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## I. INTRODUCTION

The relationship between the United States and Israel is a complicated one and has historically been defined by major geopolitical issues such as the Cold War and the ongoing Middle East peace process. Thus, it can be considered something of a surprise that the most volatile political rift between the United States and Israel in 1997 concerned not settlements in the West Bank but a murder in Maryland.

Initially, this murder did not seem to be destined to turn into an international incident. On September 19, 1997, the burned and dismembered body of Enrique Tello, Jr., was discovered by police in a suburban Maryland neighborhood near the home of Samuel Sheinbein.[1] According to area residents, Sheinbein and his friend Aaron Needle, both seventeen, had been seen pulling a wheeled cart the previous week on a path near the location where the body was found.[2] Local police sought Sheinbein and Needle for questioning in the murder.

Rather than face questioning, Sheinbein fled the country.[3] Five days after the police first sought Sheinbein for questioning, he turned up in Tel Aviv; located by Israeli police acting on a tip they had received from his family.[4] Based on information received from U.S. authorities, Israeli police took Sheinbein into custody pending application for extradition from the United States.[5]

This was the last event in the Sheinbein case which resembled an ordinary murder prosecution. Thereafter, events rapidly mushroomed. Under an Israeli law enacted in 1978, the Offenses Committed Abroad Act, Israel will not extradite suspects who were Israeli citizens at the time their alleged offense was committed.[6] Accordingly, Sheinbein, even though he was born in the United States and had never lived in Israel, claimed that he

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1. *See* Karl Vick & Steve Vogel, *Teen Detained in Israel After Drug Overdose*, WASH. POST, Sept. 26, 1997, at A1.
2. *See id.*
3. *See id.*
4. *See Teen Suspect in Maryland Killing Found Here*, JERUSALEM POST, Sept. 26, 1997, at 4; *see also* Steve Vogel & Barton Gellman, *Access to Crime Scene Sought*, WASH. POST, Sept. 27, 1997, at H1 (noting that the Sheinbein family was cooperating with American law enforcement authorities).
5. *See id.*
6. *See* Penal Law (Offenses Committed Abroad) § 4a(a) (Isr. 1978).

was an Israeli citizen.[7] He based his claim on the nationality of his father, Sol, who was born in territory within the British Mandate of Palestine, and emigrated to the United States in 1950.[8] Sheinbein thus claimed that under the Israeli nationality law, which grants citizenship to any person with Israeli parents, he was an Israeli national and could not be extradited.[9]

On September 29, after examining Sheinbein's claim, Israeli diplomats gave notice to the United States that Israel would refuse to extradite him to face trial in Maryland[10] pursuant to the Offenses Committed Abroad Act.[11] Instead, as has been the recent custom between the two countries,[12] they offered to try him in Israel on the Maryland murder charges.[13] In contrast with prior precedent, the Israeli government even agreed to bear the cost of the prosecution.[14] Rather than ameliorating the situation, however, this proposal set off a firestorm of political repercussions in the United States. Robert Dean, the Maryland prosecutor in charge of the Tello murder, almost immediately denounced the Israeli proposal as burdensome and unjust,[15] and expressed concern that Sheinbein might obtain more lenient treatment in an Israeli court than in a Maryland tribunal.[16] In addition, as Israeli officials struggled to find a means of returning Sheinbein to the United States, Rep. Robert Livingston (R-La.) threatened to withhold almost $50 million in U.S. aid to Israel if Sheinbein was not extradited.[17] The Sheinbein case thus managed to do what even the deadlock in Israeli-Palestinian negotiations did not do—threaten the long-standing friendly relationship between the United States and Israel.

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7. *See* David Briscoe, *Israeli Extradition Refusal Brings Threat of Aid Review*, ASSOC. PRESS, Sept. 30, 1997.

8. *See* Barton Gellman & Steve Vogel, *Israel Bars Return of Md. Teen, May Hold Murder Trial There*, WASH. POST, Sept. 30, 1997, at A1.

9. *See id.*

10. *See id.*

11. *See* Penal Law (Offenses Committed Abroad) § 4a(a) (Isr. 1978).

12. *See infra* notes 72-84 and accompanying text (discussing American-Israeli joint prosecutions).

13. *See* Gellman & Vogel, *supra* note 8, at A1.

14. *See* Arlo Wagner, *Sheinbein Case Turns on Israeli Citizenship*, WASH. TIMES, Oct. 1, 1997, at A1; *see also* Arlo Wagner, *Israeli High Court Rejects Extradition of Sheinbein*, WASH. TIMES, Feb. 26, 1999, at C9 (stating that Sheinbein's trial would proceed in Israel and would be paid for by the Israeli government).

15. *See* Peter Slevin, *U.S. Pursues Accused Killer*, NEW ORLEANS TIMES-PICAYUNE, Oct. 19, 1997, at A1.

16. *See* Gellman & Vogel, *supra* note 8, at A1.

17. *See* Barton Gellman & Karl Vick, *Parents Allege Sheinbein Was Being Robbed*, WASH. POST, Oct. 1, 1997, at B1.

The political implications of the Sheinbein case, however, may not be as surprising as they initially seem—because crime itself has taken on increasing geopolitical significance. In the past twenty years, drug trafficking and money laundering, along with other forms of criminal conduct, have become increasingly transnational.[18] In pursuit of international cooperation against these crimes, the United States has increasingly demanded that other nations cooperate in the investigation and prosecution of criminals—even to the extent that certain nations view U.S. pressure as an attack on their sovereignty.[19]

Thus, the United States has clashed with nations such as Mexico, Colombia, and Israel regarding their refusal to extradite their nationals.[20] The United States has also predicated economic aid to other nations, such as Nigeria, on cooperation in law enforcement.[21] Furthermore, other factors such as differing standards of due process and differences in substantive criminal law have increased the difficulty of obtaining extradition and have strained relations between the United States and foreign governments.

Accordingly, this Article will examine the political ramifications of the extradition process and the need for compromise to prevent domestic politics from undermining the ends of law enforcement. This Article will also suggest possible measures to ease the complications that extradition poses to international law enforcement cooperation. Part II of this Article will examine the facts of the most recent and dramatic example of the politics of extradition as played out in the Sheinbein case. Part III will analyze other issues which have placed obstacles in the path of practical law enforcement and international relations, and the way that the United States has reacted to each issue. Special emphasis will be placed on U.S.-Israeli extradition problems. Finally, Part IV will discuss compromises which might be made by the United States and other nations such as Israel to ease the extradition process, particularly in cases involving a national of the asylum state, without sacrificing national sovereignty.

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18. *See generally* ETHAN A. NADELMANN, COPS ACROSS BORDERS: THE INTERNATIONALIZATION OF U.S. CRIMINAL LAW ENFORCEMENT (1993).

19. *See, e.g., Caribbean Nations Stand Up to U.S. Over Drugs*, REUTERS NORTH AMERICAN WIRE, Dec. 17, 1996.

20. *See How the U.S. State Department Views Money Laundering in Select Countries*, MONEY LAUNDERING ALERT, Apr. 1998, at 11; *see also* Gregory Gross, *Mexican Judge Rejects Extradition Bid*, SAN DIEGO UNION TRIB., Apr. 27, 1998, at B1.

21. *See The United States and Certification*, JANE'S INTELLIGENCE REVIEW, June 1, 1998, at 23. The procedure by which the President of the United States can certify or decertify foreign nations for American aid payments based on their cooperation in drug enforcement is provided in 22 U.S.C. § 2291 (1994).

## II. THE CURIOUS CASE OF SAMUEL SHEINBEIN: THE APPLIED POLITICS OF EXTRADITION

The major event in Israeli-U.S. relations in 1997 began with a grisly murder in Maryland. On September 19, 1997, the Maryland state police located a black plastic bag containing the remains of a dismembered human body burned almost beyond recognition.[22] The body was later identified as that of Enrique Tello, Jr., a local teenager.[23]

Police almost immediately suspected Samuel Sheinbein and Aaron Needle, both seventeen, of the murder. The evidence against them was plentiful: the body was found in a vacant house just around the corner from Sheinbein's home; a witness had seen teenagers matching Sheinbein and Needle's descriptions struggling to move a tarpaulin covered garden cart toward the vacant house; a trail of blood was located between Sheinbein's home and the house where the body was found; and a power saw was found, near the body, which matched an empty box discovered at Sheinbein's home.[24] Moreover, subsequent investigation of the Sheinbein garage revealed the remnants of a fire which appeared to have been set and extinguished, a box of commercial fire logs that matched those found around the body, a handsaw, several bloodstains, surgical gloves, and a box of garbage bags similar to those used to contain the victim's body.[25]

On Friday, September 19, Sheinbein reportedly told his family that he was going to Ocean City, Maryland, for the weekend.[26] On Monday, however, he had not returned to his home. Instead, on September 21, Sheinbein fled to Israel.[27]

On September 25, Sheinbein's parents notified the Maryland police of his whereabouts, and stated that they had negotiated the voluntary return of their son through their attorney.[28] Sheinbein's family further notified the police that he was scheduled to board a nonstop Tel Aviv-to-New York flight

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22. *See* Vick & Vogel, *supra* note 1, at A1.
23. *See id.*
24. *See* Vogel & Gellman, *supra* note 4, at H1.
25. *See* Fern Shen & Maria Glod, *Teen Arrested, Second Sought in Md. Dismemberment Case*, WASH. POST, Sept. 24, 1997, at A1.
26. *See* Manuel Perez-Rivas & Maria Glod, *Md. Teen Sought in Dismemberment Slaying*, WASH. POST, Sept. 23, 1997, at D1.
27. *See* Gellman & Vogel, *supra* note 8, at A1.
28. *See Teen Suspect in Maryland Killing Found Here*, *supra* note 4, at 4; *see also* Maria Glod & Steve Vogel, *Teen Suspect in Md. Killing Found in Israel*, WASH. POST, Sept. 25, 1997, at A1 (quoting attorney for Sheinbein family as stating that he was in the process of negotiating Sheinbein's voluntary return).

the following day. However, Sheinbein failed to emerge from this flight when it landed at Kennedy Airport in New York.[29]

Following this, FBI agents informed Israeli authorities of the existence of a provisional warrant for Sheinbein's arrest in Maryland.[30] Working with Israeli authorities, FBI agents located Sheinbein at Yitzhak Rabin Hospital, where he had been hospitalized for an apparent drug overdose.[31] Shortly thereafter, Israeli police placed Sheinbein under arrest following a formal request for extradition from the United States embassy in Tel Aviv.[32]

The problems of the Maryland authorities appeared to be over. Israel and the United States have a functioning extradition treaty,[33] and Israel had a long-standing history of cooperation with the United States in law enforcement matters.[34] Moreover, although Sheinbein was to be tried as an adult on first-degree murder charges in Maryland, he was not eligible for the death penalty due to his age.[35] This removed a potential obstacle to extradition, as Israel has a very limited death penalty statute, and does not extradite individuals who face capital punishment abroad.[36]

Nevertheless, on September 29, 1997, Israeli authorities announced that Sheinbein would not be extradited to Maryland because he held Israeli citizenship.[37] Instead, Israel offered to prosecute Sheinbein for the Maryland homicide at Israeli expense.[38] From this point, the Sheinbein case rapidly transformed into an exercise in domestic and international politics.

