Introduction

This book concerns the often dramatic,[1] yet at times incongruous, world of capturing and delivering international fugitives from justice. This topical and dynamic subject lies at the crossroads of law and politics, of municipal[2] and international law, and of law enforcement and individual rights. This subject also gives rise to the full spectrum of inter-State[3] relations, running the gamut from diplomatic cooperation to political hostility to armed conflict; involves extraterritorial conduct that bores to the heart of State sovereignty; and implicates a diverse array of public

[1] Discussed herein, for example, are undercover operations, forcible seizures, and military interventions. A U.S. judge described the facts of one such case as "present[ing] elements one might expect to encounter in a grade-B film scenario – an organized underworld conspiracy to import massive quantities of heroin into the United States, and American agents kidnapping the leading perpetrators from South America to bring them to trial." *United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 63 (2d Cir. 1975) (Kaufman, C.J.), *cert. denied*, 421 U.S. 1001 (1975).

[2] The words "municipal," "domestic," "national," and "State," when used as modifiers of such terms as "officials," "legislation," or "courts," are intended to be interchangeable throughout.

[3] The term "State" refers to nation-states and appears in upper case (unless quoting a source in lower case) to distinguish it from those sub-national entities of the same name: "state" (*e.g.*, California, United States, or Bihar, India). "Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities." American Law Inst., Restatement (Third) of the Foreign Relations Law of the United States § 201 (1987), May 14, 1986 [hereinafter Restatement (Third)]. Some scholars have added other, or re-characterized existing, criteria for Statehood, such as legal independence and formal acceptance Statehood by the international community, *e.g.*, Michael Ross Fowler & Julie Marie Bunck, Law, Power, and the Sovereign State: The Evolution and Application of the Concept of Sovereignty 36–61 (1995); and/or a willingness to observe international law and a certain degree of civilization. James Crawford, Brownlie's Principles of Public International Law 134 (8th ed. 2012) [hereinafter Crawford, Brownlie's Principles]. From a legal perspective, all States are treated herein as equal regardless of their relative political, military, or economic strength.

international law fields, encompassing, *inter alia*, immigration law, treaty law, human rights law, and criminal law.

a Nature and Purpose

The nature of this inquiry can best be mapped via a generic fact pattern. Suppose a crime such as corporate fraud or manslaughter has been perpetrated *on* State A's territory, or weapons or narcotics have been illegally trafficked *into* State A, or a violation of State A's laws such as currency counterfeiting or bribery has taken place *outside* its boundaries, or other unlawful conduct has occurred in *virtual space*, such as cybertheft or the unauthorized Internet posting of classified government documents of State A. Following a criminal investigation, a prosecutor from State A charges the crime's chief suspect under State A's domestic law based on testimonial, physical, documentary, and/or forensic evidence. Before the charged individual can be arrested, however, he[4] travels to a neighboring country, State B, of which he is a national.[5] (Alternatively, he may have committed the crime abroad or have fled to

[4] The use of "he" or "his" in definitions, hypothetical examples, or non-case-specific legal analysis, whether in reference to a fugitive, government official, or otherwise, is intended strictly for shorthand convenience, and accordingly is to be understood as gender neutral.

[5] For present purposes, a "national" is "a natural person upon whom [a State] has conferred its nationality . . . in conformity with international law." Draft Conv. on Research in Int'l Law of the Harvard Law School, "Jurisdiction with Respect to Crime," 29 AJIL 435, 473 (Supp. 1935) (not formally adopted by States) [hereinafter Harvard Research]. According to the International Court of Justice (ICJ), nationality has "as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties," and therefore much latitude exists for States claiming a fugitive as one of its own. *Nottebohm Case* (Liech. v Guat.), Second Phase, Judgment [1955] I.C.J. Rep. 4, 23 (Apr. 6). For example, the Japanese Government decided to treat Alberto Fujimori as a Japanese national, because, consistent with Japanese legislation, his father was a Japanese national at the time of Alberto's birth, notwithstanding the fact that Alberto had served as the President of Peru. Arnd Düker, *The Extradition of Nationals: Comments on the Extradition Request for Alberto Fujimori*, 4 German L.J. 1165, 1167–68 (2003). Nationality can arise as a function of birth or naturalization. A national of a given State is generally, but not necessarily, also a "citizen" of that State; the distinction, where it exists, tends to lie in citizens possessing certain additional political rights, such as the right to vote and to stand for elected office, or even eligibility to apply for certain State jobs. *See, e.g.*, "Appeals Court: No Birthright Citizenship for American Samoa," *AP*, June 5, 2015 (reporting on a U.S. appellate court ruling that birth alone in the unincorporated U.S. territory of American Samoa conferred U.S. nationality but not U.S. citizenship, and thereby denied the plaintiff eligibility to apply for a position as a law enforcement officer in California, which required the latter).

State B after escaping from police custody or from prison in State A but before either receiving or completing his sentence.)

