
- Riyad Arab Agreement for Judicial Cooperation (Riyad, 6 April 1983) *A Collection of the Council's Documents* (Rabat, Council of Arab Ministers of Justice), vol. 2 (1988), p. 96.
- Convention against torture and other cruel, inhuman or degrading treatment or punishment (New York, 10 December 1984) United Nations, *Treaty Series*, vol. 1465, No. 24841, p. 85.
- Inter-American Convention to Prevent and Punish Torture (Cartagena de Indias, 9 December 1985) OAS, *Treaty Series*, No. 67.
- SAARC Regional Convention on Suppression of Terrorism (Katmandu, 4 November 1987) *International Instruments related to the Prevention and Suppression of International Terrorism* (United Nations publication, Sales No. E.03.V.9), p. 153.

Source

Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism (Islamabad, 6 January 2004)	Website of the South Asian Association for Regional Cooperation (http://www.saarc-sec.org)
Convention for the suppression of unlawful acts against the safety of maritime navigation (Rome, 10 March 1988)	United Nations, <i>Treaty Series</i> , vol. 1678, No. 29004, p. 201.
Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf (Rome, 10 March 1988)	<i>Ibid.</i>
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 20 December 1988)	<i>Ibid.</i> , vol. 1582, No. 27627, p. 95.
International Convention against the Recruitment, Use, Financing and Training of Mercenaries (New York, 4 December 1989)	<i>Ibid.</i> , vol. 2163, No. 37789, p. 75.
SAARC Convention on Narcotic Drugs and Psychotropic Substances (Male, 23 November 1990)	<i>Mutual Assistance in Criminal and Business Regulatory Matters</i> , W. C. Gilmore, ed. Cambridge University Press, 1995, p. 185.
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)	United Nations, <i>Treaty Series</i> , vol. 2122, No. 36984, p. 359.
Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (Geneva, 3 September 1992)	<i>Ibid.</i> , vol. 1974, No. 33757, p. 45.
Convention on the Safety of United Nations and Associated Personnel (New York, 9 December 1994)	<i>Ibid.</i> , vol. 2051, No. 35457, p. 363.
International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997)	<i>Ibid.</i> , vol. 2149, No. 37517, p. 256.
Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Paris, 17 December 1997)	ILM, vol. XXXVII, No. 1 (January 1998), p. 4.
Rome Statute of the International Criminal Court (Rome, 17 July 1998)	United Nations, <i>Treaty Series</i> , vol. 2187, No. 38544, p. 3.
Criminal Law Convention on Corruption (Strasbourg, 27 January 1999)	<i>Ibid.</i> , vol. 2216, No. 39391, p. 225.
International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999)	<i>Ibid.</i> , vol. 2178, No. 38349, p. 197.
United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)	<i>Ibid.</i> , vol. 2225, No. 39574, p. 209.
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)	<i>Ibid.</i> , vol. 2237, No. A-39574, p. 319.
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)	<i>Ibid.</i> , vol. 2241, No. A-39574, p. 480.
Convention on cybercrime (Budapest, 23 November 2001)	<i>Ibid.</i> , vol. 2296, No. 40916, p. 167.
United Nations Convention against Corruption (New York, 31 October 2003)	<i>Ibid.</i> , vol. 2349, No. 42146, p. 41.
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 13 April 2005)	<i>Ibid.</i> , vol. 2445, No. 44004, p. 89.
Council of Europe Convention on the Prevention of Terrorism (Warsaw, 16 May 2005)	Council of Europe, <i>European Treaty Series</i> , No. 196.

Introduction

1. The present report has been prepared pursuant to General Assembly resolution 61/34 of 4 December 2006, in which the Assembly, *inter alia*, invited Governments to provide to the International Law Commission information on legislation and practice regarding the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”.

2. At its fifty-eighth session in 2006, the Commission decided in accordance with article 19, paragraph 2, of its

statute,¹ to request Governments, through the Secretary-General, to submit information concerning their legislation and practice, particularly more contemporary, with regard to the topic “The obligation to extradite or prosecute (*aut dedere aut judicare*)”. More specifically, Governments were requested to provide information concerning:

¹ General Assembly resolution 174 (III) of 21 November 1947, annex.

(a) International treaties by which a State is bound, containing the obligation to extradite or prosecute, and reservations made by that State to limit the application of this obligation;

(b) Domestic legal regulation adopted and applied by a State, including constitutional provisions and penal codes of criminal procedures, concerning the obligation to extradite or prosecute (*aut dedere aut judicare*);

(c) Judicial practice of a State reflecting the application of the *aut dedere aut judicare* obligation;

(d) Crimes or offences to which the principle of the *aut dedere aut judicare* obligation is applied in the legislation or practice of a State.²

² *Yearbook ... 2006*, vol. II (Part Two), p. 21, para. 30.

3. As at 1 March 2007, written observations had been received from the following seven States: Austria, Croatia, Japan, Monaco, Qatar, Thailand and the United Kingdom of Great Britain and Northern Ireland. Additional information has since been received from Chile, Ireland, Kuwait, Latvia, Lebanon, Mexico, Poland, Serbia, Slovenia, Sri Lanka, Sweden, Tunisia and the United States of America.

4. The responses from Governments have been organized around the four clusters of information referred to in paragraph 2 above.

Comments and observations received from Governments

A. General comments

UNITED STATES OF AMERICA

The United States believes that its practice, and that of other countries, reinforces the view that there is not a sufficient basis in customary international law or State practice to formulate draft articles that would extend an obligation to extradite or prosecute beyond binding international legal instruments that contain such obligations.

The United States does not believe that there is a general obligation under customary international law to extradite or prosecute individuals for offences not covered by international agreements containing such an obligation. Rather, the United States believes that States only undertake such obligations by joining binding international legal instruments that contain extradite or prosecute provisions and that those obligations only extend to other States that are parties to such instruments. A number of important policy interests support this conclusion and practice.

First, in the context of an offence-creating convention to which a State is a party, there is no question that the State in which an offender is found will have criminalized and established jurisdiction over the offence in question. But if the obligation to extradite or prosecute were free-standing, that would not always be the case. One State could request the extradition of a person from another State in which the conduct in question was not a crime (and for which, as a result, extradition would not normally be available, as it generally requires dual criminality), and the State which had not criminalized the conduct would nevertheless be required to prosecute the person. Such a result would put the requested State in an untenable position where its domestic law would preclude both prosecution and extradition.

Secondly, and similarly, a free-standing obligation to extradite or prosecute could be seen as implying an obligation to extradite even in the absence of treaties or other legal provisions that might be required by a State as a matter of domestic law to authorize such action. In the United States, for example, a treaty relationship is required (with very limited exceptions) in order for the United States to extradite an offender to a requesting State. Therefore, if a State found that it lacked jurisdiction to prosecute an offender for an offence for which extradition was

requested by a State with which it did not have treaty relations, a Commission article establishing an obligation to extradite or prosecute could purport to requiring the State to extradite the offender even though it lacked the legal authority to do so under domestic law.

Thirdly, if there were a broad State practice of applying an extradite or prosecute regime, one would expect that most States would have enacted laws that generally confer extraterritorial jurisdiction over most offences based solely on the offender being found within their territory. This is not the case for the United States and, in its experience, it is not the case for many other States as well. To the contrary, such “found in” jurisdiction is quite limited and based primarily on the obligations of specific treaties. Thus, adoption of an extradite or prosecute regime would suggest a need for many States to dramatically expand their extraterritorial jurisdiction over offences committed anywhere in the world.

Fourthly, States around the world make and entertain thousands of extradition requests every year. Among those cases, there are undoubtedly many in which the requesting State would not want the requested State to prosecute the case if extradition were not possible. Extradition allows for the vindication of the rights and interests of the victim and the State where the offence occurred in a way that prosecution in a foreign State cannot always meet. Furthermore, there may be cases in which it is impossible for the requested country to prosecute because the underlying investigation did not accord with procedures required by its laws.

Finally, a decision by a State to enter into an extradition relationship with another State involves important considerations with respect to the other State’s adherence to rule of law, due process, human rights and other norms. A general obligation to extradite or prosecute would intrude on the sovereignty of States by either purporting to impose such a relationship where it was not desired by the State or requiring that State to undertake a sovereign act—prosecution—that it did not desire to undertake for legal, policy or other reasons.

The United States believes that the Commission should therefore not formulate draft articles on this topic. Rather, it should conclude that no such obligation exists outside international treaties.

B. International treaties by which a State is bound, containing the obligation to extradite or prosecute (*aut dedere aut judicare*), and reservations made by that State to limit the application of this obligation

AUSTRIA

The following bilateral treaties concluded by Austria contain the *aut dedere aut judicare* obligation:

(a) The Treaty between the Government of the Republic of Austria and the Government of Canada on Extradition, signed on 5 October 1998 in Ottawa (*Canada Gazette*, part I, vol. 134, No. 45, p. 3388). The relevant article 3, paragraph 2, reads as follows:

Extradition may be refused in any of the following circumstances:

(a) if the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken;

(b) if the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence;

(b) The Extradition Treaty between the Government of the Republic of Austria and the Government of the United States of America, signed on 8 January 1998 in Washington, D.C. (*Federal Law Gazette III* No. 216/1999). The relevant article 3, paragraph (2), reads as follows:

If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution.

Austria has made no reservations to relevant multilateral treaties which limit the application of the *aut dedere aut judicare* obligation.

CHILE

Chile submitted a list of multilateral treaties to which it is party: (a) the Convention on Extradition, promulgated by supreme decree of the Ministry of Foreign Affairs, No. 942 of 6 August 1935, *Diario Oficial* (19 August 1935), with the following States parties: Argentina, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, United States (art. II); and (b) the Code of Private International Law (book IV, third title), whose States parties are Bolivia, Brazil, Chile, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela (Bolivarian Republic of) (art. 345).

Chile also mentioned, in view of their special relevance, two multilateral treaties concerning specific offences to which Chile is party and which deal with the principle in question in their provisions on extradition: (a) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, promulgated by supreme decree of the Ministry of Foreign Affairs, No. 543 of 1990, *Diario Oficial* (20 August

1990); and (b) the United Nations Convention against Transnational Organized Crime and its Protocols, promulgated by supreme decree of the Ministry of Foreign Affairs, No. 342 of 20 December 2004, *Diario Oficial* (16 February 2005).

Chile also submitted a list of bilateral treaties: (a) the Treaty on Extradition with Australia, signed in Canberra on 6 October 1993 and promulgated by supreme decree of the Ministry of Foreign Affairs, No. 1844 of 27 December 1995, *Diario Oficial* (20 February 1996) (art. 5, para. 1); (b) the Treaty on Extradition with Bolivia, signed in Santiago on 15 December 1910 and promulgated by decree No. 500 of 8 May 1931, *Diario Oficial* (26 May 1931) (art. IV); (c) the Treaty on Extradition with Brazil, signed in Rio de Janeiro on 8 November 1935 and promulgated by decree No. 1180 of 18 August 1937, *Diario Oficial* (30 August 1937) (art. I, para. 1); (d) the Treaty on Extradition with Colombia, signed in Bogota on 16 November 1914 and promulgated by decree No. 1472 of 18 December 1928, *Diario Oficial* (7 January 1929) (art. IV); (e) the Convention on Extradition with Ecuador, signed in Quito on 10 November 1897 and promulgated on 27 September 1899, *Diario Oficial* (9 October 1899) (art. VII, para. 2); (f) the Treaty on Extradition with the Republic of Korea, signed in Seoul on 21 November 1994, promulgated by decree No. 1417 of 1 September 1997, *Diario Oficial* (23 October 1997) (art. 6, para. 2); (g) the Treaty on Extradition and Mutual Legal Assistance in Criminal Matters with Mexico, signed in Mexico City on 2 October 1990 and promulgated by supreme decree of the Ministry of Foreign Affairs, No. 1011 of 30 August 1993, *Diario Oficial* (30 November 1993) (art. 6, para. 2); (h) the Treaty on Extradition and Judicial Assistance in Criminal Matters with Nicaragua, signed in Santiago on 28 December 1993 and promulgated by supreme decree of the Ministry of Foreign Affairs, No. 411 of 8 June 2001, *Diario Oficial* (20 August 2001) (art. 7, para. 2); (i) the Treaty on Extradition with Paraguay, signed in Montevideo on 22 May 1897, *Diario Oficial* (13 November 1928) (art. VII, para. 2); (j) the Treaty on Extradition with Peru, signed in Lima on 5 November 1932 and promulgated by decree No. 1152 of 11 August 1936, *Diario Oficial* (27 August 1936) (art. IV); (k) the Treaty on Extradition and Judicial Assistance in Criminal Matters with Spain, signed on 14 April 1992 and promulgated by supreme decree of the Ministry of Foreign Affairs, No. 31 of 10 January 1995, *Diario Oficial* (11 April 1995) (art. 7, para. 2); (l) the Treaty on Extradition with Uruguay, signed in Montevideo on 10 May 1897, *Diario Oficial* (30 November 1909) (art. 7); and (m) the Treaty on Extradition with Venezuela, signed in Santiago on 2 June 1962 and promulgated by supreme decree of the Ministry of Foreign Affairs, No. 355 of 10 May 1965, *Diario Oficial* (1 June 1965) (art. 3, para. 2).

CROATIA

International treaties containing an obligation to extradite or prosecute for Croatia are: International Convention for the Suppression of Counterfeiting Currency; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; European Convention on Extradition; Single

Convention on Narcotic Drugs, 1961; Convention for the suppression of unlawful seizure of aircraft; Convention on psychotropic substances; Convention for the suppression of unlawful acts against the safety of civil aviation; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; European Convention on the suppression of terrorism; International Convention against the taking of hostages; Convention against torture and other cruel, inhuman or degrading treatment or punishment; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Convention on the Safety of United Nations and Associated Personnel; International Convention against the Recruitment, Use, Financing and Training of Mercenaries; International Convention for the Suppression of Terrorist Bombings; International Convention for the Suppression of the Financing of Terrorism; Criminal Law Convention on Corruption; United Nations Convention against Transnational Organized Crime; Convention on cyber-crime; United Nations Convention against Corruption.