Israel, like many nations, refuses to extradite its nationals for prosecution in foreign countries.[39] However, the Israeli-U.S. extradition relationship is complicated by the terms of the extradition treaty between Israel and the United States. This

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29. *See* Vick & Vogel, *supra* note 1, at A1.
30. *See id.*
31. *See id.*
32. *See* Vogel & Gellman, *supra* note 4, at H1.
33. Extradition Convention, Dec. 10, 1962, U.S.-Isr., 14 U.S.T. 1707.
34. *See generally* Abraham Abramovsky, *Partners Against Crime: Joint Prosecutions of Israeli Organized Crime Figures by U.S. and Israeli Authorities*, 19 FORDHAM INT'L L.J. 1903 (1996).
35. *See* Vogel & Gellman, *supra* note 4, at H1.
36. *See id.* Israel's death penalty statute is limited to crimes of genocide, and has only been put into effect on one occasion.
37. *See* Gellman & Vogel, *supra* note 8, at A1.
38. *See* Arlo Wagner, *Sheinbein Case Turns on Israeli Citizenship*, *supra* note 14, at A1; *see also* Arlo Wagner, *Israeli High Court Rejects Extradition of Sheinbein*, *supra* note 14, at C9 (stating that Sheinbein's trial would proceed in Israel and would be paid for by the Israeli government).
39. *See* Slevin, *supra* note 15, at 1 (citing Germany and France as examples).

treaty, concluded in 1962, requires each country to "deliver up persons found in its territory,"[40] and specifically prohibits the refusal of extradition on the grounds that a requested individual is "a national of the requested Party."[41] At the same time, the treaty also specifies that extradition will occur in accordance with domestic legislation.[42]

The domestic laws governing extradition proceedings in Israel were changed after several celebrated cases led the Israeli government to question the policy of extraditing its own nationals. The first of these cases occurred in 1962, the same year that the United States-Israeli extradition treaty was concluded.[43] It involved Robert Soblen, a U.S. citizen convicted of spying for the Soviet Union, who fled to Israel.[44] After considerable public debate concerning whether Israel should deny sanctuary to a Jewish immigrant, Soblen was deported and placed on a flight to the United States.[45] While on board the airplane Soblen slashed his wrists, and later finished committing suicide by ingesting poison in a London hospital.[46]

Following the death of Soblen, then-opposition leader Menachem Begin expressed his forceful opposition to the extradition of any Jew from Israel.[47] In an impassioned article written in the newspaper of the Likud Party, Begin quoted from Deuteronomy 23:15: "You shall not give up to his master a slave who has escaped from his master to you."[48] As one Israeli commentator noted, Begin "considered it the role of the Jewish state to give asylum to wanted Jews."[49]

Begin was able to give voice to these sentiments sixteen years later, as Prime Minister of Israel, following the controversial decision of the Israeli Supreme Court in *Pesachowitz v. Israel*.[50] In this case, Switzerland sought the extradition of Pesachowitz, an Israeli citizen, to face fraud charges.[51] Pesachowitz argued that he should not be extradited to Switzerland because Swiss law did

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40. Extradition Convention, *supra* note 33, art. I, 14 U.S.T. at 1708.
41. *Id.* art. IV, 14 U.S.T. at 1710.
42. *Id.* art. IX, 14 U.S.T. at 1711.
43. *See* Allan E. Shapiro, *A Case of More than Disquieting Criticism*, JERUSALEM POST, Oct. 24, 1997, at 5; *see also* Ann LoLordo, *To Extradite or Not to Extradite?*, BALT. SUN, Oct. 23, 1997, at 2A.
44. *See* LoLordo, *supra* note 43, at 2A.
45. *See id.*
46. *See id.*
47. *See id.*
48. *See id.*
49. *Id.* (quoting former Israeli cabinet member Arye Naor).
50. *Pesachowitz v. Israel*, 31(2) P.D. 449.
51. *Id.*

not allow the extradition of Swiss nationals.[52] The Israeli Supreme Court, however, rejected this implied requirement of reciprocity and ruled that Pesachowitz should be returned to Switzerland.[53]

Following the *Pesachowitz* decision, Prime Minister Begin proposed legislation in the Knesset, the Israeli parliament, to prohibit the extradition of Israeli nationals to foreign nations.[54] The new Israeli extradition legislation, the Offenses Committed Abroad Act of 1978, was modeled upon the extradition statutes of nations such as Germany and France, where extradition of citizens is prohibited or permitted only under narrow circumstances.[55] In essence, the Offenses Committed Abroad Act provides that an Israeli citizen may not be extradited from Israel unless he did not hold Israeli citizenship at the time of the alleged offense.[56]

In addition to issues of international reciprocity, the debate over the Offenses Committed Abroad Act was influenced by a fear of anti-Semitism in foreign courts. Prime Minister Begin, like many of his countrymen, was a Holocaust survivor, and had an understandable distaste for turning Jews away from Israeli sanctuary to face prosecution in foreign courts.[57] Moreover, celebrated cases such as the Dreyfus affair and the anti-Zionist show trials in the Communist bloc undermined Israeli trust in the fairness of foreign judicial systems toward Jewish defendants. As one commentator stated, "[i]f Jews could be exterminated for simply being Jews . . . why should one be surprised if Israel has an interest in protecting its citizens?"[58] Also, many religious Israelis found support for non-extradition legislation in the tenet of Jewish law which holds that a Jew should not surrender another Jew or another Jew's property to non-Jews.[59]

The extent of this feeling in Israel was graphically illustrated by the cases of William Nakash and Shmuel Flatto-Sharon. Nakash, a Sephardic Jew living in France, was accused of participating in the 1983 murder of an Arab nightclub owner and drug dealer.[60] Rather than remaining in France to face trial, he

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52. *See id.*
53. *Id.*
54. *See* Slevin, *supra* note 15, at A1.
55. *See id.*
56. *See* Penal Law (Offenses Committed Abroad) § 4a(a) (Isr. 1978).
57. *See* Slevin, *supra* note 15, at A1.
58. *Id.*
59. *See CNN Morning News: Sheinbein May Return to U.S. for Trial* (CNN television broadcast, Mar. 2, 1998), *available in* LEXIS, Transcript #9803023V09.
60. *See* LoLordo, *supra* note 43, at 2A; Thomas L. Friedman, *Is He a Jew in Danger, or Just a French Outlaw?*, N.Y. TIMES, Dec. 16, 1986, at A4.

fled to Israel and became an Israeli citizen.[61] In the meantime, he was tried in absentia in France, convicted, and sentenced to life imprisonment.[62]

After a hiatus of approximately two years, Nakash surfaced in Israel and France demanded his extradition.[63] Even though he had not been an Israeli citizen at the time of the alleged offense, a strong current of public opinion in Israel favored allowing him sanctuary on the grounds that his life would be in danger from Arab gangs in French prisons.[64] Among those who supported his cause was Justice Minister Avraham Sharir, who stated publicly that "he would rather be known as soft-hearted than bear responsibility for sending Nakash to his death in a French prison."[65] Ultimately, however, the Israeli courts ruled that Nakash was extraditable, and he was returned to France where he was retried and sentenced to twenty years imprisonment.[66]

The Flatto-Sharon case, also involving France, resulted when French authorities requested the extradition of Shmuel Flatto-Sharon on charges of defrauding French citizens of amounts totaling hundreds of millions of dollars.[67] Flatto-Sharon secured sanctuary in Israel by the unusual expedient of using a portion of his ill-gotten gains to finance a campaign for election to the Knesset.[68] Riding a wave of anti-French sentiment among the Israeli public due to French refusal to extradite Palestinian terrorist Abu Daoud to Israel, Flatto-Sharon won enough votes to take a seat in the Knesset and obtain parliamentary immunity from extradition.[69]

Accordingly, it is apparent that the Offenses Committed Abroad Act was the product of a national consensus and represented deep-seated sentiments among the Israeli public against deporting Jews to face foreign justice. The Israeli concerns that motivated the 1978 legislation are directly applicable to the Sheinbein case. Sheinbein's alleged victim was a member of the Hispanic community, and numerous prominent figures from that community have publicly called for his extradition.[70] Given the

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61. *See* Friedman, *supra* note 60, at A4.
62. *See id.*
63. *See id.*
64. *See id.*
65. Herb Keinon, *Fit to be Tried: But Where?*, JERUSALEM POST, Oct. 17, 1997, at 11.
66. *See id.*
67. *See* LoLordo, *supra* note 43, at 2A.
68. *See id.*
69. *See* Keinon, *supra* note 65, at 11.
70. *See* Brett Marcy & Sean Scully, *Latinos Denounce Israel*, WASH. TIMES, Oct. 7, 1997, at C7.

prevalence of Hispanic organizations such as the Latin Kings in U.S. prisons, it has been argued that Sheinbein's life would be in danger if he were extradited, much as Nakash claimed that he was in danger of being murdered by vengeful Arabs if returned to France.[71] Thus, despite the fact that Sheinbein never lived in Israel, and claimed Israeli citizenship only after the offense was committed, he may be exactly the sort of person that the Offenses Committed Abroad Act was intended to assist. Despite Israeli officials' reluctance to allow Sheinbein to stay in Israel, the political ramifications of returning him were potentially serious.

The Offenses Committed Abroad Act, however, allows an alternative form of prosecution for Israeli citizens who cannot legally be extradited. Under the Act, an Israeli citizen who commits an offense outside Israel may be prosecuted in Israel on the foreign charge, with the assistance of foreign authorities.[72] This alternative was offered to Maryland authorities in the case of Sheinbein, and had been utilized successfully on three prior occasions by prosecutors in the United States in the trials of Isaac Kirman, Nadav Nakan and Yair Orr, Israel Mizrahi and Joseph Reisch.[73]

Conducting a joint prosecution in Israel involves more than learning to navigate new rules of criminal procedure. U.S. prosecutors, quite logically, cannot file charges against suspects in Israeli courts on their own authority. Commencing a trial in Israel under the Offenses Committed Abroad Act[74] requires a formal application by the U.S. prosecutor to the Israeli Ministry of Justice, transmitted through both the United States Justice Department and the State Department.[75] In the case of Isaac Kirman, a small-time drug dealer who fled to Israel in 1983, this resulted in a delay of nearly ten years in bringing him to trial. The

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71. *See CNN Morning News*, *supra* note 59 (quoting Sheinbein attorney David Liba'i as stating that someone might "take revenge" on him if he were extradited); *CNN Worldview: Israel Rules Sheinbein Goes to U.S.* (CNN television broadcast, Oct. 20, 1997), *available in* LEXIS, Transcript #97102002 18 (stating that "[p]rivately, some Israelis fear for Sheinbein's life in an American prison if he's convicted of dismembering a Hispanic teenager").

72. *See* Abramovsky, *Partners Against Crime*, *supra* note 34, at 1914 (citing Penal Law (Offenses Committed Abroad) § 4a(a) (Isr. 1978)).

73. *See id.* Kirman was accused of selling narcotics in New York, Nakan and Orr were accused of murder in California, and Mizrahi and Reisch were accused of murdering a Russian gangster in Brooklyn. *See id.* For an excellent and thorough discussion of the Kirman case by one of the participating prosecutors, see generally Mark D. Cohen, New York v. Kirman/Israel v. Kirman: *A Prosecution in Tel Aviv Under Israeli Law for a Narcotics Offense Committed in New York*, 4 CRIM. L.F. 597 (1993).

74. *See* Penal Law (Offenses Committed Abroad) § 4a(a) (Isr. 1978) (allowing Israeli courts to try suspects for offenses committed outside Israel which are extraditable offenses under the Extradition Law of 1954).

75. *See* Abramovsky, *Partners Against Crime*, *supra* note 34, at 1914.

relevant laws had never been utilized before, and delays resulted while both countries developed acceptable procedures.[76] By the time the relevant applications had been made, Israeli prosecutors had traveled to Suffolk County, New York, to gather evidence to support the accusation, and charges were ultimately filed.[77] Five years had passed.[78] By then, Kirman had completed his army service and disappeared.[79] It was not until 1993 that he was apprehended after being stopped in Tel Aviv for a routine traffic violation.[80]

Subsequent U.S.-Israeli joint prosecutions, however, have had the benefit of established procedure, thus minimizing delays. When Israel Mizrahi and Joseph Reisch were prosecuted in Tel Aviv for the Brooklyn murder of Russian gangster Michael Markowitz, the time lag from the death of Markowitz to the arrest of Mizrahi and Reisch in Israel was a little more than four years.[81] "In fact, due to streamlined procedures and more efficacious apprehension of the suspects in Israel, the trial of Yair Orr and Nadav Nakan, Israelis accused of committing murder in California, was held before the Kirman trial even though their offense was committed at a later date."[82] By this time, as well, Israeli and U.S. police had become more used to working together, developing a certain mutual familiarity with each other's systems that enabled them to effectively bypass procedure.[83] Moreover, precedent existed for the transportation of witnesses and evidence to Israel, including members of the Federal Witness Protection Program, to assist Israeli prosecutors in obtaining convictions.[84]

Thus, by the time Sheinbein was arrested in Israel, an efficient and tested mechanism existed for prosecution of Israeli-U.S. suspects in Israel. Unlike previous cases, however, Maryland authorities quickly rejected the Israeli offer to try Sheinbein in Israel, even though the Israeli government offered to pay the cost of Sheinbein's prosecution.[85] This anomaly, as with many other factors in the Sheinbein case, has its roots in domestic politics.