IRELAND

In submitting a list of international treaties by which it is bound, containing the obligation to extradite or prosecute, Ireland noted that while every effort had been made to ensure accuracy, the information submitted did not purport to constitute a definitive statement of Irish law. The list was as follows: Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; Geneva Convention relative to the treatment of prisoners of war; Geneva Convention relative to the protection of civilian persons in time of war; European Convention on Extradition; Convention for the suppression of unlawful seizure of aircraft; Convention for the suppression of unlawful acts against the safety of civil aviation; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; International Convention against the taking of hostages; Convention on the Physical Protection of Nuclear Material; Convention against torture and other cruel, inhuman or degrading treatment or punishment; Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Convention for the suppression of unlawful acts against the safety of maritime navigation; Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf; Convention on the Safety of United Nations and Associated Personnel; Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; International Convention for the Suppression of Terrorist Bombings; Rome Statute of the International Criminal Court; International Convention for the Suppression of the Financing of Terrorism; Criminal Law Convention on Corruption; Council of Europe Convention on the Prevention of Terrorism.

JAPAN

Japan has concluded the following multilateral treaties containing the obligation to extradite or prosecute, and it has made no reservations to limit the application of the obligation in any of these treaties: Convention for the Suppression of the Illicit Traffic in Dangerous Drugs; Geneva Conventions for the protection of war victims of 12 August 1949 (Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; Geneva Convention relative to the treatment of prisoners of war; Geneva Convention relative to the protection of civilian persons in time of war); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Convention on the High Seas; Single Convention on Narcotic Drugs, 1961; Convention for the suppression of unlawful seizure of aircraft; Convention on psychotropic substances; Convention for the suppression of unlawful acts against the safety of civil aviation; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflict; International Convention against the taking of hostages; Convention on the Physical Protection of Nuclear Material; United Nations Convention on the Law of the Sea; Convention for the suppression of unlawful acts against the safety of maritime navigation; Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Convention on the Safety of United Nations and Associated Personnel; International Convention for the Suppression of Terrorist Bombings; International Convention for the Suppression of the Financing of Terrorism.

Japan has also concluded bilateral extradition treaties with the Republic of Korea and the United States. However, they both stipulate only an obligation to extradite under certain conditions,¹ but not “the obligation to extradite or prosecute”.

¹ The complete text of the Treaty, provided by Japan, is available for consultation at the Codification Division of the Office of Legal Affairs.

KUWAIT

The obligation to extradite or prosecute (*aut dedere aut judicare*) is governed by the agreements on legal and judicial cooperation which Kuwait has concluded with other States, in accordance with the objectives of the extradition regime, namely State cooperation in combating crime and achieving justice.

Those international agreements, upon becoming fully binding, be it through ratification, accession or approval, come into effect as enforceable law under the legal system of Kuwait. Such agreements include: the Agreement on mutual extradition between Kuwait and Lebanon (20 July

1963);¹ the Agreement on legal and judicial cooperation in civil, commercial and criminal matters and matters of personal status between Kuwait and Egypt (6 April 1977);² the Agreement on legal and judicial cooperation in civil and criminal matters and matters of personal status between Kuwait and Tunisia (13 June 1977);³ the Agreement on legal and judicial cooperation in civil, commercial and criminal matters between Kuwait and Bulgaria (26 December 1988);⁴ the Agreement on legal and judicial cooperation in civil, commercial and criminal matters between Kuwait and Turkey (24 March 1997);⁵ and the Agreement on legal and judicial cooperation in civil and commercial matters, matters of personal status, the transfer of convicted persons and the settlement of estates between Kuwait and the Syrian Arab Republic (28 June 1999).⁶

¹ Approved pursuant to Act No. 6 of 1962.

² Ratified pursuant to Decree-Law No. 96 of 1977.

³ Ratified pursuant to Decree-Law No. 123 of 1977.

⁴ Ratified pursuant to Decree-Law No. 19 of 1989.

⁵ Ratified pursuant to Decree-Law No. 46 of 1998.

⁶ Ratified pursuant to Decree-Law No. 3 of 2004.

LATVIA

Latvia is party to several international treaties containing the obligation to extradite or prosecute, namely the European Convention on Extradition; the Convention for the suppression of unlawful seizure of aircraft; the Convention for the suppression of unlawful acts against the safety of civil aviation; the Additional Protocol to the European Convention on Extradition; the European Convention on the suppression of terrorism; the Second Additional Protocol to the European Convention on Extradition; the International Convention against the taking of hostages; the Convention on the Physical Protection of Nuclear Material; the Convention for the suppression of unlawful acts against the safety of maritime navigation and its Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf; the Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation; the Criminal Law Convention on Corruption; the International Convention for the Suppression of the Financing of Terrorism; the United Nations Convention against Transnational Organized Crime; the Protocol amending the European Convention on the Suppression of Terrorism; and the United Nations Convention Against Corruption.

Latvia is also bound by various bilateral treaties containing the obligation: Agreement with Estonia and Lithuania on legal assistance and legal relations (11 November 1992); Agreement with the Russian Federation on legal assistance and legal relations in civil, family and criminal matters (3 February 1993); Agreement with the Russian Federation on transfer of sentenced persons (4 March 1993); Agreement with the Republic of Moldova on legal assistance and legal relations in civil, family and criminal matters (14 April 1993); Agreement with Belarus on legal assistance and legal relations in civil, family and criminal matters (21 February 1994); Agreement with Poland on legal assistance and legal relations in civil, family, labour

and criminal matters (23 February 1994); Agreement with Ukraine on legal assistance relations and legal relations in civil, family and criminal matters (23 May 1995); Agreement with Kyrgyzstan on legal assistance and legal relations in civil, family and criminal matters (10 April 1997); Agreement with Uzbekistan on legal assistance and legal relations in civil, family, labour and criminal matters (23 May 1997); Treaty on extradition with Australia (14 July 2000).

LEBANON

Lebanon submitted a list of relevant treaties as well as legislation giving effect to specific treaties, namely: the agreement on extradition between Lebanon and Yemen; the agreement on extradition and the exchange of judicial documents between Lebanon and Turkey; the law of 13 March 1964 on mutual extradition between Lebanon and Kuwait; the law of 17 November 1964 on extradition between Lebanon and Belgium; law No. 38/68 of 30 December 1968, concerning the agreement on the execution of judgements and the extradition of offenders between Lebanon and Tunisia; the law implemented by decree No. 3257 of 17 May 1972, relating to the judicial agreement between Lebanon and Italy; law No. 630 of 23 April 1997, concerning the judicial agreement between Lebanon and the Syrian Arab Republic; law No. 693 of 5 November 1998, concerning the judicial agreement with Egypt; law No. 467 of 12 December 2002, relating to the agreement on the transfer of convicted persons between Lebanon and Bulgaria; law No. 468 of 12 December 2002, on the agreement on extradition between Lebanon and Bulgaria; law No. 469 of 12 December 2002, concerning the agreement on judicial cooperation in criminal matters between Lebanon and Bulgaria; and law No. 470 of 12 December 2002, on the agreement on judicial cooperation in civil matters between Lebanon and Bulgaria.

MEXICO

Mexico submitted a list of multilateral treaties on substantive matters, as follows: (a) war crimes and crimes against humanity, namely, the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; the Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; the Geneva Convention relative to the treatment of prisoners of war; the Geneva Convention relative to the protection of civilian persons in time of war; and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts; (b) prohibition of genocide, namely, the Convention on the Prevention and Punishment of the Crime of Genocide; (c) illegal use of weapons, namely, the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction; (d) apartheid, namely, the International Convention on the Suppression and Punishment of the Crime of *Apartheid*; (e) slavery and slavery-like crimes, namely, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the International Convention for the Suppression of the Traffic in Women and Children; the International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, and as amended by the Protocol; the International

Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, and as amended by the Protocol; and the Slavery Convention, signed at Geneva on 25 September 1926, and amended by the Protocol (New York, 7 December 1953); (f) prohibition of torture, namely, the Convention against torture and other cruel, inhuman or degrading treatment or punishment; and the Inter-American Convention to Prevent and Punish Torture; (g) piracy, namely, the Convention on the High Seas; and the United Nations Convention on the Law of the Sea; (h) hijacking and related crimes, namely the Convention on offences and certain other acts committed on board aircraft; the Convention for the suppression of unlawful seizure of aircraft; the Convention for the suppression of unlawful acts against the safety of civil aviation; (i) crimes against the safety of international maritime navigation, namely, the Convention for the suppression of unlawful acts against the safety of maritime navigation; (j) use of force against internationally protected persons, namely, the Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; and the Convention to prevent and punish the acts of terrorism taking the form of crimes against persons and related extortion that are of international significance; (k) taking of civilian hostages, namely, the International Convention against the taking of hostages; (l) crimes against health (narcotic drugs, drugs and psychotropic substances), namely the Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs; the Single Convention on Narcotic Drugs, 1961; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; (m) international traffic in obscene material, namely, the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications; (n) protection of the environment, namely, the International Convention for the Prevention of Pollution from Ships; (o) theft of nuclear material, namely the Convention on the Physical Protection of Nuclear Material; and (p) prohibition of counterfeiting, namely, the International Convention for the Suppression of Counterfeiting Currency.

Concerning trial procedures, Mexico noted that it was party to the Convention on Extradition.

In signing the Convention on Extradition, Mexico formulated the following reservation:

Mexico signs the Convention on Extradition with the declaration with respect to Article 3, paragraph (f), that the internal legislation of Mexico does not recognize offenses against religion. It will not sign the Optional Clause of this Convention.¹

In acceding to the Convention for the suppression of unlawful acts against the safety of maritime navigation, Mexico formulated the following reservation:

Mexico's accession to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and to its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, is on the understanding that in matters relating to extradition, both article 11 of the Convention and article 3 of the Protocol will be applied in the Republic of Mexico subject to the modalities and procedures laid down in the applicable provisions of national law.²

The reservations entered by Mexico do not affect the provisions setting out the obligation to prosecute or extradite in the multilateral treaties to which it is party.

Mexico also has bilateral treaties on extradition with the following countries: Australia, signed on 22 June 1990 and which entered into force on 27 March 1991; Bahamas, signed on 7 September 1886 and which entered into force on 15 February 1889; Belgium, signed on 22 September 1938 and which entered into force on 13 November 1939; Belize, signed on 29 August 1988 and which entered into force on 5 July 1989; Brazil, signed on 28 December 1933 and which entered into force on 23 March 1938, as well as an Additional Protocol, which was signed on 18 September 1935 and which entered into force on 23 March 1938; Canada, signed on 16 March 1990 and which entered into force on 21 October 1990; Chile, signed on 2 October 1990 and which entered into force on 30 October 1991; Colombia, signed on 12 June 1928 and which entered into force on 1 July 1937; Costa Rica, signed on 13 October 1989 and which entered into force on 24 March 1995; Cuba, signed on 25 May 1925 and which entered into force on 17 May 1930; El Salvador, signed on 21 May 1997 and which entered into force on 21 January 1998; France, signed on 27 January 1994 and which entered into force on 1 March 1995; Greece, signed on 25 October 1999 and which entered into force on 29 December 2004; Guatemala, signed on 17 March 1997 and which entered into force on 29 April 2005; Italy, signed on 22 May 1899 and which entered into force on 12 October 1899; Nicaragua, signed on 13 February 1993 and which entered into force on 18 June 1998; Netherlands, signed on 16 December 1907 and which entered into force on 2 July 1909; Panama, signed on 23 October 1928 and which entered into force on 4 May 1938; Peru, signed on 2 May 2000 and which entered into force on 10 April 2001; Portugal, signed on 20 October 1998 and which entered into force on 1 January 2000; Republic of Korea, signed on 29 November 1996 and which entered into force on 27 December 1997; Spain, signed on 21 November 1978 and which entered into force on 1 June 1980, as well as an Additional Protocol, which was signed on 23 June 1995 and which entered into force on 1 September 1996, and Second Protocol, which was signed on 6 December 1999 and which entered into force on 1 April 2001; United Kingdom, signed on 7 September 1886 and which entered into force on 15 February 1889; United States, through an exchange of notes dated 4 May 1978 and which entered into force on 25 January 1980 as well as a Protocol, signed on 13 November 1997 and which entered into force on 21 May 2001; Uruguay, signed on 30 October 1996 and which entered into force on 24 March 2005; and Venezuela (Bolivarian Republic of), signed on 15 April 1998 and which entered into force on 24 November 2005.

MONACO

Monaco is party to the following international treaties containing a disposition on the obligation to extradite or prosecute, which have been given effect in the national legislation through sovereign ordinances: Convention for the suppression of unlawful seizure of aircraft;¹ Convention

¹ League of Nations, *Treaty Series*, vol. CLXV, No. 3803, p. 59.

² United Nations, *Treaty Series*, vol. 1823, No. 29004, p. 389.

¹ Sovereign ordinances No. 7.962 of 24 April 1984 and No. 15.655 of 7 February 2003.

for the suppression of unlawful acts against the safety of civil aviation;² Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents;³ International Convention against the taking of hostages;⁴ Convention on the Physical Protection of Nuclear Material;⁵ Convention against torture and other cruel, inhuman or degrading treatment or punishment;⁶ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;⁷ Convention for the suppression of unlawful acts against the safety of maritime navigation;⁸ Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation;⁹ Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf;¹⁰ International Convention for the Suppression of Terrorist Bombings;¹¹ International Convention for the Suppression of the Financing of Terrorism;¹² United Nations Convention against Transnational Organized Crime;¹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;¹⁴ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.¹⁵

Furthermore, Monaco is party to 17 bilateral treaties on extradition with the following countries: Australia, Austria, Belgium, Czech Republic, Denmark, France, Germany, Italy, Liberia, Netherlands, Russian Federation, Spain, Switzerland, United Kingdom, United States. Most of these treaties were concluded at the end of the nineteenth or the beginning of the twentieth century. Accordingly, they provide an exhaustive list of offences for which a person may be extradited without reference to a minimum sentence that may be incurred, as is the case in modern conventions.

12. Some of these bilateral treaties provide for the possibility to prosecute a person if extradition is refused on the ground of the nationality of the person requested, as for example, article 5 of the Convention between Italy and Monaco of 26 March 1866, as amended on

23 December 1896; article 5 of the Treaty on extradition between Australia and Monaco of 19 October 1988;¹⁶ article 6 of the Treaty concerning extradition between France and Monaco of 11 May 1992;¹⁷ and article 5 of the Convention between Belgium and Monaco of 29 June 1874.

¹⁶ United Nations, *Treaty Series*, vol. 1598, No. 27970, p. 139.

¹⁷ *Ibid.*, vol. 1761, No. 30627, p. 181.

POLAND

Poland is party to various international instruments dealing with extradition or containing a clause on the obligation to extradite or prosecute, namely: the International Convention for the Suppression of Counterfeiting Currency, and Optional Protocol; the Geneva Conventions of 12 August 1949 (Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; Geneva Convention relative to the treatment of prisoners of war; Geneva Convention relative to the protection of civilian persons in time of war); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the European Convention on Extradition, its Additional Protocol and its Second Additional;¹ the Single Convention on Narcotic Drugs, 1961; the Convention for the suppression of unlawful seizure of aircraft; the Convention on psychotropic substances; the Convention for the suppression of unlawful acts against the safety of civil aviation; the Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; the European Convention on the suppression of terrorism; the International Convention against the taking of hostages; the Convention on the Physical Protection of Nuclear Material; the Convention against torture and other cruel, inhuman or degrading treatment or punishment; the Convention for the suppression of unlawful acts against the safety of maritime navigation; the Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental

¹ Regarding those instruments, Poland made a declaration contained in the instrument of ratification, deposited on 15 June 1993, in which Poland declared in accordance with article 6, paragraph 1 (a), that it would under no circumstances extradite its own nationals and that, for the purposes of the Convention in accordance with article 6, paragraph 1 (b), persons granted asylum in Poland would be treated as Polish nationals (see United Nations, *Treaty Series*, vol. 1862, p. 469). Later, Poland made another declaration contained in a letter dated 24 February 2005 from the Permanent Representative of Poland and registered at the Secretariat of the Council of Europe on 24 February 2005 which read as follows:

“In accordance with Article 28, paragraph 3, of the Convention, the Republic of Poland hereby declares that since 1 May 2004 in relations with the Member States of the European Union, it will apply the internal legal provisions implementing the provisions of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/5 84/JHA) insofar as the Framework Decision is applicable in relations between Poland and these States.”

(*Ibid.*, vol. 2319, p. 24)

The provisions of the aforementioned Framework Decision were implemented in Polish law by virtue of the statute amending the Penal Code, the Code of Criminal Procedure and the Code of Misdemeanours, dated 18 March 2004.

² Sovereign ordinances No. 7.964 of 24 April 1984 and No. 15.655 of 7 February 2003.

³ Sovereign ordinances No. 15.638 of 24 January 2003 and No. 15.655 of 7 February 2003.

⁴ Sovereign ordinances No. 15.157 of 20 December 2001 and No. 15.655 of 7 February 2003.

⁵ Sovereign ordinances No. 12.093 of 28 November 1996 and No. 15.655 of 7 February 2003.

⁶ Sovereign ordinance No. 10.542 of 14 May 1992.

⁷ Sovereign ordinance of 3 July 1991.

⁸ Sovereign ordinance No. 15.322 of 8 April 2002.

⁹ Sovereign ordinances No. 11.177 of 10 February 1994 and No. 15.655 of 7 February 2003.

¹⁰ Sovereign ordinance No. 15.323 of 8 April 2002.

¹¹ Sovereign ordinances No. 15.083 and No. 15.088 of 30 October 2001 and their annex.

¹² Sovereign ordinance No. 15.319 of 8 April 2002.

¹³ Sovereign ordinance No. 605 of 1 August 2006.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

shelf; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the Convention on the Safety of United Nations and Associated Personnel; the International Convention for the Suppression of Terrorist Bombings; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Criminal Law Convention on Corruption; the International Convention for the Suppression of the Financing of Terrorism; the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; and the United Nations Convention against Corruption.

Poland has also signed several bilateral treaties on extradition and legal assistance: the Treaty with the United Kingdom for the surrender of fugitive criminals (Warsaw, 11 January 1932); the Agreement with Algeria on legal transactions in civil and criminal matters (Algiers, 9 November 1976); the Agreement with Morocco on legal assistance in civil and criminal matters (Warsaw, 21 May 1979); the Agreement with Cuba on legal assistance in civil, family and criminal matters (Havana, 18 November 1982); the Agreement with the Syrian Arab Republic on mutual assistance in civil and criminal matters (Damascus, 16 February 1985); the Agreement with Tunisia on legal assistance in civil and criminal matters (Warsaw, 22 March 1985); the Agreement with the Libyan Arab Jamahiriya on legal assistance in civil, commercial, family and criminal matters (Tripoli, 2 December 1985); the Agreement with the Democratic People's Republic of Korea on legal assistance in civil, family and criminal matters (Pyongyang, 28 September 1986); the Agreement with Iraq on legal and judicial assistance in civil and criminal matters (Baghdad, 29 October 1988); the Agreement with Egypt on legal assistance in criminal matters, transfer of sentenced persons and extradition (Cairo, 17 May 1992); the Agreement with Viet Nam on legal assistance and legal relations concerning civil, family and criminal matters (Warsaw, 22 March 1993); the Agreement with Belarus on legal assistance and legal relations in civil, family, labour and criminal matters (Minsk, 26 October 1994); the Extradition Treaty with the United States (Washington, D.C., 10 July 1996); the Agreement with Slovakia on supplementation and facilitation of the European Convention on Extradition (Jaworzyna Tatrzanska, 23 August 1996); the Treaty with Australia on extradition (Canberra, 3 June 1998); the Agreement with Mongolia on legal assistance and legal relations in civil, family, labour and criminal affairs (Warsaw, 19 October 1998); the Extradition Treaty with India (New Delhi, 17 February 2003); and the Agreement with Germany on supplementation and facilitation of the application of the European Convention on Extradition, Berlin (17 July 2003).

QATAR

There exist a number of multilateral and bilateral conventions ratified by Qatar which relate to legal and judicial cooperation, the extradition of criminals and the exchange

of information relating thereto. Qatar has also signed others and yet others are currently being studied.

Qatar has acceded to the following multilateral agreements: International Convention against the taking of hostages; Convention on psychotropic substances; International Convention on the Suppression and Punishment of the Crime of *Apartheid*; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; Convention on the Physical Protection of Nuclear Material; Riyadh Arab Agreement for Judicial Cooperation; Convention against torture and other cruel, inhuman or degrading treatment or punishment; Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation; Convention for the suppression of unlawful acts against the safety of maritime navigation; Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf; International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

Qatar has also ratified the following bilateral agreements: 1982 Agreement with Saudi Arabia on Security Cooperation and Surrender of Criminals; 1996 Memorandum of Understanding on Security Cooperation with France; 2000 Agreement on Security Cooperation with Yemen.

Finally, Qatar has signed the following bilateral agreements: the 1999 Memorandum of Understanding between the Ministry of the Interior of the State of Qatar and the Ministry of the Interior of the Islamic Republic of Iran on Combating Narcotics and Psychotropic Agents; and the Memorandum of Understanding on Security Cooperation and Coordination between the Ministry of the Interior of the State of Qatar and the Ministry of the Interior of the United Arab Emirates.

SERBIA

The obligation to extradite or prosecute an alleged offender is regulated in a number of international conventions in force between Serbia and other countries. The application of internal law (trial taking place in the country which has refused the extradition request) has been provided for in some of these conventions or as a possibility in others.

Serbia has signed or acceded to a number of international instruments, notably the European Convention on Extradition; the Convention for the suppression of unlawful seizure of aircraft; the Convention for the suppression of unlawful acts against the safety of civil aviation; the Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; the European Convention on the suppression of terrorism; the International Convention against the taking of hostages; the Convention on the Physical Protection of Nuclear Material; the International Convention for the Suppression of the Financing of Terrorism; the Convention against torture and other cruel, inhuman or degrading treatment or punishment; the United Nations

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the Convention for the suppression of unlawful acts against the safety of maritime navigation; the International Convention for the Suppression of Terrorist Bombings; the Criminal Law Convention on Corruption; and the United Nations Convention against Transnational Organized Crime.

Serbia has also concluded bilateral extradition treaties with Algeria, Austria, Belgium, Bulgaria, the Czech Republic, France, Germany, Greece, Hungary, Iraq, Italy, Mongolia, the Netherlands, Poland, Romania, the Russian Federation, Slovakia, Spain, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, the United Kingdom and the United States.

The above bilateral treaties do not specifically regulate matters related to extradition or prosecution. However, a number of them, *inter alia*, state as a reason to refuse extradition the jurisdictional competence of the requested State to prosecute, meaning that in case extradition is declined, criminal proceedings against the person whose extradition has been refused may be instituted in the requested State. On the other hand, a number of such treaties provide that in the case when criminal proceedings have already been initiated for the same offence, the extradition request will be declined.

In view of the foregoing, when a foreigner commits an offence abroad, there is a possibility that the foreigner will be extradited from Serbia to the requesting State (which is what normally happens). However, if the extradition request is denied, there is the obligation to prosecute the alleged offender in Serbia for the same offence under the terms of either the national legislation or an international treaty which has precedence over the national legislation.

Similarly, the nationals of Serbia, who cannot be extradited to another country, may be prosecuted in Serbia for offences committed abroad under the terms of the national legislation or relevant international treaties.

SLOVENIA

Slovenia submitted a list of international treaties containing the obligation to extradite or prosecute, by which Slovenia is bound, namely: Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; Geneva Convention relative to the treatment of prisoners of war; Geneva Convention relative to the protection of civilian persons in time of war; European Convention on Extradition; Single Convention on Narcotic Drugs, 1961; Convention for the suppression of unlawful seizure of aircraft; Convention for the suppression of unlawful acts against the safety of civil aviation; Convention on psychotropic substances; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; International Convention on the Suppression and Punishment of the Crime of *Apartheid*; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the

protection of victims of international armed conflicts; European Convention on the suppression of terrorism; International Convention against the taking of hostages; Convention on the Physical Protection of Nuclear Material; Convention against torture and other cruel, inhuman or degrading treatment or punishment; Convention for the suppression of unlawful acts against the safety of maritime navigation; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Slovenia has not made any reservations to the above-mentioned conventions limiting their application, including regarding the *aut dedere aut judicare* principle.

In addition to the above-mentioned multilateral conventions, Slovenia has also concluded several bilateral extradition agreements with different countries that include the *aut dedere aut judicare* principle.

SRI LANKA

Sri Lanka is a party to the following treaties containing the obligation to extradite or prosecute, and upon subscribing to these treaties, it has not entered any reservation to limit the application of the obligation: Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field; Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea; Geneva Convention relative to the treatment of prisoners of war; Geneva Convention relative to the protection of civilian persons in time of war; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Convention for the suppression of unlawful seizure of aircraft; Convention for the suppression of unlawful acts against the safety of civil aviation; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; International Convention against the taking of hostages; Convention against torture and other cruel, inhuman or degrading treatment or punishment; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation; Convention for the suppression of unlawful acts against the safety of maritime navigation; Convention on the Marking of Plastic Explosives for the Purpose of Detection; International Convention for the Suppression of Terrorist Bombings; the International Convention for the Suppression of the Financing of Terrorism; United Nations Convention against Transnational Organized Crime. Moreover, Sri Lanka has signed the International Convention for the Suppression of Acts of Nuclear Terrorism. It will be ratified shortly, after framing necessary legislation.

At the regional level, Sri Lanka has subscribed to regional conventions that provide for the obligation to extradite or prosecute. Accordingly, within the South Asian Association for Regional Cooperation (SAARC) Sri Lanka subscribed to the SAARC Regional Convention

on Suppression of Terrorism and its Additional Protocol; and the SAARC Convention on Narcotic Drugs and Psychotropic Substances.

Finally, Sri Lanka has signed bilateral extradition treaties with the Hong Kong Special Administrative Region of China, the Maldives and the United States. There are also several pre-independence extradition treaties which could be given effect to, on a case-by-case basis, under the provisions of the Extradition Law No. 8 of 1977.

SWEDEN

The principle of *aut dedere aut judicare* is established in many international treaties. Sweden ratified several of those treaties and is therefore bound by the principle in relation to the States parties to the treaties concerned. The principle is not subject to any specific provision in Swedish legislation on extradition or surrender (in pursuit of a European arrest warrant) or in any other piece of legislation. However, the principle is manifested through Swedish legislation on (extra-territorial) jurisdiction, extradition in general and the conditions for the law enforcement agencies to initiate a preliminary investigation and for the prosecutors to institute prosecution, if an offence was committed according to Swedish criminal law.

Sweden is bound by a very large number of treaties containing the principle. Many of those treaties originate from the United Nations, for example, the International Convention for the Suppression of Terrorist Bombings; and the International Convention for the Suppression of the Financing of Terrorism.

The basic provisions to meet the requirements of the principle are found in chapter 2, section 2, of the Swedish Penal Code.¹ According to the relevant provisions, Swedish courts always have jurisdiction when the crime has been committed by a Swedish citizen or an alien domiciled in Sweden (para. 1), by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in Sweden or who is a Danish, Finnish, Icelandic or Norwegian citizen and is present in Sweden (para. 2) or by any other alien who is present in Sweden, and when under Swedish law the crime can result in imprisonment for more than six months (para. 3). Those provisions, however, apply only when the act is subject to criminal responsibility under the law of the place where it was committed. Thus, in practice, Sweden may always prosecute when the alleged offender is, *inter alia*, a Swedish citizen or resident or at least present on Swedish territory.