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76. *See id.*
77. *See id.*
78. *See id.*
79. *See id.*
80. *See id.*
81. *See* Robert E. Kessler, *Two Fugitives Arrested*, N.Y. NEWSDAY, Nov. 30, 1993, at 31.
82. Abramovsky, *Partners Against Crime, supra* note 34, at 1914.
83. *See id.* at 1914-15; *see also* Miles Corwin, *Israel Tries 2 Men in Killing of Montecito Couple*, L.A. TIMES, Nov. 23, 1990, at A3.
84. *See* Abramovsky, *Partners Against Crime, supra* note 34, at 1915.
85. *See* Arlo Wagner, *Sheinbein Case Turns on Israeli Citizenship, supra* note 14, at A1; *see also* Arlo Wagner, *Israeli High Court Rejects Extradition of Sheinbein,*

Robert Dean, the State's Attorney in Montgomery County, Maryland, faced a tough re-election battle in 1998.[86] Dean's re-election effort was complicated by the fact that he had failed to secure convictions in two high-profile cases and by political fallout from a 1997 sexual harassment claim filed by a senior prosecutor.[87] In addition, Dean had been accused of abusing his authority by stuffing the mailboxes of county law enforcement officials with flyers for a political fund-raising event.[88]

The battle over Sheinbein's extradition was a ready-made opportunity for Dean to remedy his political difficulties. Sheinbein's alleged victim, Enrique Tello, was Hispanic, and Dean saw the opportunity to improve his position with Montgomery County's large population of Hispanic voters by demanding that Sheinbein be returned to Maryland. By doing so, and by rejecting every Israeli attempt at compromise, Dean positioned himself as a defender of U.S. sovereignty and the rights of Maryland's Hispanic community.[89]

Dean's call for Sheinbein's extradition was soon taken up by national political figures. Israeli-U.S. relations were already strained over the stalled Middle East peace process, and several legislators at the federal level saw Israel's refusal to extradite Sheinbein as another provocation of the United States. Rep. Robert L. Livingston, the chair of the House Appropriations Committee, and then a leading candidate to succeed Newt Gingrich as Speaker of the House,[90] stated that the Sheinbein incident offended his "sensibilities as a citizen of the United States."[91] Upon receiving a letter of protest from Livingston, Secretary of State Madeleine K. Albright personally contacted Israeli Prime Minister Benjamin Netanyahu to ask for his "maximum cooperation" in the Sheinbein case.[92]

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*supra* note 14, at C9 (stating that Sheinbein's trial would proceed in Israel and would be paid for by the Israeli government).

86. *See* Katherine Shaver, *Jury's Out on Montgomery Prosecutor*, WASH. POST, Apr. 26, 1998, at B1.

87. *See id.*

88. *See* Arlo Wagner, *Loser Dean is Bruised*, WASH. TIMES, Sept. 17, 1998, at C3.

89. *See* Barton Gellman & Steve Vogel, *Israel to Seek Sheinbein's Extradition*, WASH. POST, Oct. 20, 1997, at A1 (noting anger within the Maryland Hispanic community at Israeli extradition law); *see also* Marcy & Scully, *supra* note 70, at C7.

90. *See* David W. Chen, *A Livingston Legacy Revived*, N.Y. TIMES, Nov. 23, 1998, at B1. However, on the day following his election as Speaker, Livingston resigned amid fallout from his admission to having an extramarital affair. *See* Nancy E. Roman, *House Shellshocked as Livingston Resigns*, WASH. TIMES, Dec. 20, 1998, at A1.

91. Gellman & Vick, *supra* note 17, at B1.

92. *See* Susan Levine & Barton Gellman, *Albright Urges Israel to Extradite Md. Teenager in Slaying*, WASH. POST, Oct. 7, 1997, at B1.

Rep. Livingston's efforts, however, went considerably beyond a protest note to the Secretary of State. On October 15, 1997, a House subcommittee which reported to Livingston's Appropriations Committee froze approximately $76 million in U.S. aid payments to Israel.[93] Although the frozen aid payments were ultimately restored, Livingston cited the Sheinbein incident as a key reason why Israel deserved punishment in the form of delays or cuts in U.S. aid.[94]

The growing political firestorm left Israeli authorities on the horns of a dilemma. From the beginning, Israeli law enforcement officials repeatedly stated that they did not want Sheinbein in Israel and that they were searching for a legal means to return him to the United States.[95] While this willingness to cooperate was without doubt motivated in part by concern for Israel's standing as a law-abiding nation, the primary motivation was Israel's need to preserve good political relations with the United States. This political motivation is evidenced by the fact that Israel had refused on numerous prior occasions to extradite Israeli citizens to the United States.[96] Yet, in the face of increasing pressure from influential U.S. figures, the Israeli government backed away from its prior stance and sought to expel Sheinbein to face trial in Maryland.[97]

However, if Sheinbein was determined to be an Israeli citizen, Israeli authorities would be required to violate their own law to extradite him, and a precedent would be set that would likely be used against Israel by states requesting extradition in the future. Thus, Israeli officials followed a dual course of action: on the one hand, they sought an Israeli court ruling holding that Sheinbein was not an Israeli citizen, and on the other hand they suggested various means by which the extradition deadlock might be broken through compromise. Thus far, the judicial strategy has been the more successful.

Sheinbein was born in the United States and had never lived in Israel. However, he steadfastly claimed that he was an Israeli citizen under an Israeli law that allows a child to claim citizenship

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93. *See* Matthew Dorf, *Congress Steps Up Pressure on Israel to Extradite Suspect*, JEWISH TELEGRAPHIC AGENCY, Oct. 15, 1997 (visited Feb. 10, 1998) <http://www.softlineweb.com>.

94. *See id.*

95. *See* Thomas W. Lippman & Barton Gellman, *Israel Still Seeks Legal Way to Return Suspect to U.S.*, WASH. POST, Oct. 8, 1997, at B1.

96. *See* Abramovsky, *Partners Against Crime*, *supra* note 34, at 1914-15 (discussing cases where Israel prosecuted Israeli fugitives for crimes in the United States rather than extraditing them).

97. *See* Fern Shen & James Rupert, *Extradition Battle to Resume After Cease-Fire*, WASH. POST, Feb. 8, 1998, at A9.

from either parent.[98] His father, Sol Sheinbein, was born in British-governed Palestine in 1944, and emigrated to the United States in 1950.[99] Thus, the elder Sheinbein had lived in Israel for two years after the creation of the Israeli state on May 14, 1948. Moreover, Sol Sheinbein has held a valid Israeli passport since 1976, and the Israeli government has not challenged his claim of citizenship.[100] Thus, Sheinbein has at least a colorable claim to citizenship under Israeli law.

The law of citizenship under which Sheinbein claims Israeli nationality, however, was not passed until 1952, two years after Sol Sheinbein emigrated to the United States.[101] Moreover, evidence existed that Sol Sheinbein's parents may have renounced their Israeli citizenship when they emigrated to the United States in 1950.[102] The Israeli Attorney General's office, which sought the extradition of Sheinbein, presented documents signed by Sheinbein's paternal grandparents upon leaving Israel[103] in which they stated that they had "no citizenship."[104] Thus, Israeli authorities argued that Sheinbein's grandparents made an effective renunciation of citizenship that precludes him from claiming Israeli nationality.[105] However, Sheinbein's grandmother, Deborah Levinger, undermined the Israeli authorities' position when she testified on March 18, 1998, that she had only signed these exit documents because she had been threatened and beaten by her husband.[106] If Levinger's renunciation was not voluntary, Sol Sheinbein would be able to claim Israeli citizenship through her, and Samuel Sheinbein could in turn claim Israeli nationality through Sol.

The other means by which Israeli authorities have sought to break the Sheinbein deadlock is through attempts to reach a compromise. On February 26, 1998, Moshe Ravid, the Israeli judge presiding over the Sheinbein citizenship hearing, proposed that Sheinbein voluntarily return to the United States to face prosecution with the understanding that he would be returned to Israel to serve his sentence if convicted.[107] Initially, this seemed

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98. Law on Citizenship (Isr. 1952), 1952, 6 L.S.I. 50 (1952).
99. *See* Shen & Rupert, *supra* note 97.
100. *See id.*
101. *See id.*
102. *See* Ramit Plushnick, *Grandmother Testifies At Sheinbein Hearing,* WASH. POST, Mar. 18, 1998, at B5.
103. *See* Shen & Rupert, *supra* note 97, at A9.
104. *See* Plushnick, *Grandmother Testifies At Sheinbein Hearing, supra* note 102, at B5.
105. *See* Shen & Rupert, *supra* note 97, at A9.
106. *See* Plushnick, *Grandmother Testifies At Sheinbein Hearing, supra* note 102, at B5.
107. *See* Lee Hockstader & Ramit Plushnick, *Judge Proposes Compromise in Sheinbein Case,* WASH. POST, Feb. 26, 1998, at A18.

to be a feasible alternative. Sheinbein's Israeli attorney said that he would seriously consider the Ravid Proposal,[108] which would have alleviated Sheinbein's concerns about the danger to his life in U.S. prisons while enabling Maryland authorities to conduct a trial in Maryland courts under Maryland law. Moreover, both the United States and Israel are signatories to a multilateral treaty, the Strasbourg Convention, under which convicted criminals may be transferred to prisons in their native countries.[109]

This proposal, however, was quickly rejected by Maryland authorities.[110] Under the Strasbourg Convention, a country to which a prisoner is transferred has the discretion to review and reduce a sentence imposed by a foreign court.[111] Maryland authorities argued that Israel, which does not impose sentences of life imprisonment without the possibility of parole, might exercise this discretion to release Sheinbein after serving less time than he would in a Maryland prison.[112] In a move that revealed Dean's effort to obtain a high-profile conviction prior to the 1998 election, he stated that his office would consider the Israeli offer, but only if Sheinbein agreed to waive trial and plead guilty.[113]

Ultimately, the Israeli Attorney General's judicial strategy proved more fruitful. On September 6, 1998, Judge Ravid ruled that Sheinbein could be extradited, albeit in a manner which raised questions as to the legality of his ruling.[114] Rejecting the evidence that Sheinbein's grandparents had renounced their Israeli citizenship, he ruled that Sol Sheinbein—and therefore his son Samuel—was an Israeli citizen.[115] However, he held that "Sheinbein is not enough of a citizen to deserve protection under Israeli law" because he had never lived in Israel, used a U.S. passport, and had no meaningful connections to the State of Israel.[116] Judge Ravid ruled that "[a] citizenship that is empty of

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108. *See id.*

109. Additional Protocol to the *Convention on the Transfer of Sentenced Persons*, Eur. Consult. Ass., 18th Sess., Doc. No. 167 (1997). This convention provided additional mechanisms for enforcement of the *Convention on the Transfer of Sentenced Persons*, Eur. Consult. Ass., 21st Sess., Doc. No. 112 (1983) [hereinafter Strasbourg Convention 1983].

110. *See* Scott Wilson & Ramit Plushnick, *Prosecutor Declines Sheinbein Proposal*, WASH. POST, Mar. 3, 1998, at D1.

111. *See* Strasbourg Convention 1983, *supra* note 109, at art. 9, 11.

112. *See* Ramit Plushnick, *Sheinbein Prosecutor Ties Israeli Prison Stay to Guilty Plea*, WASH. POST, Mar. 5, 1998, at A29.

113. *See id.*

114. *See* Lee Hockstader, *Judge Says Israel Can Extradite Sheinbein*, WASH. POST, Sept. 7, 1998, at A1.

115. *See id.*

116. *See id.*

meaning and all feelings and interest is not enough to afford protection from extradition."[117]

This decision came under instant criticism from the defense camp. Sheinbein's attorney, former Israeli Justice Minister David Liba'i, characterized Judge Ravid's ruling as "absurd," stating that "you are either a citizen, or you aren't."[118] Liba'i's comments echoed a more colorful description of the Israeli Attorney General's argument that was voiced the previous year on CNN by Dr. Abraham Abramovsky, who stated that such a plastic definition of citizenship is "like being half pregnant."

The novelty of Judge Ravid's definition of citizenship also called into question the finality of his decision. Judge Ravid's ruling echoes a proposal made by Israeli legislator Amnon Rubinstein, who proposed that Israeli citizens who reside abroad for long periods or lack meaningful ties to Israel should not come under the protection of the Offenses Committed Abroad Act.[119] However, the Rubinstein proposal has not yet been acted upon by the Knesset. By effectively taking it upon himself to play the role of legislator, Judge Ravid cast considerable doubt on whether his ruling would withstand the inevitable appeal. In addition, the Israeli ruling called into question whether Sheinbein would be eligible to serve his sentence in Israel under the Strasbourg Convention.[120] Although his Israeli nationality has apparently been acknowledged, his "lack of meaningful contact" with Israel may also influence the Israeli and U.S. courts' willingness to accept his citizenship for purposes of transfer of penal sanctions. Thus, Judge Ravid may have unwittingly foreclosed his own prior compromise proposal.