Since the generic provisions in the Swedish Penal Code are applicable to any international obligation by which Sweden is bound, Sweden saw no need to list each international treaty containing the principle of *aut dedere aut judicare* in its submission.

¹ “The Extradition for Criminal Offences Act, the Act on surrender from Sweden according to the European arrest warrant and extracts from the Swedish Penal Code are available for consultation in the Codification Division of the Office of Legal Affairs.

THAILAND

International treaties by which Thailand is bound without any reservation to limit the application of the obligation to extradite or prosecute (*aut dedere aut judicare*) could be set out in two main groups, namely: (a) in relation to offences relating to hijacking: Convention on offences and certain other acts committed on board aircraft; Convention for the suppression of unlawful seizure of aircraft; Convention for the suppression of unlawful acts against the safety of civil aviation; and (b) in relation to narcotic drug offences: Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

TUNISIA

Article 32 of the Constitution of Tunisia recognizes the principle of the precedence of international treaties over laws. International agreements ratified in accordance with constitutional procedures are considered to take precedence over laws and take effect automatically aside from certain exceptions pursuant to the application of the principle of legality of crimes and punishment. Such agreements may be bilateral or multilateral.

Tunisia has concluded numerous bilateral agreements relating to judicial cooperation, most of which provide explicitly for the obligation to “extradite or prosecute”. Those agreements are either specifically about extradition or general in nature, with some articles touching on extradition. They include: the agreement with the Libyan Arab Jamahiriya on judicial notices, letters rogatory, enforcement of judgements and extradition (art. 20, para. 2); the agreement with Algeria concerning mutual assistance and judicial cooperation (art. 27, para. 2); the agreement with Lebanon concerning judicial cooperation, enforcement of judgements and extradition (art. 22, para. 2); the agreement with Morocco concerning judicial cooperation, enforcement of judgements and extradition (art. 35, para. 2); the agreement with Jordan concerning judicial cooperation, enforcement of judgements and extradition (art. 20, para. 1); the agreement with Mauritania concerning judicial cooperation (art. 29, para. 2); the agreement with the United Arab Emirates on judicial cooperation in civil and criminal matters (art. 27, para. 2); the agreement with Egypt on legal and judicial cooperation in civil, commercial and personal status and criminal matters (art. 37, para. 2); the agreement with Kuwait on legal and judicial cooperation in civil, criminal and personal status matters (art. 38, para. 2); the first annexed agreement to the agreement with Kuwait on legal and judicial cooperation in civil, criminal and personal status matters (art. 39 *bis*); the agreement with the Syrian Arab Republic concerning judicial notices, letters rogatory and enforcement of judgements (art. 26, para. 2); the agreement with Qatar on legal and judicial cooperation (art. 41, para. 2); the agreement with Yemen on judicial cooperation in civil, commercial, criminal and personal status matters (art. 38, para. 2); the agreement with Germany concerning extradition and judicial cooperation in criminal matters (art. 6, para. 2); the agreement with Italy concerning judicial cooperation in civil, commercial and criminal matters, the recognition

and enforcement of judgements and arbitral awards and extradition (art. 15, para. 2); the agreement with France concerning judicial cooperation in criminal matters and extradition (art. 23, para. 2, which contains the phrase “when necessary”); the agreement with Bulgaria concerning judicial cooperation in civil and criminal matters (art. 32); the agreement with Czechoslovakia concerning judicial cooperation in civil and criminal matters, recognition and enforcement of judicial rulings and extradition (art. 48); the agreement with Turkey concerning judicial cooperation in criminal matters and extradition (art. 23, para. 2, which contains the phrase “when necessary”); the agreement with Hungary concerning judicial cooperation in civil and criminal matters, recognition and enforcement of judicial rulings and extradition (art. 47); the agreement with Poland concerning judicial cooperation in civil and criminal matters (arts. 32–33); the agreement with Belgium concerning judicial cooperation on criminal matters and extradition (art. 4, para. 2); the agreement with Greece concerning extradition and judicial cooperation in criminal matters (art. 23, para. 2); the agreement with Portugal on extradition (art. 4); the agreement with Senegal concerning judicial cooperation, enforcement of judgements and extradition (art. 42, para. 2); the agreement with Mali concerning judicial cooperation (art. 38, para. 2); the agreement with Côte d’Ivoire on judicial cooperation (art. 25, para. 2); the agreement with China on judicial cooperation in matters of extradition (art. 5); and the agreement with India on judicial cooperation in matters of extradition (art. 5).

Tunisia also observed that all international and United Nations counter-terrorism conventions provide explicitly for the principle of “extradite or prosecute”, except for the Convention on offences and certain other acts committed on board aircraft and the Convention on the Marking of Plastic Explosives for the Purpose of Detection. Tunisia had ratified all these conventions, except for the Convention for the Suppression of Acts of Nuclear Terrorism, which was still under consideration. In 1988, it also ratified the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND¹

The United Kingdom is party to the following treaties containing the obligation to extradite or prosecute; Geneva Conventions for the protection of war victims of 12 August 1949; Convention for the suppression of unlawful seizure of aircraft; Convention for the suppression of unlawful acts against the safety of civil aviation; Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; European Convention on the suppression of terrorism; International Convention against the taking of hostages; Convention on the Physical Protection of Nuclear Material; Convention against torture and other cruel, inhuman or degrading treatment or punishment; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; Protocol

for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of civil aviation; Convention for the suppression of unlawful acts against the safety of maritime navigation; Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf; Convention on the Safety of United Nations and Associated Personnel; International Convention for the Suppression of Terrorist Bombings; International Convention for the Suppression of the Financing of Terrorism; United Nations Convention against Transnational Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; United Nations Convention against Corruption.

The United Kingdom also noted that it is party to the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on offences and certain other acts committed on board aircraft. These conventions did not contain an obligation to extradite or prosecute, but required States to establish jurisdiction in respect of other offences.

The United Kingdom has also signed but not yet ratified the Protocol amending the European Convention on the Suppression of Terrorism; and the International Convention for the Suppression of Acts of Nuclear Terrorism.

UNITED STATES OF AMERICA

The United States is a party to a number of international conventions that contain the obligation to extradite or prosecute. Among those conventions are the Convention for the suppression of unlawful seizure of aircraft; the Convention for the suppression of unlawful acts against the safety of civil aviation; the Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents; the International Convention against the taking of hostages; the Convention on the Physical Protection of Nuclear Material; the Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the Convention for the suppression of unlawful acts against the safety of aviation; the Convention for the suppression of unlawful acts against the safety of maritime navigation; the Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf; the International Convention for the Suppression of Terrorist Bombings; and the International Convention for the Suppression of the Financing of Terrorism.

The United States believes that commitments to extradite or prosecute as contained in these conventions are an important aspect of collective efforts to deny terrorists and other criminals a safe haven. The United States strongly supports the implementation of such provisions in international instruments.

¹ The United Kingdom noted that its response does not address issues and/or cases regarding the European Arrest Warrant which has extradition implications for participating States.

The United States notes, however, that recent multilateral criminal law conventions do not uniformly impose extradite or prosecute regimes. Rather, recent conventions of wide application and great importance such as the United Nations Convention against Transnational Organized Crime; the Convention on cybercrime; and the United Nations Convention against Corruption, impose an obligation on a State in which an offender is found to prosecute that offender only when (a) extradition is denied on the basis of the nationality of the offender; and (b) prosecution is requested by the requesting State. Thus, the consensus in the international community suggests that strict extradite or prosecute obligations should apply only to limited categories of the most serious crimes and only to those States that have undertaken such an obligation (and the requisite changes to their criminal and jurisdictional laws) by becoming a party to a legally binding international instrument that encompasses such crimes.

The United States has not taken reservations to limit the application of the obligation to extradite or prosecute *per se*. When becoming a party to these conventions, however, the United States has consistently taken the position that the extradition obligations within the conventions apply only to expand the bases for extradition with countries with which the United States has bilateral extradition treaties. The United States does not use multilateral conventions as a basis for extradition in the absence of a bilateral treaty. This is because, for the United States, extradition is a function of treaty relationships; there is no obligation to extradite absent a bilateral treaty. The obligation to extradite or prosecute is similarly limited.

C. Domestic legal regulation adopted and applied by a State, including constitutional provisions and penal codes of criminal procedures, concerning the obligation to extradite or prosecute

AUSTRIA

Austria noted that the relevant Austrian legislation had been summarized by Mr. Zdzislaw Galicki, Special Rapporteur, in paragraph 44 of his preliminary report.¹

¹ *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/571.

CHILE

The regulations followed in order to comply with the obligation to extradite or prosecute derive directly from the treaties signed by Chile. The question is not dealt with in national legal or constitutional regulations.

CROATIA

The Act on Mutual Legal Assistance in Criminal Matters¹ provides that when an extradition from Croatia is not permissible, a domestic judicial authority may, at the request of a foreign judicial authority, take over carrying out criminal proceedings for an offence committed abroad.² The Act does not make extradition conditional upon the existence of an extradition agreement with the

¹ *Official Gazette*, No. 178 (2004), in effect since 1 July 2005.

² Chap. IV (Taking over and surrendering proceedings), art. 62.

requesting State and, consequently, it does not require the implementation of the *aut dedere aut judicare* principle, but in such a case reciprocity is required, i.e. the request will be granted if, on the basis of the assurances presented by the requesting State, it can be expected that this State would grant a comparable request made by a Croatian judicial body.

IRELAND

The mechanisms allowing Ireland to carry out its international treaty obligations to extradite or prosecute were provided for in domestic law by primary and secondary legislation. Typically, an Act of the Oireachtas (parliament) will provide the necessary grounds for jurisdiction, on the basis of which prosecution in relation to acts committed outside the State may be pursued.

As regards extradition, section 8 of the Extradition Act 1965 allows the Government to transpose its treaty obligations by order into domestic law. Part III of the International Criminal Court Act 2006 provides for the surrender of individuals to the International Criminal Court for the prosecution of offences within the jurisdiction of the Court. Part II of the International War Crimes Tribunals Act, 1998 provides for the surrender of individuals where requested by an “international tribunal” (i.e. the tribunal or court established by the United Nations for the prosecution of persons responsible for serious violations of international humanitarian law committed outside the State to be an international tribunal for the purposes of the Act; that the Minister for Justice, Equality and Law Reform, by regulation, declares to be an international tribunal for the purposes of the Act).

The Extradition Act, 1965, as amended (Extradition (Amendment) Act, 1994), governs extradition with countries other than member States of the European Union. The obligation to extradite is considered paramount, and recourse to prosecution in Ireland is considered only where extradition of an Irish citizen is not permitted because of the absence of reciprocal arrangements. A decision in relation to the prosecution of a person for any offence in Ireland is a matter for the Director of Public Prosecutions. No extradition requests have been refused on the grounds of Irish nationality.

Ireland also transmitted extracts of the following relevant legislation giving effect to treaties by which it is bound: Geneva Conventions Act, 1962; Air Navigation and Transport Act, 1973; Air Navigation and Transport (No. 2) Act, 1975; Extradition (European Convention on the Suppression of Terrorism) Act, 1987; Radiological Protection Act, 1991; Criminal Justice Act, 1994; Criminal Justice (United Nations Convention against Torture) Act, 2000; Criminal Justice (Safety of United Nations Workers) Act, 2000; Prevention of Corruption (Amendment) Act, 2001; Maritime Security Act 2004; Criminal Justice (Terrorist Offences) Act 2005; and International Criminal Court Act 2006.¹

¹ The extracts are available for consultation in the Codification Division of the Office of Legal Affairs.

KUWAIT

The international agreements mentioned in section B above by which Kuwait has become bound, constitute applicable legislation on the basis of which rulings are to be handed down by the courts and the provisions of which are to be applied in all matters relating to extradition. They cover cases in which extradition is compulsory, those in which it is not permissible, the conditions that must be fulfilled for an offence to be extraditable, the authorities to be addressed under such agreements, including for the transmittal of extradition requests, the manner of submission of such requests, extradition priority in the event of multiple requests for extradition for the same offence, the trial and prosecution of the person whose extradition is requested, the rights of well-intended third parties, the travel of persons whose extradition has been decided from other countries through the territory of the States parties, the costs of extradition and other questions relating to extradition.

LATVIA

In Latvia the obligation to extradite or prosecute (*aut dedere aut judicare*) is regulated by the Constitution of the Republic of Latvia, the Citizenship Law and the Criminal Procedure Law.¹ In accordance with article 98 of the Constitution, everyone has the right to freely depart from Latvia. Everyone having a Latvian passport shall be protected by the State when abroad, and has the right to freely return to Latvia. A citizen of Latvia may not be extradited to a foreign country, except in the cases provided for in international agreements ratified by the Parliament and under the condition that the basic human rights specified in the Constitution are not violated by the extradition.

The above-mentioned issue is regulated by part C, entitled “International cooperation in the criminal-legal field”, of the Criminal Procedure Law. Chapter 64 of part C (General provisions of cooperation), determines different types of international cooperation. Chapter 65 (Extradition of a person to Latvia), contains articles referring to provisions and procedures for the submission of a request for the extradition of a person; grounds and procedures for the announcement of an international search for a person; request for temporary detention; takeover of a person extradited by a foreign State; extradition of a person from a foreign State for a period of time; frameworks of the criminal liability and of the execution of a penalty of a person extradited by a foreign State; inclusion of the time spent in detention in a foreign State; extradition of a person to Latvia from a European Union member State; procedures for the taking of a European detention decision; fulfilment of a European detention decision; and conditions connected with the takeover of a person from a European Union member State.

Chapter 66, entitled “Extradition of a person to a foreign State”, establishes principles for extradition of a person. First, a person who is located in the territory of Latvia may be extradited for criminal prosecution, litigation or the execution of a judgement if a request has

been received from a foreign State to extradite such person regarding an offence that, in accordance with the law of Latvia and the foreign State, is criminal. Secondly, a person may be extradited for criminal prosecution, or litigation, regarding an offence the commission of which entails a penalty of deprivation of liberty whose maximum duration is not less than one year, or a more serious penalty. Thirdly, a person may be extradited for the execution of a judgement by the State that rendered the judgement and convicted the person with a penalty that is connected with deprivation of liberty for a period of not less than four months. Fourthly, if extradition has been requested regarding several criminal offences, but extradition may not be applied for one of the offences because that offence does not comply with the conditions regarding the possible or imposed penalty, the person may also be extradited regarding such criminal offence.

If for some reason Latvia is not able to extradite a person, there is a possibility to take over criminal proceedings or to take over a judgement for recognition and fulfilment. In accordance with chapter 67 (Takeover in Latvia of criminal proceedings commenced in a foreign State), and chapter 68 (Transfer of criminal proceedings commenced in Latvia), of the Criminal Procedure Law, the takeover of criminal proceedings is the continuation in Latvia of criminal proceedings commenced in a foreign State, on the basis of a request of the foreign State or with the consent thereof, if such continuation is required by procedural interests and the offence is punishable in accordance with the criminal law of Latvia. Transfer of criminal proceedings is the suspension thereof in Latvia and the continuation thereof in a foreign State, if there are grounds for holding a person suspect, or prosecuting a person, for the commission of an offence, but the successful and timely performance of the criminal proceedings in Latvia is not possible or hindered and, in addition, transfer to the foreign State prevents such impossibility or hindrance. The transfer of criminal proceedings in which a judgement of conviction has entered into effect shall be admissible only if the judgement may not be executed in Latvia, and the foreign State in which the convicted person resides does not accept a judgement of another State for execution.

Chapter 71 (Execution in Latvia of a sentence imposed in a foreign State), of the Criminal Procedure Law establishes content and conditions of the execution of a sentence imposed in a foreign State. In accordance with terms of the Law, the execution in Latvia of a sentence imposed in a foreign State is the uncontested recognition of the justification and lawfulness of such sentence and the execution thereof in accordance with the same procedures, as if the sentence were specified in criminal proceedings taking place in Latvia. Furthermore, the recognition of the justification and lawfulness of a sentence imposed in a foreign State shall not exclude the coordination thereof with the sanction provided for in the criminal law of Latvia regarding the same offence. Article 777 of the Law determines that the execution of a sentence imposed in a foreign State shall be possible if (a) Latvia has a treaty with the foreign State regarding the execution of sentences imposed by that State; (b) a foreign State has submitted a request regarding the execution of the sentence imposed in that State; (c) the sentence has been specified in the foreign State with a valid

¹ Excerpts of national law provided by Latvia are available for consultation at the Codification Division of the Office of Legal Affairs.

adjudication in completed criminal proceedings; (d) the convicted person could be penalized regarding the same offence in accordance with the criminal law of Latvia; (e) a limitation period for the execution of the sentence has not come into effect in the foreign State or in Latvia; (f) at the moment of the rendering of a judgement, a limitation period of criminal liability had not come into effect in accordance with the criminal law of Latvia; and (g) at least one of the reasons for the submission of a request for the execution of a sentence referred to in section 804 of the Law exists in the foreign State.

Chapter 72 (Execution in a foreign State of a sentence imposed in Latvia), of the Criminal Procedure Law provides that the execution in a foreign State of a sentence imposed in Latvia is the recognition of the justification and lawfulness of such sentence and the execution thereof, in accordance with the same procedures as if the sentence were specified in criminal proceedings taking place in the foreign State.

LEBANON

Lebanon transmitted a list containing the legal texts in force in Lebanon in respect of the question of extradition. The provisions governing extradition are those provided for in articles 30–36 of the Lebanese Penal Code and in article 17 of the Lebanese Code of Criminal Procedure. The aforementioned articles of the Penal Code contain elements of the response to the request for a definition of the nature of the crimes for which extradition is permitted or for which it is denied. Under article 17 of the Code of Criminal Procedure, the Public Prosecutor at the Court of Cassation provides information on the judicial application of the principle of extradition.¹

A distinction was drawn between cases in which the person whose extradition is requested is a Lebanese national and those in which the person is a foreign national. With regard to Lebanese nationals, in accordance with the principle that “the State does not extradite its own citizens”, the person sought is not extradited, but rather tried before the Lebanese courts in accordance with the jurisdiction *ratione personae* laid down in article 20 of the Penal Code, which provides for:

Lebanese law shall apply to any Lebanese national who, outside the Lebanese territory, shall have rendered himself guilty, either as author, or abettor, or accomplice, of a crime or of an offence punishable under Lebanese law.

Consequently, Lebanon is bound, in that regard, by the *aut dedere aut judicare* principle. It should be borne in mind, however, that a request for the extradition of a Lebanese national is subject, as far as procedures are concerned, to the very same rules that are followed in respect of requests for the extradition of an alien, which are referred to below.

With regard to foreign nationals, the question of their extradition to the requesting State is handled in accordance with the following mechanism:

(a) On the basis of international “wanted” notices issued by the INTERPOL General Secretariat and the Arab Bureau of Criminal Police, circulars on internationally wanted persons are issued in Lebanon;

(b) Whenever a wanted person, in accordance with the above, is found, he or she is arrested by members of the competent judicial police on the basis of an instruction issued by the Office of the Public Prosecutor at the Court of Cassation;

(c) The State requesting the issuance of a circular on the person in question is notified of the order for his or her arrest and of the need to send a certified copy of his extradition file, if deemed appropriate;

(d) The person whose extradition is requested is held under arrest or released against a residence permit, sufficient safeguards being taken to guarantee that he or she will not flee, such as the issuance of a travel ban, depending on what is decided in that regard by the Public Prosecutor at the Court of Cassation with respect to the duration of arrest or to release. That is done on the basis of the agreements in force, should any exist, and if not, in accordance with the facts of each case, account being taken, in particular, of the principle of reciprocity;

(e) Upon the receipt of the extradition file, the person in question shall be interrogated by the Public Prosecutor at the Court of Cassation or whomever is delegated for that purpose and by the public defenders at the Court. Under article 35 of the Penal Code, the Public Prosecutor may issue a warrant for the arrest of the person whose extradition is requested, after interrogation. The Public Prosecutor prepares a report on the request for extradition, after ascertaining the validity of the charge and the extent to which the legal conditions for accepting the request are met or not met, whether they be those existing in judicial agreements or treaties, if any exist, or, if not, those based on the rules contained in domestic law and the principle of reciprocity. Thereupon, the entire file, together with the report of the Public Prosecutor, is transmitted to the Minister of Justice. At that point, a decision on the request for extradition is taken pursuant to a decree issued on the basis of a proposal of the Minister of Justice;

(f) Following the issuance of the decree accepting or denying the request for extradition, the State requesting extradition is notified to that effect.

In the case of acceptance, the authorities concerned in that State are requested to dispatch a security mission to take custody of the person in question, unless he or she has been arrested on other grounds, in which case extradition only proceeds upon completion of the trial before the Lebanese courts.

In the case of denial, if the denial is not due to the offence having been extinguished for some reason or to the inadmissibility of prosecution on any legal ground, hence the possibility of prosecution in respect of the offence still exists, then, in accordance with article 23 of the Lebanese Penal Code:

¹ The aforementioned articles, provided by Lebanon, are available for consultation at the Codification Division of the Office of Legal Affairs.

Lebanese law shall apply also to any alien residing on Lebanese territory who has committed abroad, either as author, or abettor, or accomplice, a crime or offence not designated under articles 19, 20 and 21, in case his extradition has not been requested or granted.

Accordingly, an alien, a request for whose extradition is denied owing to the absence of the legal requirements provided for in agreements, or, in the absence of any such agreement, in domestic law, must be arraigned before the Lebanese courts for trial.

On the basis of all the foregoing, Lebanon is bound by the “extradite or prosecute” (*aut dedere aut judicare*) principle with respect to both Lebanese nationals and any alien or stateless person in Lebanon who has committed criminal acts abroad.

MEXICO

Article 133 of the Political Constitution of Mexico establishes the hierarchy of legislation in force in Mexico. To that end, it states: this Constitution, the laws of the Congress of the Union that emanate from it and all the treaties that are in accordance with it, concluded and to be concluded by the President of the Republic, with the approval of the Senate, shall be the supreme law of the whole Union. Mexico has therefore incorporated the principle of *aut dedere aut judicare* into its legal system by ratifying the international treaties containing that provision.

The obligation underlying this principle of international law is implemented through the following two mechanisms:

(a) Article 4 of the Federal Penal Code establishes the cases in which Mexico may exercise its jurisdiction in order to ensure that federal crimes committed abroad do not go unpunished:

Crimes committed abroad by a Mexican national against Mexican nationals or foreign nationals, or by a foreign national against Mexican nationals, shall be punishable in the Republic, in accordance with federal laws, provided the following conditions are met:

- (i) The accused is inside the Republic;
- (ii) A final verdict has not been rendered in the country where the crime was committed; and
- (iii) The offence with which the accused is charged is considered a crime both in the country where it was committed and in the Republic;

(b) In addition, the third paragraph of article 119 of the Political Constitution provides for the possibility of Mexico conducting extradition proceedings:

Requests for extradition from a foreign State shall be dealt with by the Federal Executive, with the intervention of the judicial authority, in accordance with the terms of this Constitution, the international treaties signed in that respect, and the regulatory laws.

For procedural purposes, therefore, during extradition proceedings Mexico may apply, first, the extradition treaties to which it is a party and, secondly, the International Extradition Act,¹ which entered into force on 29 December 1975 and is the implementing legislation for article 119 of the Political Constitution.

¹ The International Extradition Act provided by Mexico is available for consultation in the Codification Division of the Office of Legal Affairs.

Mexico conducts all its extradition proceedings on the basis of bilateral treaties or the International Extradition Act. To date, it has not received any extradition requests based on a multilateral treaty. If it were to receive such a request, Mexico would conduct extradition proceedings according to the procedural rules established in the aforementioned instruments. The aim is to ensure respect for both procedural safeguards and the human rights of the accused.

In that regard, with a view to providing individual safeguards, article 15 of the Political Constitution establishes the following limitations for extradition proceedings:

No treaty shall be authorized for the extradition of political offenders or of delinquents of the common order who have been slaves in the country where the offense was committed; nor shall any agreement or treaty be entered into which restricts or modifies the guarantees and rights established in this Constitution for man and citizen.

MONACO

Monaco provided national legislation No. 1.222 of 28 December 1999 on extradition.¹ This law establishes a general legal framework for extradition procedure and it applies in the absence of a treaty or of a specific provision in that regard. The application of the *aut dedere aut judicare* principle is closely linked with the various grounds of refusal of extradition upon which the requested State can rely. Article 6 of Law No. 1.222 is fundamental in this regard as it provides that extradition may be refused if the offence for which extradition is requested has been committed in Monaco, or is prosecuted in Monaco, or has been already judged in a third State. Article 6 also provides for refusal when the offence for which extradition is requested is subject to a capital penalty in the legislation of the requesting State, or when the alleged offender may be subject to treatment harming physical integrity.

These limitations are consistent with provisions of national legislation establishing the jurisdiction of the Courts of Monaco on criminal matters (arts. 7–10 of the Code of Penal Procedure).

The *aut dedere aut judicare* principle is implemented when extradition is refused because of the nationality of the alleged offender. Article 7 of Law No. 1.222 provides that Monaco does not extradite its own nationals. However, when the refusal of extradition is based on the nationality of the person requested, upon request of the requesting State, the case is transmitted to the Prosecutor General who may prosecute the person if necessary. The conditions of application of the principle are that the requesting State has to demand that the person should be tried, and that it transmits all the documents, information and relevant evidence regarding the offence. Thereafter, the requested State is under the obligation to inform the requesting State of the follow-up to the demand.

¹ The full texts in their original French version are available for consultation at the Codification Division of the Office of Legal Affairs. See also *Journal de Monaco*, No. 7423 (31 December 1999).

Article 7 of Law No. 1.222 is not deemed to suppress the power of the Prosecutor of Monaco to decide on the opportunity to prosecute, except when such an obligation results directly from international treaties, as for example, the agreements between Monaco and Switzerland or from other multilateral treaties.

When extradition is refused on other grounds, *inter alia*, when the offence has a military, political or fiscal nature, or when the offence has been definitively prosecuted and judged in Monaco, or when the offence, or its prosecution is limited by statute under Monegasque legislation or under the legislation of the requesting State, the *aut dedere aut judicare* principle will be applied only when the Courts of Monaco have jurisdiction on foreigners for offences committed abroad, as established by articles 7–10 of the Code of Penal Procedure.²

Finally, article 265, paragraph (4), of the Penal Code extends the jurisdiction of Monegasque courts regarding the organization or the facilitation of sexual exploitation of minors (18 years old) committed inside or outside the territory of Monaco.

² Art. 7 of the Code: “The following parties can be prosecuted and sentenced in the Principality:

“(1) An alien who has, outside the territory of the Principality, committed a crime against State security, counterfeited national legal tender, national identification documents or currency, either paper or other, which has entered State coffers, or who has committed a crime or offence against agents, diplomatic or consular premises or property of Monaco.

“(2) An alien who is the co-perpetrator of or accomplice to any crime committed outside the territory of the Principality by a Monegasque who is being prosecuted or has been sentenced in the Principality for the crime in question.”

Art. 8: “The following parties can be prosecuted and sentenced in the Principality:

“(1) Any person who is an accomplice on the territory of the Principality to a crime or offence committed abroad, if the issue of complicity is provided for in both the relevant foreign law and in Monegasque law, on the condition that the main act has been certified by a definitive decision of the foreign jurisdiction.

“(2) Anyone who commits acts outside the territory of the Principality qualified as crimes or offences constituting torture as defined in article 1 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment, adopted at New York on 10 December 1984, if he or she is found to be in the Principality.”

Art. 9: “An alien can be prosecuted and sentenced in the Principality if he or she has committed one of the following outside its territory:

“(1) A crime or offence against a Monegasque.