The fears of American law enforcement officials concerning the validity of Judge Ravid's decision were realized on February 25, 1999, when a panel of the Israeli Supreme Court determined in a 3-2 decision that Sheinbein could not be extradited.[121] Expressing the majority opinion over a stinging dissent by Chief

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117. *See id.* Ironically, even if Samuel Sheinbein is ultimately extradited, Sol Sheinbein probably has sufficient ties to Israel to avoid extradition under the standard set by Judge Ravid, as he was born in Israel and carries an Israeli passport. *See* Shen & Rupert, *supra* note 97, at A9. Thus, it is unlikely that Sol Sheinbein will face trial on the obstruction of justice charges which have been lodged against him in Maryland.

118. Hockstader, *supra* note 114, at A1.

119. *See* Keinon, *supra* note 65, at 11.

120. *See* Strasbourg Convention 1983, *supra* note 109, at art. 3(1)(a) (specifying requirement that transfer only be allowed if the convicted is a national of the administering State).

121. *See* Arlo Wagner, *Israeli High Court Rejects Extradition of Sheinbein*, *supra* note 14, at C9.

Justice Aharon Barak,[122] Justice Theodor Orr rejected Judge Ravid's conception of Israeli citizenship, holding that Israel would not recognize two categories of citizenship in the absence of legislative authorization.[123] In addition, while noting that the Offenses Committed Abroad Act violated Israel's 1962 extradition treaty with the United States, Justice Orr determined that Israeli domestic law held primacy and that the Israeli courts were bound to enforce the law as long as it was on the books.[124]

The Israeli government responded to the Supreme Court's decision by requesting a rehearing en banc.[125] However, the high court had only granted such a rehearing once in its fifty-year history, and, on March 22, 1999, refused the government's petition in regard to the Sheinbein case.[126] This decision destroyed the final hope of Israeli and American authorities for Sheinbein's extradition, as the Rubinstein legislation would not operate retroactively even if passed by the Knesset.[127] Instead, on the same day that the Supreme Court rejected the government's petition for rehearing, Sheinbein was indicted on charges of first degree murder in the District Court of Tel Aviv.[128]

A trial on the Sheinbein case in Tel Aviv is anticipated in early 1999, although this timetable may be drastically affected by the strategy of Sheinbein's defense attorneys and the willingness of American authorities to cooperate with the Israeli prosecutors.[129] Ironically, the event most likely to break the Sheinbein logjam may not be any ruling by an Israeli court but the election of a new State's Attorney in Montgomery County, Maryland. On September 15, 1998,

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122. *See id.* (quoting Barak's dissent as stating: "How can one imagine that a foreign citizen, whose affinity is with a foreign country, can argue before Israeli courts that he does not trust the laws of his country and its jurisprudence?").

123. *See id.*

124. *See id.*

125. *See Israel's Highest Court Rejects Final Appeal to Extradite U.S. Teen,* BALT. SUN, Mar. 22, 1999, at 2B.

126. *Id.*

127. *See* Lenny Ben-David, *For Israel, No More Sheinbeins,* WASH. POST, Mar. 23, 1999, at A16 (stating that the Rubinstein proposal had passed the Judiciary Committee of the Knesset but would not operate retroactively). However, American courts have held that retroactivity in extradition legislation is not barred by the prohibition against ex post facto laws, raising the possibility that Israel—which follows the Anglo-American common law tradition—might succeed in extraditing Sheinbein if the Rubinstein legislation is amended to provide for retroactivity. *See* McMullen v. United States, 989 F.2d 603 (2d Cir. 1993) (en banc) (stating that retroactive application of an amendment to the United States-United Kingdom extradition treaty did not violate constitutional prohibitions against ex post facto legislation or bills of attainder).

128. *See Teen Indicted in Israel,* NEWSDAY, Mar. 23, 1999, at A22 (stating that arraignment was expected to proceed within one month and that trial would commence in six to nine months).

129. *See id.*

Dean's re-election bid was defeated by the Democratic primary victory of Douglas Gansler, a thirty-five-year-old former federal prosecutor.[130] The new State's Attorney, Gansler, who was elected in the general election of November 3, 1998,[131] may break the Sheinbein impasse by adopting a more conciliatory stance toward the Israeli position.[132] Nevertheless, substantial damage has already been done; the long-standing tradition of U.S.-Israeli law enforcement cooperation has become hostage to U.S. domestic politics.

## III. DETAILS, DETAILS: POLITICAL ISSUES WHICH CAUSE DIFFICULTY TO THE UNITED STATES IN OBTAINING EXTRADITION OF SUSPECTS

The Sheinbein case is only the most recent and furthest reaching example of the manner in which the pursuit of fugitives has complicated international relations. In addition to the problem posed by countries that refuse to extradite their own nationals, several other measures taken by or against the United States have hindered both diplomacy and international law enforcement. These can be broken down into three general categories: (1) refusal of extradition due to conflicts in criminal procedural rights, (2) resort to extralegal means to obtain extradition, and (3) differences in substantive criminal law.

### A. *Differing Legal Systems*

One issue which has stymied both past and present extradition efforts is the differences in criminal procedure between the United States and asylum nations. Although, under the doctrine of non-inquiry, United States courts do not normally examine the due process standards of foreign criminal justice systems prior to granting requests for extradition,[133] the judicial systems of certain other nations refuse to extradite suspects to countries whose laws do not comport with their own standards of due process.[134] When extradition to the United States is refused

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130. *See* Wagner, *Loser Dean is Bruised*, *supra* note 88, at C3.

131. *See* Katherine Shaver & Michael E. Ruane, *The 1998 Election: Montgomery County; "Democratic Tide" Prevails as Party Reasserts Power*, WASH. POST, Nov. 4, 1998, at A44.

132. *See Israel's Highest Court Rejects Final Appeal to Extradite U.S. Teen*, *supra* note 125, at 2B (noting that Gansler expressed disappointment at the decision of the Israeli Supreme Court but recognized the efforts of the Israeli government to extradite Sheinbein and promised to cooperate with Israel).

133. *See* Ethan A. Nadelmann, *The Evolution of United States Involvement in the International Rendition of Fugitive Criminals*, 25 N.Y.U. J. INT'L L. & POL. 813, 842 (1993).

134. *See id.* at 814.

on these grounds, the political blow to the U.S. government is twofold: not only are the U.S. authorities denied jurisdiction over a fugitive, but U.S. justice has effectively been condemned in a foreign court.

A case in point was the recent attempt by the United States to obtain the extradition of Ira Einhorn from France. Einhorn, a popular guru of 1960s Philadelphia, "was locally famous for speaking at the first Earth Day, opposing the Vietnam War, and passing out marijuana joints at public occasions."[135] Holly Maddux, a Texas native attracted to the counterculture, met Einhorn in Philadelphia and lived with him for five years during the 1970s.[136] After a stormy relationship, Maddux decided in September of 1977 to leave Einhorn, following which Einhorn flew into a rage and threatened to dump her belongings in the street.[137] Maddux telephoned her family, and told them that she was going to Einhorn's apartment to "calm [him] down."[138] She was never seen alive again.[139]

Following Maddux' death, Einhorn refused to answer questions posed by detectives and would not allow them to enter his apartment.[140] However, he was not charged with Maddux' murder until two years later, when a neighbor noticed an unpleasant odor coming from his apartment.[141] This time, police obtained a search warrant for Einhorn's residence, and discovered Maddux' body in a closet along with three air fresheners.[142] Her skull had been broken in thirteen places.[143]

Subsequently, Einhorn was charged with first degree murder in Maddux' death.[144] As a local celebrity with strong ties to the community, he was freed on four thousand dollar bond.[145] He attended pretrial hearings, but disappeared on the eve of trial in 1981.[146] Some twelve years later, after attempts to capture him had proved fruitless, Einhorn was tried in absentia and convicted of murder by a Philadelphia jury.[147]

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135. *See* Jack Broom, *Sister Won't Rest Until Killer Isn't Free in France*, SUNDAY GAZETTE-MAIL, Dec. 21, 1997, at 17A.
136. *See id.*
137. *See id.*
138. *See id.*
139. *See id.*
140. *See id.*
141. *See id.*
142. *See id.*
143. *See id.*
144. *See French Reject Extradition of Ex-U.S. Guru*, DALLAS MORNING NEWS, Dec. 5, 1997, at 12A.
145. *See* Broom, *supra* note 135, at 17A.
146. *See French Reject Extradition of Ex-U.S. Guru, supra* note 144, at 12A.
147. *See id.*

In the meantime, Einhorn had managed to remain one step ahead of the FBI, living in Britain, Ireland, Switzerland, Spain, Denmark, and Sweden.[148] Around the time of his Philadelphia conviction, he moved to France and lived quietly for four years in the village of Champagne-Mouton with his Swedish wife.[149] In June 1997, however, Einhorn's wife applied for a driver's license in nearby Bordeaux, and her name came up in a French government computer as being linked to an international fugitive.[150] Acting on a request from the FBI, French police arrested Einhorn, and he was bound over to a French court for extradition proceedings.[151]

The matter of Einhorn's extradition was immediately complicated by differences in due process standards between the U.S. and French judicial systems. Under French law, a fugitive who is tried and convicted in absentia is entitled to a new trial if he subsequently surrenders or is captured.[152] In Pennsylvania, however, the right to a new trial after a conviction in absentia does not automatically attach.[153]

At the time, however, U.S. experts believed that this would not be an obstacle to Einhorn's extradition.[154] The extradition treaty between the United States and France did not specifically forbid extradition of fugitives who had been convicted in absentia, and contained no exceptions under which Einhorn could claim protection.[155] Moreover, U.S. courts had granted extradition in prior cases where fugitives had been convicted in absentia in foreign countries,[156] and the ratification of an extradition treaty carries a strong expectation, although not a requirement, of reciprocity.[157]

Nevertheless, a French magistrates' court in the city of Bordelais ruled in September of 1997 that Einhorn could not be extradited because he would not be guaranteed a retrial if returned to the United States.[158] Instead, he was freed on his

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148. *See id.*
149. *See id.*
150. *See id.*
151. *See id.*
152. *See id.*
153. *See, e.g.*, Commonwealth v. Ford, 715 A.2d 1141 (1998).
154. *See* Sandy Schopbach, *French Court Delays Decision on Einhorn and Sets a Hearing*, PHILADELPHIA INQUIRER, Sept. 24, 1997, at A3 (statement of Joel Rosen, assistant district attorney who successfully prosecuted Einhorn in 1993).
155. Extradition Treaty, Jan. 6, 1909, U.S.-Fr., 37 Stat. 1526, *amended by* Supplementary Convention, Feb. 12, 1970, U.S.-Fr., 22 U.S.T. 407.
156. *See* Gallina v. Fraser, 278 F.2d 77 (2d Cir. 1960). Some American courts, however, have required independent findings of probable cause before extraditing a person convicted in absentia. *See id.* at 79.
157. *See* Paul Michell, *Domestic Rights and International Responsibilities: Extradition Under the Canadian Charter*, 23 YALE J. INT'L L. 141, 167 (1998).
158. *See French Reject Extradition of Ex-U.S. Guru*, *supra* note 144, at 12A.

own recognizance and resumed his peaceful existence in rural France.[159] This ruling was upheld by the Bordeaux Court of Appeals in December,[160] and ultimately by France's highest constitutional court,[161] despite the passage of a special law by the Pennsylvania legislature in January 1998 guaranteeing Einhorn a retrial if extradited to the United States.[162]

Not unsurprisingly, this was "received as a slap in the face by American prosecutors."[163] Effectively, the French court had branded the U.S. justice system as lacking in fundamental fairness; in fact, the magistrate who ruled on the United States's original extradition application "reproached the American justice system for not respecting the fundamental guarantee of procedure and the protection of the rights of the defense to the degree accorded in France."[164] While such decisions may be momentarily satisfying to asylum states, they can also undermine law enforcement cooperation in the long term by rendering the requesting state less willing to offer assistance in future cases where extradition is requested.

### B. *Irregular Rendition and Abduction*

Political difficulties can also arise when the United States, frustrated with obstacles in the regular extradition process, resorts to extralegal means to obtain jurisdiction over fugitives. This most often occurs when a suspect flees to a nation with which the United States has no extradition treaty, or where foreign law prevents the implementation of the normal extradition process.