“(2) A crime or offence against another alien, if the alien is found in the Principality in possession of items acquired through the commission of the violation.”

POLAND

The Constitution of the Republic of Poland was adopted by the National Assembly on 2 April 1997. Its article 55 reads as follows:

1. The extradition of a Polish citizen shall be prohibited, except in cases specified in paragraphs 2 and 3.

2. Extradition of a Polish citizen may be granted upon a request made by a foreign State or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organization of which the Republic of Poland is a member, provided that the act covered by a request for extradition:

(1) was committed outside the territory of the Republic of Poland; and

(2) constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.

3. Compliance with the conditions specified in paragraph 2, subparagraphs (1) and (2), shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.

4. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.

5. The courts shall adjudicate on the admissibility of extradition.

Further, article 604 of the Code of Criminal Procedure, provides:

1. Extradition is inadmissible if:

(1) The person to whom such a motion refers is a Polish citizen or has been granted the right of asylum in the Republic of Poland;

(2) The act does not have the features of a prohibited act, or if the law stipulates that the act does constitute an offence, or that the perpetrator of the act does not commit an offence or is not subject to penalty;

(3) The period of limitation has lapsed;

(4) The criminal proceedings have been validly concluded concerning the same act committed by the same person;

(5) The extradition would contravene Polish law;

(6) There is a justifiable concern that the prosecuted person may be sentenced to the death penalty or that the death penalty may be executed in the State requesting the extradition;

(7) There is a justifiable concern that rights and freedoms of the prosecuted person may be infringed in the State requesting the extradition;

(8) It concerns the person prosecuted for offences committed without violence for political reasons.

2. In particular, extradition may be refused, if:

(1) The person to whom such a motion refers has permanent residence in the Republic of Poland;

(2) The criminal offence was committed within the territory of the Republic of Poland, or on board a Polish vessel or aircraft;

(3) Criminal proceedings are pending concerning the same act committed by the same person;

(4) The offence is subject to prosecution on a private charge;

(5) Pursuant to the law of the State which has moved for extradition, the offence committed is subject to the penalty of deprivation of liberty for a term not exceeding one year, or to a lesser penalty or such a penalty has been actually imposed;

(6) The offence with which the motion for extradition is connected is of a military, fiscal or political nature other than that referred to in paragraph 1, subsection (8); or

(7) The State which has moved for extradition does not guarantee reciprocity in this matter.

3. In the event indicated in paragraph 1, subsection (4), and paragraph 2, subsection (3), the resolution of the motion for extradition may be adjourned until the criminal proceedings pending against the same person in the Republic of Poland are concluded, or until he has served the sentence imposed or has been granted remission of the penalty.

QATAR

The Code of Criminal Procedure of Qatar, promulgated by Law No. 23 of 2004, contains a chapter, comprising articles 408–424, which is devoted to the question of accused and convicted persons. The most important provisions are the following:

Article 409

It is a prerequisite for the extradition of persons:

– That the offence for which extradition is requested has been committed within the territory of the State requesting the extradition or has been committed outside the territory of the State of Qatar and the State requesting the extradition, provided that the act is punishable under the laws of the requesting State if committed outside its territory;

– That the offence is a felony or misdemeanour punishable under both Qatari law and the law of the State requesting the extradition by a custodial penalty of at least two years or a more severe penalty, or that the person whose extradition is requested on the grounds of such offence has been sentenced to imprisonment for a term of at least six years;

If the act is not punishable under the laws of the State of Qatar, or the penalty established for the offence in the State requesting the extradition has no equivalent in the State of Qatar, extradition shall not be compulsory unless the person whose extradition is requested is a national of the State requesting the extradition or a national of another State that establishes the same penalty;

If extradition is requested for more than one offence, extradition shall be permissible only with regard to those offences which satisfy the conditions set forth above.

Article 410

Extradition is not permissible in the following cases:

(1) If the person whose extradition is requested is a Qatari national;

(2) If the offence for which extradition is requested is a political offence or is connected with a political offence, or the person whose extradition is requested is a beneficiary of political asylum at the time of submission of the request for extradition;

(3) If the offence for which extradition is requested is limited to breaches of military obligations;

(4) If there exist serious grounds for believing that the extradition request was submitted for the purpose of trying or punishing the person on the basis of considerations relating to race, religion, nationality or political views, or the existence of any such consideration is likely to be detrimental to the position of the person whose extradition is requested;

(5) If the person whose extradition is requested has already been tried for the same offence, a judgement has been handed down and he has satisfied his penalty, or the criminal action or the penalty has expired or become null and void owing to the passage of time or the granting of pardon in accordance with Qatari law or the law of the State requesting the extradition;

(6) If Qatari law permits the trial of the person whose extradition is requested before the judicial authorities in Qatar for the offence for which extradition is requested.

Moreover, some provisions of the 2004 Penal Code of Qatar apply to international terrorist offences. Article (17) provides as follows:

The provisions of this Code apply to anyone present in the State after having committed abroad, whether as principal or accessory, any crime of trafficking in drugs or in persons or any international crime of piracy or terrorism.

And, according to article (18) of the said Penal Code:

Any Qatari who, while outside Qatar, commits an act considered hereunder as a felony or a misdemeanour shall be punished in accordance with the provisions of this Code if he returns to Qatar and the act is punishable under the law of the country in which it was committed.

On the basis of the foregoing, the Code subjects all persons (Qataris, residents and foreigners), if they are present in the State, to the jurisdiction of the Qatari courts with regard to specific offences, including international terrorism, whether committed inside or outside Qatar.

Furthermore, there is also Law No. 28 of 2002 on combating money-laundering, with article 17 providing:

The crime of money-laundering is one of the offences that permit of legal assistance, coordination, mutual cooperation and extradition of offenders under the provisions of agreements concluded or acceded to by the State.

Finally, article 58 of the Permanent Constitution of Qatar provides as follows:

The extradition of political refugees is prohibited, and the law stipulates the conditions governing the granting of political asylum.

SERBIA

The issue of extradition or prosecution in Serbia is also regulated by its internal law.

It should be emphasized in particular that the Criminal Procedure Code regulates in specific sections, *inter alia*, matters related to extradition of accused or convicted persons and other forms of international legal aid (general forms of such assistance, transferring and taking over prosecution, execution of foreign judicial decisions).

In respect of extradition, but also with respect to other forms of international legal assistance in criminal matters, the Criminal Procedure Code gives precedence to international treaties. In fact, its provisions are applicable only in case of non-existence of an international treaty, but in the case when it does apply, the Code will not regulate certain matters.

This disposition is in conformity with the Constitution of Serbia, which stipulates that generally accepted rules of international law and ratified international treaties form an integral part of the legal system of Serbia and that they are implemented directly. Furthermore, international treaties must not contravene the Constitution, whereas the laws and other general legal acts adopted by Serbia must not be contrary to the ratified international instruments and generally accepted rules of international law.

The Constitution of Serbia does not contain any provision relating to the extradition of accused or sentenced persons.

Neither the extradition of accused or sentenced persons nor their possible prosecution in Serbia is made conditional on the existence of an international treaty. Consequently, if there is no international treaty, then in matters of extradition or prosecution in international legal relations, provisions of a domestic law will apply.

The Criminal Procedure Code, which establishes requirements for the extradition of accused or sentenced persons and considerations to be taken into account in

refusing extradition of such persons, as well as the procedure for determining these considerations, does not specifically provide for the obligation or duty to extradite or prosecute (*aut dedere aut judicare*).

However, regarding extradition or prosecution, the Criminal Procedure Code does not allow extradition to another country of a national of Serbia. Nor does it provide for the extradition of a foreigner for an offence against Serbia or its nationals irrespective of whether the offence was committed in the territory of Serbia or outside it. Accordingly, the Code provides for the jurisdictional competence of Serbia in regard to prosecution, i.e. prosecution will be undertaken in Serbia.

Under the Criminal Procedure Code, a foreigner may be extradited if criminal proceedings against him or her have not been instituted in Serbia for an offence against Serbia or its national, or in case criminal proceedings have been initiated, if a security bond has been posted to ensure the claim of the injured party.

Of particular relevance for the obligation to extradite or prosecute in national legislation are the solutions contained in the provisions of the Penal Code of Serbia relating to the geographic scope of criminal legislation in Serbia (applicability of criminal legislation as regards where the offence has been committed). These provisions regulate the enforcement of criminal legislation of Serbia if an offence has been committed in its territory. However, these provisions may also apply if the offence has been committed outside the territory of Serbia. This is particularly true in cases when a foreign country, where the offence has been committed, has not requested extradition of an alleged offender, or if extradition has been requested but refused for some reason.

When an offence has been committed in the territory of Serbia, under its Penal Code, the main principle to be applied is the territorial one, meaning that the criminal legislation of Serbia will apply to all offences committed on its territory, whatever the nationality of the alleged offender. This principle has been expanded to include the nationality of a vessel or an aircraft. The Code provides for the possibility to transfer prosecution to another country, in particular if the offence concerned carries a sentence of up to 10 years in prison, or if it is an offence against the safety of public transport, regardless of the sentence it carries. If a foreign country has either instituted or completed proceedings for an offence committed in the territory of Serbia, prosecution in Serbia for the same offence may only be pursued upon approval of the public prosecutor. Exemptions from the application of the territorial principle are those envisaged by public international law (e.g. persons enjoying full diplomatic immunity), in which case national legislation will apply.

The criminal legislation of Serbia also applies to everyone (national or foreigner) who commits an offence abroad to the detriment of Serbia. Such offences are those against the constitutional system and security of Serbia, except for the criminal incitement of national, racial or religious hatred, division or intolerance, as well as money counterfeiting, if national currency has been counterfeited. In all the above cases the principle of an absolute application of the law of Serbia is applicable.

The criminal legislation of Serbia also applies to its national when he or she has committed any other offence abroad, or if found in the territory of Serbia or if he or she has been extradited to Serbia. The reason for the application of this active personality principle is that a national of Serbia, by coming to his or her own country, should not escape criminal responsibility for any offence he or she committed abroad, in the light of the fact that he or she cannot be handed over to another country. According to this principle, the criminal legislation of Serbia will be applicable even to an offender who becomes its national after he or she has committed the offence in question. Such a provision was necessary to ensure prosecution of offenders who may not be extradited to another country because they were foreigners at the time of commission of the offence. These cases may be prosecuted in Serbia only if foreign criminal law has not been applied or if such an offence is also made punishable under the laws of the country where the offence occurred. If not, in order to proceed to prosecution in Serbia, it will be necessary to obtain the approval of the public prosecutor.

The criminal legislation of Serbia will also apply to a foreigner outside its territory who has committed any offence against it or its national, if he or she is found in its territory or if surrendered to it. Such an individual may be prosecuted only on condition that the offence committed is also punishable under the law of the country where it was committed. If this is not the case, the public prosecutor must consent to such prosecution.

Similarly, the criminal legislation of Serbia is further applicable to a foreigner who commits against a foreign country or another foreigner abroad an offence punishable under the criminal law of the country where it was committed by an imprisonment of not less than five years or by a harsher sentence (universal principle). In addition, the requirements for the application of this principle include that the foreigner is found in its territory but is not extradited, and that the offence is also punishable under the laws of the country where it has been committed. As regards the requirement that the offence concerned is also considered as an offence under a foreign law, there is one exception: the offence is to be considered as such under the principles of law recognized by the international community. Prosecution may then, pursuant to the Penal Code of Serbia, be pursued once the public prosecutor has approved it. In the case of application of national legislation, the accused person may not be condemned to a more severe sentence than that provided for under the criminal legislation of the country where the offence occurred.

In view of the foregoing, the criminal legislation of Serbia and the universal principle will be applied only if no foreign country has requested the extradition of a foreigner or if the extradition request has been refused.

In the case when the request for extradition has been refused, there is both the need and justification to apply the criminal legislation of Serbia, i.e. to prosecute in Serbia so that the foreigner in question be held criminally liable or face punishment. In this context, the application of domestic law (i.e. the trial) may also be seen as the obligation of the country refusing the extradition. Hence, it is in such cases that the application of the *aut dedere aut judicare* principle is fully reflected.

As a rule, the judicial practice in Serbia allows the extradition of foreigners provided all requirements for it have been met. For this reason, application of the universal principle is very uncommon. However, this does not diminish the importance of the principle ensuring that an alleged offender may be prosecuted at all times to avoid escaping criminal liability.

Furthermore, concerning the active nationality principle and the universality principle, prosecution in Serbia will not be pursued: (a) if the offender has served full term of the sentence he or she has received in a foreign country; (b) if the offender has been cleared by a legally valid judicial decision or if his or her sentence has been barred by the lapse of time or if he or she has been pardoned; (c) if an appropriate security measure has been imposed on the mentally ill offender in a foreign country; or (d) if prosecution of the offence under a foreign law requires a request by the injured party and if such a request has not been made.

SLOVENIA

Article 8 of the Constitution of Slovenia stipulates that laws and other regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

Article 47 of the Constitution of Slovenia determines that no citizen of Slovenia may be extradited or surrendered unless such obligation to extradite or surrender arises from a treaty by which, in accordance with the provisions of the first paragraph of article 3a of the Constitution, Slovenia has transferred the exercise of part of its sovereign rights to an international organization.

Article 122 of the Penal Code of Slovenia determines that it shall be applicable to any citizen of Slovenia who commits any criminal offence abroad and who has been apprehended in or extradited to Slovenia.

Article 123 of the Penal Code of Slovenia determines that it shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against it or any of its citizens and has been apprehended in Slovenia and is not extradited to a foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country in which the offence was committed.

The request for extradition to the authorities of Slovenia goes through the channels agreed upon in the relevant multilateral or bilateral treaties. The request for the extradition is forwarded to the investigative judge of the district court on whose territory the person claimed resides or is in pre-trial detention. The investigative judge must hear the person claimed and take into account the views expressed by his defence counsel and the prosecutor. He may also perform some other inquiries in the case. After that, the file is sent to a panel of three judges which decides on the question of whether legal conditions for extradition are fulfilled, according to the Criminal Procedure Act.

In the event that legal conditions for extradition are fulfilled, the panel issues a decision against which the person has the right to appeal. The court's final decision on the legal grounds for extradition, together with the court file, is sent to the Ministry of Justice and the Minister issues a ruling whereby extradition is granted, rejected or postponed (arts. 521–537 of the Criminal Procedure Act).

In cases where legal conditions for extradition are not fulfilled, the panel issues the decision on refusing extradition which is obligatorily reviewed (annulled or modified) by the appeal court.

Article 522 of the Criminal Procedure Act stipulates that the preconditions for extradition are: (a) that the person whose extradition is requested is not a citizen of Slovenia; (b) that the act which prompted the request for extradition was not committed in the territory of Slovenia against Slovenia or a Slovenian citizen; (c) that the act which prompted the request for extradition is a criminal offence within the meaning of domestic and foreign law alike; (d) that under domestic law, criminal prosecution or the execution of punishment was not barred by statute before the alien was detained or interrogated as the accused; (e) that the alien whose extradition is requested has not been convicted of the same offence by the domestic court or has not been acquitted under a final decision of the domestic court, or criminal proceedings against him have been suspended by a final decision, or the charge against him has been rejected by a final decision, or that in Slovenia criminal proceedings have not been instituted against the alien for the same offence committed against Slovenia and, in the event that criminal proceedings have been instituted for an offence committed against a citizen of Slovenia, that the indemnification claim of the injured party has been secured; (f) that the identity of the person whose extradition is requested has been established; and (g) that there is sufficient evidence to suspect that the alien whose extradition is requested has committed a criminal offence, or that a finally binding judgement exists thereon.

The second paragraph of article 530 of the Criminal Procedure Act determines that the Minister for Justice shall decline extradition of an alien if the latter enjoys the right of asylum in Slovenia, if a political or military offence is involved or if an international treaty with the country demanding the extradition does not exist. He may decline extradition if a criminal offence punishable by up to three years' imprisonment is involved, or if a foreign court had imposed a sentence of a prison term of up to one year.

The second paragraph of article 521 of the Criminal Procedure Act stipulates that an alien may only be extradited in instances provided for by the international agreements binding on Slovenia.

SRI LANKA

The Extradition Law, No. 8 of 1977, provides the basic legal regime to deal with requests for extradition of fugitive offenders received from designated Commonwealth countries or treaty States.

Furthermore, the enabling legislations introduced to give effect to international treaties relating to the suppression of serious international crimes which contain the obligation to extradite or prosecute, include necessary provisions to amend the Extradition Law; *inter alia*, they provide that offences under the said convention are to be treated as extraditable offences and to treat the convention as the basis for extradition in the absence of an extradition treaty with a foreign State. These enabling laws are the following: the Offences against Aircraft Act, No. 24 of 1982; the SAARC Regional Convention on Suppression of Terrorism Act, No. 70 of 1988; the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation Act, No. 31 of 1996; the Suppression of Terrorist Bombings Act, No. 11 of 1999; the Prevention of Hostage Taking Act, No. 41 of 2000; the Suppression of Unlawful Acts against the Safety of Maritime Navigation Act, No. 42 of 2000; and the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.

SWEDEN

Sweden has different regimes regarding extradition, depending on the country to which a person is subject to extradition (or surrender): the Act on Extradition for Criminal Offences to Denmark, Finland, Iceland and Norway deals with extradition between Nordic countries; the Act on surrender from Sweden according to the European arrest warrant provides for conditions for surrender between member States of the European Union; and finally, the Extradition for Criminal Offences Act deals with extradition to all other countries.

In all cases, a request for extradition (or surrender) is dealt with by the Swedish Prosecution Authority. A prosecutor handles a request and investigates if there are reasons to extradite (or surrender) a person. If the request is from a Nordic country, the prosecutor decides if the person should be extradited (with a few exceptions). If a person should be surrendered to a member State of the European Union, the court takes the final decision. In all other cases, the decision is delivered by the Government of Sweden after the Supreme Court has examined the case and delivered a written opinion on whether extradition can be legally granted or not. If the Court is of the opinion that the extradition should not be granted, the Government is bound by that opinion. Depending on the country to which a person is subject to extradition (or surrender), different conditions or grounds for refusal apply. Very few grounds for refusal are applicable on extradition to the Nordic countries. The opposite is the case when it comes to extradition requests to countries outside the European Union. For instance, Swedish nationals can be extradited (or surrendered) to the Nordic countries and within the European Union but not to other countries. The requirement of dual criminality applies in all cases if the request was received from a country outside the Nordic States and the European Union. That requirement is limited if the person is subject to a European arrest warrant and not applicable at all if the request comes from a Nordic country (except for Swedish nationals).

The provisions on jurisdiction in criminal matters are mainly found in chapter 2 of the Swedish Penal Code.

Crimes committed outside Swedish territory shall be adjudged according to Swedish law and by a Swedish court if the crime has been committed (chap. 2, sect. 2):

(a) By a Swedish citizen or an alien domiciled in Sweden;

(b) By an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in Sweden; or who is a Danish, Finnish, Icelandic or Norwegian citizen and is present in Sweden;

(c) By any other alien, who is present in Sweden, and under Swedish law if the crime can result in imprisonment for more than six months.

A further condition required is that the act is criminalized in the State where it is committed (double criminality) or, if it is committed within an area not belonging to any State, that the prescribed punishment under Swedish law is more severe than a fine.

For the situations mentioned above, it is prescribed that no sanction exceeding the most severe sanction in the other State may be imposed.

Thus, Swedish courts have very far-reaching jurisdiction when the alleged perpetrator is present in Sweden. In order to be “present” in Sweden, in the sense of the Penal Code, the person in question has to have come to Sweden on a voluntary basis.

There are additional situations where crimes committed outside Swedish territory shall be adjudged according to Swedish law and by a Swedish court. In contrast to the situations referred to above, the law does not impose any requirement of double criminality, for example, in the following situations (chap. 2, sect. 3):

(a) If the crime is hijacking, maritime or aircraft sabotage, airport sabotage, counterfeiting currency, an attempt to commit such crimes, crimes against international law, unlawful dealings with chemical weapons, unlawful dealings with mines, false or careless statement before an international court, terrorist crime according to the law on terrorist crimes or an attempt to commit such a crime;

(b) If the least severe punishment prescribed for the crime in Swedish law is imprisonment for four years or more.

The specific crimes for which Sweden has extraterritorial jurisdiction (i.e. jurisdiction based only on the crime itself) are thus mentioned under those provisions of the Penal Code.

According to Swedish law, a preliminary investigation shall be initiated by the police or prosecution authority as soon as there is reason to believe that a criminal offence subject to public prosecution has been committed. The main purposes of the investigation are to find out who could be reasonably suspected of having committed the crime and if there are sufficient grounds to prosecute him or her.

The Swedish public prosecutor is, as a matter of general principle, obliged to prosecute offences falling within the domain of public prosecution when there is enough evidence to expect the court to find the suspect guilty. There are, however, a few exceptions. Under certain circumstances, the prosecutor may decide to limit the preliminary investigation or to waive prosecution provided no compelling public or private interest is disregarded.

Those general rules apply, on the condition that the Swedish provisions on jurisdiction, as described above, are applicable, irrespective of where the crime has been committed.

In conclusion, a prosecutor is always involved in the extradition or surrender procedures and will be informed if a request for extradition or surrender is refused. In such a case, the provisions in the Swedish legislation on jurisdiction and preliminary investigation and prosecution could be applicable in order to fulfil the obligation of the principle of *aut dedere aut judicare*.

THAILAND

The 1991 Act on Measures for the Suppression of Offenders in an Offence Relating to Narcotics was enacted to implement the conventions relating to narcotic drug offences to obligate Thailand to grant extradition upon the basis of these multilateral treaties where the obligation to prosecute or extradite (*aut dedere aut judicare*) is operated.

TUNISIA

Tunisian legislation regulates the extradition of foreign criminals under articles 308–335 of the Code of Criminal Procedure under the heading “Extradition of foreign criminals”, which covers the conditions, procedures and effects of extradition without explicitly recognizing the principle of “extradite or prosecute”. However, it recognizes the active personality principle in its treatment of the bases of international jurisdiction in criminal matters and in the text of article 305 of the Code, which allows for the prosecution by the Tunisian courts of a Tunisian citizen who has committed a crime or misdemeanour punishable by Tunisian law outside Tunisia. It also recognizes the passive personality principle under article 307 *bis* of the Code, which grants authority to prosecute anyone who commits, as principal or accessory, a crime or misdemeanour outside Tunisia when the victim is of Tunisian nationality. It also recognizes, under article 307 of the Code, the objective territoriality principle, which grants authority to prosecute a foreigner who commits, as principal or accessory, a crime or misdemeanour outside the soil of Tunisia which harms the security of the State, or who engages in counterfeiting the national currency.

Therefore, although the Code of Criminal Procedure does not explicitly recognize the principle of extradite or prosecute, the net result of its adoption of such a wide-ranging basis for international jurisdiction is a *de facto* recognition of that principle.

That trend was reinforced by the adoption of the principle of universal jurisdiction in article 55 of Act No. 2003–75 of 10 December 2003 in support of international efforts to combat terrorism and prevent money-laundering. It gives the Tunisian courts jurisdiction over terrorist crimes when they are committed by a Tunisian national, when they are committed against Tunisian parties or interests or when they are committed by a foreigner or stateless person whose habitual place of residence is on Tunisian soil, or by a foreigner or stateless person present on Tunisian soil whose legal extradition the competent foreign authorities did not request prior to the issuance by the competent Tunisian courts of a final judgement against him. Article 60 of the Act requires extradition if terrorist crimes are committed outside Tunisia, by a person not bearing Tunisian citizenship, against a foreigner, foreign interests or a stateless person, if the perpetrator is present on Tunisian soil.

Tunisian legislation follows internationally accepted practice in its application of the principle of not permitting the extradition of Tunisian citizens. On the other hand, Tunisia is obligated under the previously noted international judicial conventions to initiate criminal prosecution in Tunisia against a person whose extradition and prosecution are requested in accordance with the principle of extradite or prosecute.

With respect to non-Tunisians, legislation allows the extradition of a person to a foreign State only if that person is being prosecuted for a crime punishable by Tunisian law as a crime or misdemeanour, if the penalty required by the law of the requesting State is that of imprisonment for a period of six months or more for all crimes for which extradition is being requested. In case of trial, the penalty imposed by the court of the requesting State must be imprisonment for two months or more.

Extradition can be granted only when the crime for which extradition is being requested was committed on the soil of the requesting State by one of its citizens or by a foreigner, or if it was committed outside such State by one of its citizens or a foreigner if the crime is one of the crimes the prosecution of which is authorized in Tunisia by Tunisian law even when committed abroad by a foreigner.

Extradition is not permitted when the crimes were committed in Tunisia or when, despite their having been committed outside Tunisia, the prosecution of the perpetrators has been concluded, the statute of limitations on the public proceedings or the punishment has run out under Tunisian law or the law of the requesting State, the crime is of a political nature, it is clear that the request is for political purposes, or the crime consists of failure to discharge a military obligation.

Article 59 of Act No. 2003–75, in support of international efforts to combat terrorism and prevent money-laundering, under no condition allows terrorist crimes to be considered political crimes. Article 56 of the Act authorizes the initiation of public proceedings for terrorist crimes independent of the criminality of the acts under prosecution under the law of the State in which the crime was committed.

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

The United Kingdom does not have any specific legal regulations concerning the obligation to extradite or prosecute. Section 193 of the Extradition Act 2003 allows the United Kingdom to extradite for trial when requested by another party to an international convention and where the conduct in question is covered by the provisions of that convention.

The United Kingdom has several statutory provisions establishing jurisdiction for specified crimes, thus enabling the relevant national authorities to prosecute offences. Implementing legislation for the international treaties by which the United Kingdom is bound includes: Geneva Conventions Act, 1957; part I of the Aviation and Security Act 1982; Internationally Protected Persons Act 1978; Suppression of Terrorism Act 1978; Taking of Hostages Act 1982; Nuclear Material (Offences) Act 1983; sect. 134 of the Criminal Justice Act 1988; sect. 21 of the Criminal Justice (International Co-operation) Act 1990; parts I–II of the Aviation and Maritime Security Act 1990; United Nations Personnel Act 1997; part VI of the Terrorism Act 2000; chap. 15 of the Serious Organised Crime and Police Act 2005.

UNITED STATES OF AMERICA

The United States has no domestic legal provisions concerning the obligation to extradite or prosecute. Indeed, as noted above, United States extradition law is clear in setting forth that it shall continue in force only during the existence of any treaty of extradition with a foreign Government (18 U.S.C. §3181(a)).

D. Judicial practice of a State reflecting the application of the *aut dedere aut judicare* obligation

AUSTRIA

The *aut dedere aut judicare* principle plays a crucial role in Austrian practice. According to section 65, paragraph 1.2, of the Austrian Penal Code, the Public Prosecutor has to examine the institution of proceedings in Austria if the extradition of a suspect cannot be granted for reasons other than the nature or characteristics of the offence.¹ However, the court decisions instituting proceedings in Austria following the refusal of extradition do not explicitly refer to the above-mentioned provisions. For this reason, no court decisions referring explicitly to section 65 of the Code or comparable provisions can be provided. The lack of court decisions therefore does not reflect the great importance of the *aut dedere aut judicare* principle in Austrian judicial practice.

¹ See also section 17, paragraph 3, of the Federal Law on judicial cooperation in penal matters with the member States of the European Union, *Federal Law Gazette*, No. 36/2004, implementing Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, *Official Journal of the European Communities*, L190 of 18 July 2002, p. 1.