U.S. authorities' use of extralegal means to return fugitives to the United States can be divided into two categories. The first, irregular rendition, is a cooperative process under which the law enforcement authorities of the asylum state deliver the suspect to their counterparts in the requesting state outside the formal extradition process.[165] The second, abduction, is a unilateral

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159. *See* Broom, *supra* note 135, at 17A.

160. *See* Herzberg Nathaniel, *La car d'appel de Bourdeaux refuse l'extradition de l'ancien leader hippie Ira Einhorn* [*The Bordeaux Court of Appeals Refuses the Extradition of Former Hippie Leader Ira Einhorn*], LE MONDE, Dec. 6, 1997 [hereinafter *The Bordeaux Court of Appeals*].

161. *See French Court Rules Against Extradition*, DALLAS MORNING NEWS, Mar. 14, 1998, at 19A.

162. 42 Pa. Cons. Stat. Ann. §9543(c) (West 1988).

163. *French Reject Extradition of Ex-U.S. Guru*, *supra* note 144, at 12A.

164. *The Bordeaux Court of Appeals*, *supra* note 160.

165. *See* M. Cherif Bassiouni, *Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition*, 7 VAND. J. TRANSNAT'L L. 25, 33-37 (1973).

process under which the requesting state arranges the capture and transportation of the suspect without the knowledge or permission of the asylum state.[166] These methods, especially the second, have often been used by the United States in obtaining fugitives from Latin American countries that have been historically regarded as within the U.S. sphere of influence, and that contain narcotics trafficking organizations which are of particular concern to U.S. law enforcement.[167] In fact, both former Attorney General Dick Thornburgh and President Bill Clinton have sanctioned the use of unilateral abduction in U.S. law enforcement, particularly in cases involving drugs or terrorism.[168]

The legality of irregular rendition has been upheld repeatedly by the U.S. courts under the "Ker-Frisbie doctrine," established in *Ker v. Illinois* and *Frisbie v. Collins*.[169] Both cases upheld the apprehension of a suspect via irregular means so that he could be brought into the jurisdiction where his crimes were committed, whether international or interstate.[170]

Until the 1970s, the use of irregular rendition by the United States was uncommon and generally limited to high-profile cases.[171] With the rise of international drug trafficking in the 1970s, however, irregular rendition became more common, especially from Latin American drug source and trans-shipment countries.[172] In many cases, U.S. efforts to obtain extradition were stymied by laws of the requested state that restricted the extradition of nationals or by corrupt Latin American judicial systems. As a result, extrajudicial cooperation with Latin American police agencies was sought by the United States.[173] In the case of drug traffickers who were not citizens of the nations in

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166. *See id.* at 28-33.

167. *See Panama: Acquittal of Suspects in Killing of U.S. Soldier Sets Off U.S.-Panama Feud*, IAC NEWSL. DATABASE, Nov. 13, 1997 (quoting unnamed State Department officials as stating that unilateral abductions were "fairly common" in Latin America).

168. *See* John Diamond, *U.S. Willing to Use Force to Apprehend Terrorists*, CHATTANOOGA TIMES, Feb. 5, 1997, at A9.

169. Ker v. Illinois, 119 U.S. 436 (1886); Frisbie v. Collins, 342 U.S. 519 (1952).

170. *See id.* at 522; *Ker*, 119 U.S. at 443-44.

171. *See* Nadelmann, *supra* note 133, at 860. These included, for example, the case of Samuel Insull, a major Chicago financier accused of fraud who was seized in 1934 by Turkish police aboard a Greek ship in Turkish waters after futile attempts by the United States to obtain his extradition from Greece. *See* United States v. Insull, 8 F. Supp. 310 (N.D. Ill. 1934). Similarly, in 1951, Mexican police seized accused spy Morton Sobell, an associate of Julius and Ethel Rosenberg, and delivered him to the United States with the assistance of the FBI. *See* United States v. Sobell, 244 F.2d 520 (2d Cir. 1957).

172. *See* Nadelmann, *supra* note 133, at 861.

173. *Id.*

which they resided, such cooperation was often easy to obtain; in the early 1970s, almost sixty major drug traffickers were deported from Latin American countries without formal extradition procedures and subsequently arrested by U.S. authorities.[174] In some cases, extrajudicial cooperation was extended to apprehend drug traffickers living in their native countries. For example, in "Operation Grab-Bag" newly-installed Chilean dictator Augusto Pinochet seized approximately twenty Chileans wanted by the Drug Enforcement Agency (DEA) and turned them over to the United States in early 1974.[175]

Beginning in the 1980s, U.S. law enforcement authorities adopted an increasingly aggressive attitude toward irregular rendition, especially in the apprehension of suspected terrorists or drug traffickers. The irregular rendition of Juan Matta-Ballesteros, a Honduran drug trafficker implicated in the 1985 murder of DEA agent Enrique Camarena is illustrative.[176] The United States was unable to obtain the extradition of Matta-Ballesteros from Honduras because Honduran law forbade the extradition of Honduran citizens,[177] and because Matta-Ballesteros had acquired substantial influence within the Honduran government.[178] Thus, in 1988, Honduran military officials accompanied by U.S. Marshals arrested Matta-Ballesteros, drove him to the airport, and flew him to the United States.[179] Despite street protests in Honduras that resulted in the American embassy being set afire by a mob, no formal protest was lodged by the Honduran government.[180]

The second method of extralegal rendition, outright abduction of suspects by U.S. law enforcement agencies, has a long and troubled history, especially in drug cases and those involving

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174. *Id.* Cases where such deportations have been upheld by American courts include *United States v. Cordero*, 668 F.2d 32 (1st Cir. 1981) (defendants deported from Panama to Puerto Rico at the request of DEA agents), and *United States v. Herrera*, 504 F.2d 859 (5th Cir. 1974) (Colombian national arrested in Peru at the request of American agents during a stopover on a Chile-Ecuador flight and deported to Miami). Another recent instance of rendition through deportation occurred in 1992 when Israeli drug trafficker Eli Ohana was deported from Bolivia to face heroin importation charges in New York City. *See One of the Chiefs of Israeli Organized Crime in New York is Captured in Bolivia*, MA'ARIV, Nov. 27, 1991.

175. *See* Nadelmann, *supra* note 133, at 861.

176. *See* Matta-Ballesteros v. Henman, 896 F.2d 255 (7th Cir. 1990); *see also* Doyle McManus & Ronald J. Ostrow, *U.S. Aides Link Honduran Military Chief, Drug Trade*, L.A. TIMES, Feb. 13, 1998, at 1 (stating that Matta-Ballesteros was one of several suspects implicated in the Camerena murder).

177. *See id.* at 256.

178. *See id.*

179. *See id.*

180. *See* Matta-Ballesteros *ex rel.* Solar v. Henman, 697 F. Supp. 1040, 1044 (S.D. Ill. 1988), *aff'd*, 896 F.2d. 255 (7th Cir. 1990).

abduction of suspects from Third World countries. The legality of international abductions by U.S. law enforcement agents has been upheld by U.S. courts with very few limitations. In *United States v. Toscanino*,[181] for example, the Second Circuit heard the case of an Italian national, accused of smuggling narcotics into the United States, who was kidnapped in Uruguay by Uruguayan agents and driven to Brazil, where he was interrogated and tortured by Brazilian police with the awareness of U.S. law enforcement agencies.[182] After seventeen days in Brazil, Toscanino was drugged and put on an airplane to the United States.[183]

The Second Circuit reiterated the *Ker-Frisbie* provision that "due process [is] limited to the guarantee of a constitutionally fair trial, regardless of the method by which jurisdiction was obtained over the defendant."[184] Noting an "erosion of *Frisbie*,"[185] however, the *Toscanino* court held that a foreign national who is the victim of an unreasonable search or seizure conducted by U.S. law enforcement agents outside the United States was entitled to the protection of the Fourth Amendment.[186] The *Toscanino* court thus required that the United States "divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights."[187]

The kidnapping itself, however, was not held by the *Toscanino* court to constitute such a violation. Rather, Toscanino's Fourth Amendment rights would only be deemed violated if it could be shown that the abduction was conducted in a manner that "shocked the conscience"[188] and was accomplished at the direction or with the active participation of U.S. officials.[189] On remand, the trial court found that, although U.S. law enforcement agents had known of the kidnapping, they had not been involved in Toscanino's torture and that Toscanino need not be released.[190]

In *Lujan v. Gengler*,[191] a decision rendered the same year as *Toscanino*, the Second Circuit again "decline[d] to adopt . . . the

181. 500 F.2d 267 (2d Cir. 1974).
182. *See id.* at 269-70.
183. *See id.* at 270.
184. *See id.* at 272.
185. *See id.* at 273.
186. *See id.* at 280.
187. *Id.* at 275.
188. *Id.* at 273 (quoting Justice Frankfurter in Rochin v. California, 342 U.S. 165, 169 (1952)).
189. *See id.* at 281.
190. *See* United States v. Toscanino, 398 F. Supp. 916 (E.D.N.Y. 1975).
191. United States *ex rel.* Lujan v. Gengler, 510 F.2d 62 (2d Cir. 1975).

extreme remedy of requiring dismissal of the indictment" against an abducted suspect on the grounds that "adoption of an exclusionary rule here would confer total immunity to criminal prosecution."[192] The constitutional protection enjoyed by foreign nationals abducted by U.S. agents was again drastically limited to kidnappings that were "so shocking that the abduction constituted a denial of due process."[193] It is essential to note here that no U.S. court has ever found that the actions of U.S. law enforcement agents abroad were sufficiently shocking to the conscience, no matter what the circumstances alleged.[194] In fact, not only has no U.S. court ever invoked the "*Toscanino* exception," the Seventh Circuit rejected the exception outright in *Matta-Ballesteros v. Henman.*[195]

Although the *Lujan* court also limited the recourse that abductees might have to international law, holding that "abduction from another country violates international law only when the offended state objects to the conduct,"[196] the United States Supreme Court held in *United States v. Alvarez-Machain*[197] that even a timely objection by the government of the offended state may not be sufficient to render an U.S. abduction of a foreign national illegal.[198] The defendant, Humberto Alvarez-Machain, was kidnapped from his medical office in Guadalajara, Mexico, by paid agents of the United States DEA.[199] Following his abduction, the Mexican government "made several specific formal

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192. *Id.* at 68 n.9.

193. United States v. Alvarez-Machain, 971 F.2d 310 (9th Cir. 1992).

194. Examples of cases in which the "Toscanino exception" has been invoked but denied include *United States v. Fielding*, 645 F.2d 719, 723-24 (9th Cir. 1981) (holding that American agents were involved in defendant's kidnapping and torture in Peru); *United States v. Lopez*, 542 F.2d 283, 284 (5th Cir. 1976) (holding that the defendant, abducted and tortured for eight days in the Dominican Republic, could not invoke the Toscanino exemption unless "the United States or its agents played a direct role" in his torture and interrogation); *United States v. Reed*, 639 F.2d 896, 902 (2d Cir. 1981) (holding that the Toscanino exception did not apply to agents who threatened a fugitive and forced him onto a United States-bound airplane at gunpoint); and *United States v. Noriega*, 746 F.Supp. 1506, 1531-32 (S.D. Fla. 1990) (holding that the invasion of Panama to seize defendant, even if illegal, could not implicate the Toscanino exception because no due process right specific to the defendant was violated).

195. 896 F.2d 255, 263 (7th Cir. 1990) (holding that the defendant, tortured by Honduran military authorities under the supervision of U.S. Marshals and subsequently tortured by U.S. Marshals aboard a United States-bound airplane, was not entitled to the dismissal of his indictment, although he might be entitled to other legal remedies for American police misconduct).

196. *Lujan*, 510 F.2d at 68.

197. 504 U.S. 655 (1992).

198. *Id.* at 667.