CHILE

Recent judicial practice in 2006 reflecting the application of the *aut dedere aut judicare* obligation, includes

(a) the judgement of first instance dated 7 February 2006 handed down by Alberto Chaigneau del Campo, Examining Magistrate of the Supreme Court, approved by the Court by decision of 21 March 2006, concerning the request by Argentina for the extradition of Chilean national Rafael Washington Jara Macias, which rejected the request and stated that the person in question should be tried in Chile for the offence of which he was accused; and (b) the judgement of first instance dated 21 August 2006 handed down by Alberto Chaigneau del Campo, approved by the Supreme Court by decision of 9 November 2006, concerning the request by Argentina for the extradition of Chilean national Juan León Lira Tobar, which rejected the request and stated that the person in question should be tried in Chile for the offence of which he was accused.

CROATIA

In the criminal prosecution taken over from another State, the accused is tried as if the offence had been committed in Croatia. However, foreign law is applicable when it is more lenient on the accused, to honour the principle that the transfer of prosecution between States must not aggravate the position of the accused. Every investigative action undertaken by a foreign judicial body under the law of the requesting State will engender a corresponding investigative action under the law of Croatia, unless it runs contrary to the principles of the national legal order, the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights.

IRELAND

It would appear that no Irish judicial practice reflecting the application of the obligation exists.

LATVIA

There is not much judicial practice of Latvia reflecting the application of the *aut dedere aut judicare* obligation. In 2006, Latvia received three requests for legal assistance concerning the extradition of persons for criminal prosecution. Two of them are still in process. One of them has been fulfilled.

LEBANON

With regard to judicial application of the principle of extradition, the Public Prosecutor at the Court of Cassation is competent to prepare the docket on the extradition of offenders and forward it, together with his report, to the Minister for Justice (art. 17 of the Code of Criminal Procedure).

MEXICO

There are no jurisprudential criteria relating to extradition in the judicial practice of Mexico which explicitly demonstrate the obligation to extradite or prosecute.

MONACO

Monaco courts are rigorously applying the rules contained in its law on extradition No. 1.222. Monaco is

committed to fight against transnational crimes in an efficient manner, and to promote the largest and the most effective international cooperation, as exemplified by the judgement of the Appeal Court, dated 12 April 2001.¹ In this judgement, the Court allowed the extradition of a Russian national requested by the Russian Federation for drug trafficking. In order to do so, the Court carefully applied the provisions contained in law No. 1222, the bilateral convention between Monaco and Russia of 5 September 1883, and the provisions on extradition contained in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which Monaco and the Russian Federation are both parties. It concluded that the extradition request by the Russian Federation fully complied with the procedural and substantive requirements provided in those instruments, namely, the request had been transmitted through diplomatic channels, the judge had ascertained the identity of the person arrested and notified to him the extradition procedure, an interpreter was present during the hearing, all relevant documents had been duly translated, and his arrest had been made lawfully. Furthermore, the grounds for the request of extradition were contained in the United Nations Convention and therefore were deemed included in the 1883 extradition convention between Monaco and Russia. Moreover, there was no other basis to refuse such an extradition as the offence did not have any military, fiscal, or political nature, it was not prosecuted in Monaco courts; it was not covered by any statute of limitations. Finally, the asylum request made by the suspect could not become a ground to refuse extradition in the view of the gravity of the alleged offence.

Meanwhile, no specific judgement concerning the direct application of the *aut dedere aut judicare* principle has been identified.

¹ This judgement in its original French version is available for consultation at the Codification Division, Office of Legal Affairs. See also *Revue de droit monégasque*, vol. 4 (2002), p. 52.

POLAND

Pursuant to the Code of Criminal Procedure, applications of foreign States for the extradition of prosecuted or convicted persons are subject to court rulings. In deciding on the admissibility of extradition, the court is guided by the aforementioned provisions of the Constitution and the Code of Criminal Procedure. The court ruling on extradition is subject to appeal by the prosecuted person and the prosecutor. During the years from 2004 to 2007, the courts usually determined inadmissibility of extradition on the basis of the provisions of article 604, paragraph 1, subsections (5) and (7) of the Code, namely, incompatibility of extradition with Polish law, or justified concern that the freedoms and rights of the extradited person would be violated in the State seeking extradition.

The final decision on the application of a foreign State for extradition is taken by the Minister for Justice of Poland. Only a ruling in which the court determines inadmissibility of extradition is binding on the Minister. On the other hand, the Minister is entitled to deny extradition even if the court finds that it is admissible. In taking the final decision, the Minister is guided by criminal policy

considerations. However, pursuant to the resolution of the Supreme Court of 17 October 1996, the Minister cannot refuse extradition by making an independent ascertainment of facts that differs from the ascertainment made by the court in its ruling on the admissibility of extradition. The Minister's decisions on extradition are not subject to appeal. In practice, during the period from 2004 to 2007 there have been no instances of the Minister refusing extradition despite a court ruling allowing extradition.

In 2004, four extradition requests have been refused out of 63; in 2005, 10 extradition requests were refused out of 27; in 2006, four were refused out of 24; and in 2007, so far, there have been three requests for extraditions.

An analysis of extradition proceedings conducted during the years from 2004 to 2007 indicates that the complete procedure, from the lodging of the application by a foreign State until the decision of the Minister for Justice, lasts on average seven months.

SERBIA

In practice, Serbia allows, as a rule, extradition of a foreigner to a foreign country for offences committed in that foreign country. Hence, for example, in the last 10 years extradition requests have been denied only in very few instances, primarily because nationals of Serbia were involved. The said individuals have not been proceeded against in Serbia since their offences have not fulfilled the conditions required to consider them as offences under international instruments providing for the obligation to extradite or prosecute. In all the instances concerned, Serbia has not been requested by any country to try these individuals, nor has it been provided with evidential material supporting the institution of criminal proceedings against them.

There are many more instances in practice where foreign countries have declined the extradition requests made by Serbia. As a matter of fact, such individuals are neither prosecuted nor stand trial in the countries which have refused to extradite them. Instead, they are released and sometimes, later on, extradited by other countries where they happen to be found and arrested on an international search warrant.

SLOVENIA

One of the fundamental principles of Slovenian criminal procedure is the principle of legality, which determines that the prosecutor is bound to institute criminal prosecution if there is reasonable suspicion that a criminal offence liable to prosecution *ex officio* has been committed. Accordingly, Slovenian law enforcement authorities must prosecute Slovenian citizens or persons having permanent residence in Slovenia for a criminal offence committed abroad, if extradition is declined. They must also prosecute foreign citizens who have, in a foreign country, committed a criminal offence against that country or any of its citizens and have been apprehended in Slovenia and have not been extradited to a foreign country. But it should be pointed out that Slovenia generally grants extradition of aliens, if all legal conditions are fulfilled. Upon the request of a foreign country, Slovenia

can also prosecute Slovenian or foreign citizens for a criminal offence committed abroad. The request for prosecution must be transmitted, together with the files, to the competent prosecutor in whose territory that person has permanent residence. Refusal to prosecute can only be based on the same grounds as for an offence perpetrated in Slovenia. Jurisdiction in Slovenia for institution of criminal proceedings lies in the hands of the district prosecutors (in Slovenia there are 11 offices of district prosecutors). There are no special centralized records or gathering of information with regard to individual cases where prosecutors initiated criminal proceedings or took over prosecution from a foreign country as a consequence of application of the *aut dedere aut judicare* principle; therefore Slovenia has not provided numerical data with regard to the application of the principle in practice.

SRI LANKA

In the Supreme Court judgement on *Ekanayake v. Attorney General* (SLR 1988 (1), p. 46), the following international conventions which contain the obligation to extradite or prosecute were taken into consideration: (a) the Convention on offences and certain other acts committed on board aircraft; (b) the Convention for the suppression of unlawful seizure of aircraft; and (c) the Convention for the suppression of unlawful acts against the safety of civil aviation. The case involved the hijacking of an Alitalia aircraft to Bangkok by a Sri Lankan national. The offender was prosecuted before the High Court of Colombo, under the Offences against Aircraft Act, No. 24 of 1982, and convicted.

THAILAND

Thailand indicated “no” in response to the question regarding judicial practice.

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

The nature of the obligation to extradite or prosecute was discussed in the litigation surrounding the extradition of Augusto Pinochet: see *Regina v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte* [2000] 1 AC 61; *ibid.* (No. 3) [2000] 1 AC 147; and in *T. v. Immigration Officer* [1996] AC 742 (per Lord Mustill).

The United Kingdom extradites individuals (including British nationals) where there is a request for extradition and provided that the extradition is not barred for other reasons (for example, human rights considerations). Most recent cases have concerned terrorism offences.

The United Kingdom has recently prosecuted an individual for alleged instances of torture and hostage-taking occurring in Afghanistan in *R. v. Zardad*. Certain aspects of the decision are currently subject to appeal.

UNITED STATES OF AMERICA

Judicial practice in the United States is consistent with the understanding that the obligation to extradite or prosecute is tethered firmly to international conventions. So,

for example, in *United States v. Yousef* (327 F.3d 56 (2d Cir. 2003)), a United States court of appeals held that the Convention for the suppression of unlawful acts against the safety of civil aviation created “a jurisdictional agreement among contracting States to extradite or prosecute offenders who commit the acts proscribed by the treaty” (*ibid.*, p. 96). The United States is not aware of any judicial decisions in the United States that apply the obligation except as set forth in conventions to which the United States is a party.

E. Crimes or offences to which the principle of the *aut dedere aut judicare* obligation is applied in the legislation or practice of a State

AUSTRIA

With regard to the *aut dedere aut judicare* obligation, Austrian legislation does not distinguish between certain categories of crimes or offences. Therefore, all crimes and offences punishable under the Austrian Penal Code are subject to this obligation as laid down in sections 64–65 of the Code.¹

¹ See *Yearbook ... 2006*, vol. II (Part One), document A/CN.4/571, para. 44.

CHILE

It should be noted that there are no limitations in national legislation and practice that would prevent its application to certain crimes or offences.

CROATIA

The *dedere* obligation only applies to the so-called extraditable offences, determined or determinable as such in an international agreement. If there is no such agreement between the requesting State and Croatia, the Croatian Act on Mutual Legal Assistance in Criminal Matters is applied. The Act provides that extradition for criminal prosecution may be granted for criminal offences that are punishable under Croatian law by a prison term or a security measure including deprivation of liberty of a minimum period of one year, or by a more severe punishment. Should the extradition not be permissible for this reason, it shall not prevent a takeover of the prosecution (*aut judicare*). Therefore, the *aut dedere aut judicare* obligation is applicable to all criminal offences.

IRELAND

In its reply, Ireland made a cross-reference to information contained in the present report (see section B above).

JAPAN

In the Japanese judicial system, the obligation to extradite or prosecute stipulated by the treaties listed in section B above, is implemented on the basis of the Act of Extradition, the Penal Code¹ and other related laws and regulations.

¹ Unofficial translations of the Penal Code and the Act of Extradition provided by Japan are available for consultation at the Codification Division, Office of Legal Affairs.

MEXICO

In Mexico, individuals who commit a federal crime can be extradited. According to article 50, paragraph I (a), of the Judicial Authority Organization Act, crimes provided for in international treaties are federal crimes and such crimes are heard by federal criminal judges. Such crimes are therefore duly incorporated into Mexico's criminal system. Paragraph II of the same article establishes that federal criminal judges also hear extradition requests. The article in question reads as follows:

Federal criminal judges shall hear the following:

I. Federal crimes

The following crimes constitute federal crimes:

- (a) Those provided for in federal laws and international treaties;
- (b) Those mentioned in articles 2 to 5 of the Penal Code for the Federal District for ordinary crimes and for the whole Republic for federal crimes;
- (c) Those committed abroad by diplomatic agents, official staff of legations of the Republic and Mexican consuls;
- (d) Those committed in foreign embassies and legations;
- (e) Those in which the Federation is a passive subject;
- (f) Those committed by a public servant or federal employee, during or in connection with the exercise of their functions;
- (g) Those committed against a public servant or federal employee, during or in connection with the exercise of their functions;
- (h) Those committed on the occasion of the operation of a federal public service, even when that service has been decentralized or contracted out;
- (i) Those committed against the operation of a federal public service or against the property provided for carrying out that service, even when that service has been decentralized or contracted out;
- (j) All those which attack, hinder or prevent the exercise of any specific power or authority of the Federation;
- (k) Those mentioned in article 389 of the Penal Code, in the event that a contract is promised or awarded to an office, decentralized body or State-owned company of the Federal Government;
- (l) Those committed by or against federal electoral officials or party officials under the terms of article 401, paragraph II, of the Penal Code.

II. Extradition proceedings, notwithstanding the provisions of international treaties.

III. Requests for authorization to intercept private communications.

MONACO

Following articles 7–10 of the Code of Penal Procedure, the *aut dedere aut judicare* principle may be implemented in various cases, including crimes against State security, counterfeiting, crimes or offences against diplomatic, consular or national premises, and torture.

POLAND

Prosecuted or convicted persons may be extradited upon the application of a foreign State in connection with the commission of any crimes or offences covered by international treaties binding on Poland. During the period from 2004 to 2007, the extradition applications of foreign States usually referred to offences against property and life and health, and those involving forgeries.

SLOVENIA

The *aut dedere aut judicare* principle applies to all crimes proscribed in the Penal Code of Slovenia, including crimes which derive from international humanitarian law and international treaties referred to above (sect. B): genocide; crimes against the civilian population; crimes against the wounded and sick; war crimes against prisoners of war; war crimes of use of unlawful weapons; unlawful slaughtering and wounding of the enemy; maltreatment of the sick and wounded and of prisoners of war; abuse of international symbols; trafficking in persons; international terrorism; endangering persons under international protection; taking of hostages; unlawful manufacture of and trade in narcotic drugs; enabling opportunity for consumption of narcotic drugs and others.

UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND

The United Kingdom applies the “extradite or prosecute” principle to the following crimes: torture, hostage-taking, certain offences against civil aviation and maritime safety, and specified terrorist offences.