199. United States v. Alvarez-Machain, 946 F.2d 1466, 1466-67 (9th Cir. 1991).

diplomatic protests to the United States government . . . [and] stated unequivocally that the abduction of Dr. Alvarez-Machain by United States agents violated the 1980 Extradition Treaty . . . [and] at all times demanded his immediate repatriation to Mexico."[200] The Ninth Circuit followed the standard set in *Lujan* and ordered Alvarez-Machain's return to Mexico pursuant to the demand of the Mexican government.[201]

In a landmark decision, however, the United States Supreme Court reversed the Ninth Circuit.[202] In validating Alvarez-Machain's abduction, the Court ruled that in construing a treaty, its meaning must be determined solely by its specific terms.[203] The Court noted that the extradition treaty between the United States and Mexico "says nothing about the obligations of the United States and Mexico to refrain from forcible abductions of people from the territory of the other nation, or the consequences under the Treaty if such an abduction occurs."[204] The majority opinion further held that "[g]eneral principles of international law provide no basis for interpreting the Treaty to include an implied term prohibiting international abductions."[205] The Court thus concluded that Alvarez-Machain's claim that the 1980 treaty had been violated was invalid and that the case must be remanded to the Ninth Circuit to determine whether the circumstances of the kidnapping were so shocking as to be a per se violation of international law.[206] The Ninth Circuit held that they were not.[207] However, Alvarez-Machain was eventually released by Judge Edward Rafeedie on the grounds that the prosecution's case was built on "hunches" and "the wildest speculation."[208]

In sum, U.S. courts have decreed that abduction of suspects from foreign countries is only unlawful if an extradition treaty exists which specifically forbids kidnappings. While this policy has short-term benefits for U.S. law enforcement, it also has the potential to pose long-term difficulties for cooperation in criminal matters between the United States and nations in which such abductions have been conducted. For instance, following the Alvarez-Machain abduction, Mexico threatened to cease all joint counter-drug activities with U.S. law enforcement unless the

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200. *Id.* at 1467.
201. *See id.*
202. *Alvarez-Machain*, 504 U.S. at 670.
203. *Id.* at 669.
204. *Id.* at 663.
205. *Id.* at 55.
206. *See id.* at 670.
207. *See* United States v. Alvarez-Machain, 971 F.2d 310, 311 (9th Cir. 1992).
208. Jerry Seper, *Justice Sued for $20 Million by Doctor in Camarena Case*, WASH. TIMES, July 10, 1993, at A5, *available in* 1993 WL 5836671.

United States agreed to refrain from future abductions of Mexican citizens.[209] This potential law enforcement disaster was averted only when President George Bush personally promised the government of Mexico to refrain from future violations of Mexican sovereignty and to renegotiate the Mexico-United States extradition treaty to forbid abductions.[210] Other nations, such as Jamaica, have also characterized unilateral U.S. law enforcement efforts as a violation of national sovereignty, and have threatened to undermine vital areas of law enforcement cooperation in combating illegal drugs at their source.[211] Thus, too heavy-handed a policy of unilateral rendition has made, and will continue to make, foreign nations less willing to cooperate when voluntary assistance is requested.[212]

### C. *The Dual Criminality Problem*

A third obstacle to extradition occurs when a fugitive is accused of an offense that is not punishable as a crime in the asylum state. The majority of extradition treaties require dual criminality as a precondition for extradition; that is, the offense for which extradition is sought must be an offense in both the requesting state and the asylum state.[213] Thus, if a fugitive flees to a country where the offense with which he is charged is not a crime, he may effectively immunize himself from prosecution.

One area in which the dual criminality problem has been an especially frustrating impediment to the extradition process is transnational money laundering. Many nations, especially those of the former Communist bloc, have lagged behind the United States in enacting statutes to combat individuals who conceal the origin of illegally obtained funds.[214] For instance, the Russian Federation did not reform its penal code to include a money laundering statute until 1996, and similar reforms are still pending in other former Soviet republics.[215] Given the increasing prevalence of criminals from the former Soviet Union in U.S.

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209. *See* Editorial, *Border Backlash: Mexico Reacts to U.S. Kidnap Approval*, SAN DIEGO UNION-TRIB., June 17, 1992, at B6, *available in* 1992 WL 4244426.

210. *See id.*; *see also* Diamond, *supra* note 168, at A9.

211. *See* Mark Fineman, *Caribbean Forming Own Alliances; Many Fault U.S. Attitudes in the Region*, SUN-SENTINEL (Ft. Lauderdale), Jul. 12, 1998, at 21A (noting that many Caribbean nations, including Jamaica and Barbados, regard certain American anti-drug policies as a violation of their sovereignty).

212. *See* Editorial, *supra* note 209, at B6.

213. *See* Abraham Abramovsky, *Prosecuting the "Russian Mafia": Recent Russian Legislation and Increased Bilateral Cooperation May Provide the Means*, 37 VA. J. INT'L L. 191, 208-09 (1996).

214. *See id.* at 205.

215. *See id.* at 219.

organized crime,[216] this lack of parallel penal statutes makes it possible for a significant fraction of money launderers operating in the United States to escape prosecution simply by returning home with their ill-gotten gains.

A similar discrepancy in penal legislation exists between the United States and Israel. Although Israel has instituted certain elementary anti-money laundering measures such as a voluntary transaction reporting system, it is not an offense in Israel to conceal the origin of the proceeds of crime.[217] Despite the introduction of comprehensive money laundering legislation in the Israeli Knesset, the Israeli government has thus far failed to enact these proposals into law.[218] Thus, Israeli money launderers, both those who obtain their citizenship through birth and those who are recent immigrants from Russia, are immune, not only from extradition but from joint prosecution such as was offered in the Sheinbein case if they return to Israel after committing crimes in the United States.

A case in point is provided by the breakup of an Israeli-Colombian money laundering ring in Connecticut in the early 1990s.[219] In 1993, FBI agents in New Haven announced the arrest of fourteen members of a criminal organization believed to have laundered hundreds of millions of dollars for the Cali cocaine cartel.[220] One of the ringleaders of this organization, an Israeli national named Adi Tal—who had previously served time in a federal prison on other money laundering charges—evaded arrest and subsequently fled to Israel.[221] Although both Israeli and U.S. authorities are aware of Tal's whereabouts, he can neither be extradited to the United States, nor arrested in Israel because the offense with which he is charged in the United States is not a crime in his native land.[222] Thus, as long as Tal does not leave Israel, he is free to enjoy the proceeds of his criminal activity.

The increasingly international nature of money laundering means that a nation which refuses to extradite or prosecute money launderers may present an obstacle to the law enforcement efforts of many nations. For instance, in the U.S.-Israeli context, authorities recently broke up a money laundering

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216. *See id.* at 194.

217. *See Israel a Major Money-Laundering Centre for the Mafia,* AGENCE FRANCE-PRESSE, June 25, 1997, *available in* 1997 WL 2140861.

218. *See* David Harris, *Police: Israel is a Global Money-Laundering Center,* JERUSALEM POST, June 26, 1997, at 8, *available in* 1997 WL 7956391.

219. *See* Edward Mahony, *13 Indicted in Drug Money Laundering Scheme,* HARTFORD COURANT, May 26, 1993, at A1.

220. *See id.*

221. *See id.*

222. *See id.*

ring whose members operated in Israel, the United States, and France.[223] Russian immigrants to Israel, such as Michael Mikhailov and Gregory Lerner, have also laundered millions of dollars in Israel, Europe, and the United States, but remained outside the reach of prosecutors for long periods by residing in jurisdictions where money laundering is not an offense.[224] This problem is not confined to Israel; in another recent case, a Russian employee of Citibank laundered stolen funds through accounts in seven countries, but could not be prosecuted because money laundering was not recognized as an offense at that time in Russia.[225]

The rise of Israeli money laundering has, to some extent, led to a deterioration in U.S.-Israeli relations even prior to the Sheinbein case. After enacting its own money laundering statute, the United States has repeatedly brought political pressure to bear upon other countries to criminalize money laundering.[226] Certain nations, such as Russia, Mexico and even Colombia, have acceded to the U.S. request and added money laundering statutes to their domestic criminal code.[227] Israel, however, has thus far failed to do so. The result has been that Israel has become one of the primary money laundering nations of the world and has incurred the ire of law enforcement agencies in the United States.[228]

This has been felt keenly by the Israeli National Police themselves, who are the primary sponsors of the anti-money

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223. *See Israel a Major Money-Laundering Center for the Mafia, supra* note 217.

224. *See* Linda Slobodian, *Just Who is John Doe?*, CALGARY SUN, Dec. 20, 1998, at 38 (describing how lack of accountability in Israel aids Russian Mafia in money laundering activities); *see also* Richard C. Paddock, *A New Breed of Gangster is Globalizing Russian Crime*, L.A. TIMES, Sept. 23, 1998, at A1.

225. *See* Abramovsky, *Prosecuting the "Russian Mafia," supra* note 213, at 197, 205.

226. *See, e.g.*, Michele Moser, *Switzerland: New Exceptions to Bank Secrecy Laws Aimed at Money Laundering and Organized Crime*, 21 CASE W. RES. J. INT'L L., 321, 333 (1995) (noting American political pressure on foreign countries, including Switzerland, to pass money laundering legislation).

227. *See* Jimmy Gurulé, *The 1998 U.N. Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances—A Ten-Year Perspective: Is International Cooperation Merely Illusory?*, 22 FORDHAM INT'L L.J. 74, 86 n.50 (1998) (Colombia); *id.* at 86 n.49 (Brazil); Mathew Paulose Jr., United States v. McDougald: *The Anathema to 18 U.S.C. § 1956 and National Efforts Against Money Laundering*, 21 FORDHAM INT'L L.J. 253, 269 (1997) (Mexico); Abramovsky, *Prosecuting the "Russian Mafia," supra* note 213, at 219 (Russia).

228. *See Israel a Major Money-Laundering Centre for the Mafia, supra* note 217 (stating that Israel has become one of the world's premier money laundering centers).

laundering statute currently pending in the Israeli Knesset.[229] For example, at a recent session of the Knesset, a spokesman for the Israeli police estimated that approximately $4 billion in laundered money—representing five to nine percent of the Israeli economy—passed through Israel each year, and blamed the country's lack of effective anti-laundering legislation as the primary reason for this high volume.[230] In other cases in which Israelis have been implicated in international money laundering operations, the Israeli police have repeatedly expressed their exasperation at their inability to prosecute these offenders.[231] In an effort to combat money laundering as much as possible within the framework of Israeli law, Israeli authorities have concluded agreements with police agencies in countries such as Russia and Ukraine to exchange money laundering information and to assist in foreign investigations.[232] Due to the lack of effective domestic legislation, however, the ability of Israeli law enforcement to fight money laundering is drastically limited.

Thus, the complaints of State's Attorney Dean and Rep. Livingston in the Sheinbein case received a warmer reception in the United States than they might have otherwise. In an era where crime has increasingly become an international activity, law enforcement cooperation has come to require uniformity, not only in extradition, but in many areas of substantive criminal law. Since the promulgation of domestic law is a legislative, and therefore a political function, international law enforcement has increasingly become a political rather than a judicial process. With the internationalization of crime, national governments must either bring their criminal statutes into compliance with international norms or take steps to ease the extradition of international organized crime figures; otherwise, they risk becoming international pariahs as havens for criminals.

### D. *American Reaction to Extradition Obstacles in Perspective*

The political ramifications of extradition can be seen not only in the nature of the obstacles posed to extradition, but in the manner in which the United States has responded to them. This can be illustrated by comparing the measures which the United

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229. *See* David Harris, *supra* note 218. *See generally* Julian Borger, *Israel's New Enemy Within*, THE GUARDIAN, July 2, 1997, at 15, *available in* 1997 WL 2389537.

230. *See* Borger, *supra* note 229, at 15.

231. *See id.*; *see supra* notes 217-22 and accompanying text.

232. *See Ukrainian, Israeli Police Sign Cooperation Accord*, BBC SUMMARY OF WORLD BROADCASTS, July 17, 1998, *available in* LEXIS, News Library, BBCSUB File.

States has taken against nations that refuse to extradite fugitives wanted by U.S. authorities.

The cases of Samuel Sheinbein and Humberto Alvarez-Machain, for example, are similar in several crucial respects. Both suspects were wanted in connection with offenses committed against the United States, and both claimed citizenship in nations that did not extradite their own nationals. The manner in which U.S. authorities pursued these suspects, however, is far from similar.

Alvarez-Machain was a citizen of Mexico, a Latin American nation which has traditionally been regarded as part of the U.S. sphere of influence. The prevalence of narcotics production in this area, and the widespread activity of U.S. law enforcement agencies therein, has also contributed to U.S. willingness to take extraordinary measures to apprehend suspects in Mexico and elsewhere in Latin America. Given this, and given the weak military and economic position of Mexico in relation to the United States, U.S. authorities felt that they had a free hand to resort to unilateral abduction.[233] As stated above, this has been a common pattern in U.S. law enforcement policy toward Latin American countries; indeed, the 1990 invasion of Panama, which may represent the most concerted U.S. effort to obtain extralegal rendition of a suspect,[234] occurred in this part of the world.

Israel, as well, has been considered part of the U.S. sphere of influence since its inception in 1948. Unlike Mexico, however, Israel is a Western country, and has an influential political constituency in the United States which would object to the use of heavy-handed measures such as unilateral abduction. Thus, the U.S. effort to obtain jurisdiction over Samuel Sheinbein has not been as direct as the manner in which it pursued Alvarez-Machain.

Nevertheless, the United States possesses a considerable amount of leverage against the Israeli government due to the $3 billion in U.S. aid which is given annually to Israel.[235] Thus, if sufficient domestic political sentiment exists, the United States can bring financial pressure to bear on Israel to conform to U.S. law enforcement expectations. This, in fact, was threatened on at least one occasion by an U.S. legislator in connection with the Sheinbein case.[236]

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233. *See supra* notes 165-212 and accompanying text.

234. *See* United States v. Noriega, 117 F.3d 1206 (11th Cir. 1997).

235. *See* Hillel Kuttler, *Israel Gets First Reduced Aid Package*, JERUSALEM POST, Nov. 12, 1998, at 6, *available in* 1998 WL 6537713.

236. *See supra* note 93 and accompanying text.

Just as irregular rendition is a common denominator in U.S. law enforcement relations with Latin American countries, the exercise of political and economic pressure has played a central role in the U.S. law enforcement efforts in the Middle East. An instructive example of a U.S. joint prosecution in a foreign country occurred in Jordan in 1994, where accused murderer Mohammed Ismail Abequa fled with his children after strangling his wife in their New Jersey home.[237] At the time, Jordan and the United States had no extradition treaty;[238] thus, there was no legal means of returning Abequa to the United States for prosecution. The Jordanian Grand Prosecutor's office, however, agreed to prosecute Abequa in Jordan on a charge of murder.[239]

The crucial fact of the Abequa case is not that a joint prosecution occurred, but the manner in which it was obtained. The murder of Nina Abequa in July of 1994 took place in the wake of the Middle East peace talks, a time when the Jordanian government was intensively seeking to improve relations with the United States. On July 25, 1994, the Kingdom of Jordan concluded a peace treaty with Israel after three years of negotiation.[240] The following day, Jordan's King Hussein made a speech before Congress in which he requested financial and military assistance from the United States in order to build the peace.[241]

At the time, there was little political support for an increase in the U.S. foreign aid budget due to an increased focus on domestic spending within the U.S. government. Congress approved $220 million in debt relief for Jordan on July 29, 1994, and authorized the Pentagon to supply light weaponry to Jordan after a marathon negotiating session.[242] However, Congress stated that "there will need to be substantial steps in addition to the courageous and laudable step that has just been taken" in order to obtain support for additional assistance and debt relief.[243]

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237. *See* 140 CONG. REC. S9046 (daily ed. July 14, 1994) (statement of Sen. Lautenberg).

238. *See* Tareq Ayyaub, *Police Say Jordanian Confessed to His Wife's Murder*, ASSOC. PRESS, July 24, 1994, *available in* 1994 WL 10127278.

239. *See Admitted Wife Killer On Trial in Jordan*, STAR-TRIB. (Minneapolis), Apr. 3, 1995, at 10A, *available in* 1995 WL 3657490.

240. *See* Israel-Jordan, Treaty of Peace, 34 I.L.M. 43, 46 (entered into force 1995) (stating that treaty followed the principles of the Washington Declaration of July 25, 1994, in which Israel and Jordan agreed to end their 46-year state of war).

241. *See* Carroll J. Doherty, *Foreign Aid Bill Wrapped Up After Fight Over Earmarks*, CONQ. Q. WKLY. REP., 2155 (July 30, 1994), *available in* 1994 WL 3827319.

242. *See id.*

243. H.R. CONF. REP. NO. 103, 633 at 16 (1994).

The U.S. government had already indicated that such "substantial steps" included cooperation in the Abequa trial. The Abequa case had received wide exposure in the U.S. media, combining a sympathetic victim who had served four years in the U.S. Army with concern for the fate of the children who had been taken to Jordan. On July 14, 1994, the U.S. Senate acknowledged this public concern by explicitly urging the personal involvement of King Hussein in locating the children.[244] In addition, the Senate urged the government of Jordan to use all of its resources to apprehend Abequa and extradite him to the United States.[245] While Abequa was not extradited, he was ultimately tried and convicted in Jordan.[246]

As in the trial of Mizrahi and Reisch,[247] U.S. prosecutors brought witnesses to the Jordanian courtroom, including the sister of the victim, a New Jersey detective, and the travel agent who sold Abequa his ticket to Jordan.[248] After a trial in Amman, Abequa was convicted on all charges and sentenced to fifteen years' imprisonment, a sentence that would lead to his release after twelve years according to Jordanian law.[249]

Like Nina Abequa, Enrique Tello garnered widespread popular sympathy due to the grisly manner of his death. In addition, Tello was a member of an influential political constituency. Israel, like Jordan, is subject to influence through its annual receipt of U.S. aid. Thus, the same sort of leverage which was applied in the Abequa case was used to convince Israeli authorities to be cooperative in the matter of Sheinbein.

The Einhorn case, involving a fugitive located in France, provides yet a third pattern of response.[250] France is neither within a traditional U.S. sphere of influence nor financially dependent upon the United States, and is, in addition, a Security Council power in its own right. Even though Einhorn did not have any claim whatsoever to French nationality, the United States has not pursued his extradition with the same aggressiveness it has shown toward Israel and Mexico when they protect their own citizens. Although one commentator has termed

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244. *See id.* at 46.

245. *See id.*

246. *See Jordanian Who Killed U.S. Wife Gets 12 Years*, CHI. TRIB., July 10, 1995, at 2C, *available in* LEXIS, News Library, CHITRIB File.

247. *See supra* note 73 and accompanying text.

248. *See* John Cichowsky, *An Experience in Speedy Justice: Prosecutor Tells of Jordanian Murder Trial*, BERGEN REC., May 1, 1995 (Bergen County, N.J.), at A5, *available in* 1995 WL 3466646.

249. *See Jordanian Who Killed U.S. Wife Gets 12 Years*, *supra* note 246, at 2C.

250. *See* Doherty, *supra* note 241, at 2155.

the Einhorn case "a trans-Atlantic legal storm,"[251] Philadelphia prosecutors have had to largely make due without federal assistance in their effort to reverse the decision of the Bordeaux court of appeal. Thus, U.S. response to obstacles in the extradition process is arguably more dependent on domestic political pressure and the relative strength of the requesting and asylum states, than it is on the terms of treaties or international conventions.

These three patterns of response, however, have a common thread. They all illustrate the importance of compromise to overcoming difficulties in extradition. The heavy-handed tactics that the United States used in apprehending Alvarez-Machain in Mexico accomplished the short-term goal of bringing him to trial, but undermined more important long-term cooperation between the two countries.[252] Likewise, Pennsylvania's willingness to compromise with French standards of due process by guaranteeing Einhorn a retrial may ultimately bear fruit where prosecutorial outrage has not, as Einhorn was recently rearrested in France and may soon be the subject of renewed extradition proceedings.[253] In the Sheinbein case as well, whatever the ultimate outcome, justice could have been achieved much sooner and with a minimum of difficulty if the United States had applied the scalpel of compromise, rather than the bludgeon of threats. Any solution to the United States's difficulties in the international rendition of suspects will have to be addressed by a combination of legal and political means, and will have to take the legitimate concerns of other nations into account.

## IV. EXTRADITION DIPLOMACY: METHODS OF RESOLVING POLITICAL ISSUES IN INTERNATIONAL LAW ENFORCEMENT COOPERATION

As demonstrated above, extradition proceedings, albeit grounded in legal terms, are often resolved in accordance with political considerations. The requesting state has a legitimate interest in ensuring that crimes committed on its soil are punished according to its law, and will arguably lose face politically if it allows a fugitive criminal to go unpunished or to be tried in a foreign country. The asylum state, although often embarrassed by the presence of the fugitive and reluctant to grant him sanctuary, will likewise risk losing face domestically if it allows one of its citizens to be tried and imprisoned in the

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251. *French Reject Extradition of Ex-U.S. Guru, supra* note 144, at 12A.

252. *See supra* notes 165-212 and accompanying text.

253. *See Extradition Decision is Postponed,* DALLAS MORNING NEWS, Jan. 13, 1999, at 9A.

requesting state.[254] In reality, the interests of the two nations are substantially the same: each desires that the fugitive be tried and brought to justice. If a means can be found by which each nation is able to protect its legitimate interests while avoiding domestic political fallout, an agreement is likely. Several methods may exist by which both the requesting and asylum states can obtain assurances that the majority of their primary concerns will be met without making unreasonable demands of the other party.

### A. *An Organized Crime Exception*

In certain cases, it has long been recognized that national sovereignty must yield to the pursuit of criminals who commit offenses against all mankind. As early as the eighteenth century, any nation was entitled to apprehend and try pirates on the high seas based on the theory that a pirate's crimes were considered *hosti humani generis*, crimes that rendered them enemies of all humanity.[255] In modern times, this rationale has been extended to crimes such as genocide and the waging of aggressive war.[256] In a further refinement, international law recognizes the right of international tribunals to obtain jurisdiction over persons suspected of these offenses regardless of the sovereignty of the nations where they take refuge.[257]

In recent decades, organized crime has taken on an increasingly international character. It is now commonplace for criminal organizations to include members in more than one country and to routinely move contraband and money across national borders.[258] In fact, it is rare for a narcotics smuggling operation and its attendant money laundering activities to be confined to one country.[259] Moreover, the effects of organized crime are felt on an international scale, in the form of increased import-export costs and large-scale importation of narcotics to consumer countries.[260]

A convincing argument could be made that organized crime should be recognized as an offense against humanity and that

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254. *See supra* notes 67-71 and accompanying text.
255. *See* The King v. Marsh, 81 Eng. Rep. 23, 23 (K.B. 1615).
256. *See* Matthew Lippman, *The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later*, 15 ARIZ. J. INT'L & COMP. L. 415, 425-35 (1998); Steven R. Ratner, *The Schizophrenias of International Criminal Law*, 33 TEX. INT'L L.J. 237, 254-55 (1998).
257. *See* Ratner, *supra* note 256, at 254-55.
258. *See generally* NADELMANN, *supra* note 18 (describing the internationalization of organized crime and law enforcement).
259. *See id.*
260. *See id.*

jurisdiction over organized crime suspects should be available independently of the traditional extradition process. At least one activity commonly conducted by criminal organizations—narcotics trafficking—has been the subject of a 1988 United Nations convention, the Vienna Convention, which is currently adhered to by ninety-two countries.[261] Thus, it is arguable that narcotics trafficking can—at a minimum—already be classified as an offense against all nations.

While transnational offenses committed by criminal organizations should ideally be tried in an international criminal forum, no such court currently exists. In addition, the sheer volume of organized crime activity in the world would make an international organized crime tribunal financially and logistically impractical, if not impossible. However, organized crime figures pose a serious enough threat to all countries that the nations where they commit crimes should be able to obtain jurisdiction over them swiftly and bring them to trial.

This could be accomplished either by a multilateral treaty or domestic legislation which provides that organized crime suspects are automatically extraditable notwithstanding the provisions of any other law. Such legislation should also afford an expedited process for returning organized crime figures to face trial. In this way, organized crime figures will not be able to hide behind such considerations as dual criminality and citizenship in the asylum state in order to escape justice.

While a multilateral convention would be the most comprehensive solution, such a convention would take a considerable time to draft, ratify, and implement. In the meantime, such an exception could be implemented in connection with particular nations that present law enforcement difficulties, such as Russia or Israel, by means of domestic legislation or amendments to bilateral extradition treaties. In addition, such nations could also be encouraged to ratify the Vienna Convention and implement its extradition provisions with domestic legislation.

Some safeguards will be necessary, however, in order to prevent an organized crime exception from becoming a catchall exception that eviscerates the protections afforded by the normal extradition process. In order to fulfill the intent of this exception, authorities in the requesting state would have to make a prima facie showing that the requested suspect is an organized crime figure as well as show probable cause to suspect him of the offense with which he is charged. The statute or treaty will also

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261. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 19, 1988, 28 I.L.M. 493.

have to define organized crime itself in order to clearly delineate which criminals are subject to the exception. Guidance for this definition may be taken from the laws of countries as diverse as the United States and the Russian Federation which have enacted legislation to punish members of criminal organizations. These statutes include the Racketeer-Influenced Corrupt Organizations Act (RICO)[262] and Continuing Criminal Enterprise Act (CCE),[263] as well as Article 35 of the Russian Penal Code.[264] The definition set forth in the CCE establishes an especially clear standard by requiring that the suspect have conspired with five or more other persons, that the organization at issue have been founded for the purpose of committing crimes, and that the suspect have played a supervisory role in the organization.[265] Thus, an exception similar to the CCE's definition of organized crime would enable the extradition of major organized crime figures without the risk that the exception would become all-encompassing—as might happen if a broad definition such as that contained in RICO were adopted. With such an exception to ensure that the criminals which posed the greatest threat to the international community could be extradited, international narcotics smugglers or money launderers, such as Adi Tal, would be extraditable and would not be able to frustrate the efforts of the United States and of asylum countries such as Israel to bring them to justice.

### B. *Forfeiture of Nationality for Extradition Purposes*

Countries that refuse to extradite their own nationals, whether on constitutional or statutory grounds, often face a considerable dilemma. While nations have a legitimate interest in protecting their citizens from potential bias in foreign judicial systems, a blanket policy of non-extradition of nationals may also create a haven for criminals. This unintended side effect often results in persons who have long since given up any real ties to their native land seeking to reclaim their nationality for the sole purpose of evading prosecution of their crimes in the locality where those offenses were committed. These fugitives become an enormous liability to their native countries, which are often embarrassed by their presence but unable to use lawful means to expel them.

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262. 18 U.S.C. §§ 1961-68 (1994).
263. 21 U.S.C. § 848 (1994).
264. For a discussion of Article 35, see Abramovsky, *Prosecuting the "Russian Mafia," supra* note 213, at 215-19.
265. 21 U.S.C. § 848(c).

Blanket policies under which nations refuse to extradite their own citizens are arguably outmoded. Many of the worst fears that inspire these policies are unjustified, as the nations that are most likely to deny fair justice to a foreign suspect are least likely to have functioning extradition treaties with the nations where these suspects hold citizenship. Israel, for instance, has no functioning extradition treaties with countries such as Syria or Saudi Arabia, nor does the United States have a bilateral extradition relationship with Iran or Iraq. Thus, the possibility that extradition of citizens will lead to injustice is mitigated by the politics of the treaty-making process itself.

At least one nation, the Dominican Republic, has recognized this in recent times with the passage of a 1998 law repealing a three-decade-old statute which prohibited the extradition of Dominican nationals.[266] The history of the extradition relationship between the United States and the Dominican Republic is strikingly similar to that between the United States and Israel. Under a bilateral extradition treaty ratified in 1909, the United States and the Dominican Republic undertook to extradite fugitives regardless of nationality.[267] In 1969, however, the Dominican Congress responded to public sentiments, not unlike those which inspired the Israeli Offenses Committed Abroad Act, by enacting a law that protected Dominican citizens from being extradited.[268]

This law was resented by U.S. law enforcement officials, who were concerned that criminals within the growing Dominican-U.S. community could escape justice simply by returning to the country of their birth.[269] In fact, although the Dominican Republic was willing to try Dominican fugitives for their U.S. crimes if requested by the United States, more than four hundred Dominican fugitives, mostly narcotics traffickers, escaped U.S. prosecution between 1969 and 1998 by fleeing to their native country.[270]

As a result, numerous federal, state, and local law enforcement officials in the United States, including New York City Police Commissioner Howard Safir, traveled to the Dominican Republic to lobby for a change in the Dominican extradition statute.[271] Although some Dominican legislators regarded this

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266. *Dominican Congress OK's Extradition to the U.S.*, SUN-SENTINEL (Ft. Lauderdale), July 16, 1998, at 1A, *available in* LEXIS, News Library, SUNSEN File.

267. Extradition Treaty, June 19, 1909, U.S.-Dom. Rep., 36 Stat. 2468.

268. *See* Greg B. Smith, *Dominicans Eye Change in Extradition Targeting Drug Dealers*, DAILY NEWS (N.Y.), July 20, 1998, at 16, *available in* LEXIS, News Library, DLYNWS File.

269. *See id.*

270. *See id.*

271. *See id.*

expression of U.S. concern as "Yankee imperialism," the Dominican Republic's newly-elected U.S.-educated president, Leonel Fernandez Reyna, shepherded legislation through the Dominican Congress to repeal the 1969 statute and allow extradition of Dominican nationals to the United States.[272]

This legislation passed the Dominican Congress in July 1998 and was signed into law by President Fernandez on July 24th.[273] In analyzing the new statute, Dominican commentators opined that their legislature "turned back decades of nationalism and acknowledged that the drug threat has eclipsed old notions of sovereignty."[274] In addition, Dominican legislators were aware that many of the victims of Dominican fugitives were themselves Dominican immigrants to the United States, a situation that has many parallels among the victims of Russian and Israeli criminals as well as those of other emerging organized crime groups that prey upon their own ethnic community.[275] Thus far, it appears that the change in Dominican law has worked to the benefit of U.S. law enforcement; despite initial fears that the law would not be applied retroactively,[276] the Dominican Republic has begun proceedings to extradite at least one fugitive wanted in the United States for crimes committed during the period when extradition of Dominican nationals was prohibited.[277]

The Dominican legislation is an example not only of how nations which confront transnational crime have backed away from refusal to extradite their nationals, but also of how U.S. law enforcement can effectively express its concerns without unduly angering asylum states. By casting the Dominican-American law enforcement problem as one of protecting Dominican crime victims in the United States as well as safeguarding the jurisdiction of U.S. law enforcement, the United States gave the Dominican government a legitimate reason to change its law without appearing to capitulate to U.S. pressure. A similar argument could be utilized with Israel in emphasizing that many victims of Israeli-U.S. criminals are themselves Jews and Israelis, and it is therefore a proper concern of the Jewish state to ensure that justice is done for these victims.

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272. *See* Alice McQuillan, *Dominicans to Extradite '89 Slay Suspect*, DAILY NEWS (N.Y.), Sept. 3, 1998, at 42, *available in* LEXIS, News Library, DLYNWS File.

273. *See id.*

274. Mark Fineman, *Dominican Republic: End to Extradition Ban to Put Criminals Within Law's Reach*, L.A. TIMES, July 24, 1998, at A5, *available in* LEXIS, News Library, LAT File.

275. *See id.* at A5.

276. *See* Smith, *supra* note 268, at 16.

277. *See* McQuillan, *supra* note 272, at 42.

For reasons of patriotism and national sovereignty, however, many countries remain reluctant to extradite their citizens to face trial in foreign courts. These countries will continue to face the possibility of becoming havens for persons who commit crimes abroad and of damaging relations with friendly countries which inure to the greater good of their populace. One method of avoiding this dilemma, while continuing to protect the rights of bona fide nationals, is to enact legislation which provides that persons who are absent from their native country for a certain period of time forfeit their nationality for extradition purposes only. One such policy was recently suggested by Amnon Rubinstein, a member of the Israeli Knesset.[278] Under Professor Rubinstein's proposed legislation, an Israeli citizen who had been absent from Israel for more than one year would be eligible for extradition.[279] While this proposal may set too strict a limit on absence from Israel—students or persons who work for multinational corporations, for instance, might be stationed abroad for several years at a time—it would remove the protection of Israeli law from those who effectively abandon Israeli nationality until it is needed again as a means of escaping prosecution.

A similar method of determining eligibility for extradition might be to hold that any person who applies for citizenship or permanent residency in a foreign country has forfeited his nationality for extradition purposes. This would have the advantage of limiting the availability of extradition to those who have taken affirmative measures to divest themselves of their ties to their native land rather than setting an arbitrary time limit that may include people who are absent for legitimate reasons. This would be particularly applicable when the nation in which the accused has taken out citizenship or residency is the nation where his crimes were committed.

Yet a third approach to forfeiture of nationality would be a multi-factor test such as that proposed by Judge Ravid. This test considers such factors as place of birth, place of domicile, length of residence or absence, dual citizenship, and use of a foreign passport.[280] Under any of these policies, nations will remain able to protect the rights of their bona fide citizens while enabling themselves to expel unwanted and politically embarrassing citizens of convenience.

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278. *See* Keinon, *supra* note 65.
279. *See id.*
280. *See supra* notes 114-17 and accompanying text.

### C. *Transfer of Penal Sanctions*

Among the concerns that prevented an accord in the Sheinbein case were Israeli procedural law and U.S. prison conditions. For instance, the Maryland prosecutor assigned to the Tello case worried that Sheinbein might face a shorter sentence if tried and convicted in Israel, and that Tello's family might not have a chance to speak prior to sentencing in Israel as they would in Maryland.[281] Conversely, Sheinbein was concerned that as a Jew of Israeli ancestry, he would suffer discriminatory conditions in U.S. prisons and might not be able to receive a fair trial in a U.S. court.[282]

An international device exists that could potentially address these concerns. Any two countries that are parties to a transfer of penal sanctions treaty, such as the United States and Israel, may agree that a defendant be incarcerated in the asylum state if convicted in the requesting state.[283] Under this arrangement, the asylum state would compromise by waiving any right to re-evaluate the length of the sentence or the terms of imprisonment. However, nations that regard sentences of death or life without parole as violations of human rights[284] could continue to insist, as many do now, that extradition be conditioned upon such an extreme sentence not being imposed.[285]

Under this system, the suspect would be returned to face trial in the requesting state, but would be guaranteed that he would be incarcerated in his own country if convicted. Likewise, the requesting state would be assured that the sentence imposed by its court would not be disturbed. Although such an accord might not be possible in certain countries which refuse extradition in cases where a sentence of life imprisonment without parole might be imposed, it might well have been sufficient in Sheinbein's case. Although Israel does not itself impose sentences of life without parole, it has in the past extradited fugitives who faced such sentences to the United States.[286] It thus appears that the Israeli government does not

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281. *See* Wilson & Plushnick, *supra* note 110, at D1.

282. *See* Keinon, *supra* note 65, at 11.

283. *See* David S. Finklestein, Note, *"Ever Been in a [Foreign] Prison?": The Implementation of Transfer of Penal Sanctions Treaties by U.S. States*, 66 FORDHAM L. REV. 125, 125-26 (1997) (defining transfer of penal sanctions treaties).

284. *See* State v. Tcoeib, 1996(7) BCLR 996 (NmJ), *available in* 1996 SACLR LEXIS 18.

285. *See* Vogel & Gellman, *supra* note 4, at H1.

286. *See* Keinon, *supra* note 65 (describing the case of Robert Manning, who was extradited from Israel to face a life sentence in California).

regard a sentence of life without parole as a fundamental violation of human rights, and might therefore be willing to administer such a sentence if imposed by a Maryland court. In addition, the U.S. Congress has declared itself in favor of the fuller use of transfer of penal sanctions treaties and might thus be amenable to a solution under which the integrity of U.S. sentences is preserved.

## V. CONCLUSION

As the case of Samuel Sheinbein demonstrates, international extradition has as much to do with domestic politics and the willingness of authorities to compromise as it does with the actual terms of any treaty. Although Israel and the United States have a long history of cooperation in law enforcement and joint prosecutions, the demands of prosecutors in Maryland and the inflexibility of Israeli extradition legislation have thus far stymied Israel's best efforts to cooperate with U.S. authorities in this case. The narrow decision of the Israeli Supreme Court demonstrates its commitment to enforcing Israeli legislation regardless of political considerations, raising the strong possibility that a similar combination of circumstances will undermine U.S.-Israeli relations in future cases where fugitives with Israeli citizenship flee to Israel after committing crimes in the United States.

Regardless of the outcome of the Sheinbein case, reform in the Israeli-U.S. extradition process is necessary. Several compromises are available to Israel that would satisfy U.S. interests without sacrificing its legitimate policy of protecting its citizens from unjust trials abroad. One such alternative would be to enact an exception under which organized crime figures who present the most clear and present danger to the international community would be extraditable notwithstanding other legislation. Another alternative would be to pass legislation providing that persons who are absent from Israel for a significant time or who take up permanent residency in another country, may be extradited if they flee to Israel after committing an offense. Yet a third alternative would provide that Israeli citizens may be extradited, but only if they are returned to Israel upon conviction to serve their sentences. None of these is a perfect solution for the United States or for Israel, but all three allow both countries to protect the interests which are their primary concern.[287]

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287. All translations of non-English sources are the author's.