State A submits official requests to State B, first to locate and provisionally arrest[6] and later to extradite (*i.e.*, in essence, cooperatively deliver) the fugitive, seeking his return to face criminal charges (or to potentially receive and/or serve out a prison sentence). State B law enforcement authorities find, apprehend, and temporarily detain the fugitive, but he does not consent to return to State A, and is not otherwise accidentally or fortuitously returned. State B may choose to extradite him, but also may refuse on one of many grounds, including that, under its domestic law, State B is barred from extraditing one of its own nationals.[7]

Despite a number of recent and meaningful improvements to the international extradition system (discussed in Chapter 4.f), there remain many impediments that can obstruct, or at least complicate or delay, the transfer of known or alleged criminals from one State to another for the purpose of bringing them to justice.[8] In circumstances whereby extradition is either (i) *unavailable* – whether because it has been unsuccessfully pursued or, because under the circumstances, including the absence of an extradition treaty and/or a bilateral political climate non-conducive to

[6] A "provisional arrest" is *the temporary arrest of a fugitive made on an emergency basis at the behest of a pursuing State (or international criminal tribunal) prior to but in anticipation of an extradition (or surrender) request.*

[7] In May 2011, while on the tarmac awaiting departure of his flight from New York to Paris, Dominique Strauss-Kahn, then-President of the International Monetary Fund (IMF) and a prominent French politician with presidential aspirations, was arrested by U.S. law enforcement authorities on charges of rape and sexual assault of a chambermaid at a Manhattan hotel. Angelique Chrisafis, *et al.*, "Dominique Strauss-Kahn Charged with Sex Attack on New York Hotel Maid," *The Guardian*, May 15, 2011. Had the plane taken off an hour earlier and not landed until it had reached French territory, however, in all likelihood his extradition to the U.S. would have been barred, as under the applicable bilateral extradition treaty, France has no obligation to extradite one of its nationals (Treaty on Extradition, U.S.-Fr., Apr. 23, 1996, art. 3(1)), and French statutory law prohibits the extradition of its own nationals, as determined at the date of the offense for which the extradition is requested. Fr. Code of Crim. Proc., art. 696–4, *adopted by* Law No. 2004–204, Mar. 9, 2004, art. 17. *See* discussion of this impediment to extradition in Chapter 6.a.

[8] These impediments will be examined in Chapters 5–7. "Bring to justice" is defined herein as *a law enforcement action with the end result of: (i) prosecuting an individual for a charged crime; or (ii) punishing an individual whose guilt has been established but has yet to pay his debt to society, whether by incarceration, re-incarceration (in the event of a prison escape), or other legally sanctioned means.*

extradition,[9] it is reasonably anticipated that it will be denied if sought[10] – or (ii) *undesirable* – whether because its procedures are deemed too onerous or time-consuming, its outcome too uncertain or sub-optimal,[11] and/or more expeditious or predictable means are preferred[12] – which lawful recourses, including remedial or collateral approaches, or alternatives, to extradition,[13] does a State have for bringing a charged or convicted individual ultimately to justice?[14]

In a nutshell, this book aims to present a novel and robust framework for the operational and legal analysis of recovering fugitives

[9] For example, Israel and its Arab neighbors lack extradition arrangements with one another, Israel Ministry of Foreign Affairs, Bilateral Treaties Database, updated to Feb. 24, 2014, *available at* http://mfa.gov.il/MFA/AboutTheMinistry/LegalTreaties/Pages/Bilateral-Treaties.aspx (last visited on May 27, 2016), and otherwise have been disinclined politically to cooperate in such law enforcement matters.

[10] Sometimes, the host State will make clear in advance that any request for extradition of a given individual will be denied. For example, British officials warned that Sarah Ferguson, the Duchess of York, would not be extradited to Turkey for charges related to her covert filming of a documentary in Turkish orphanages. Bruce Zagaris, *Turkish Gov't Pursues Criminal Charges against Duchess of York*, 28 IELR 88 (2012). But a State may, for reasons of principle or in combination with political pressure, still choose to submit an extradition request.

[11] *See* Keith R. Fisher, *In Rem Alternatives to Extradition for Money Laundering*, 25 Loy. L.A. Int'l & Comp. L. Rev. 409 (2003) ("the person who is prosecutable for the money laundering offense is rarely the person law enforcement really wants, the one at the top of the pyramid of unlawful activity; . . . [r]ather, the prosecutable person is likely to be someone farther down the criminal food chain, someone who can be sacrificed, if need be, without doing more than inconveniencing the criminal enterprise, and then only slightly.").

[12] *See* Ethan A. Nadelmann, Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement 398–99 (1993) [hereinafter Nadelmann, Cops] (recognizing that States may pursue fugitives by means other than by extradition even when the State in which the fugitive is located is willing to extradite).

[13] The term "alternatives to extradition" herein *refers expansively to all measures, methods, and mechanisms, whether ultimately regarded as lawful or unlawful, that: (i) fall outside the extradition regime; (ii) aim to bring a fugitive to justice fully or partially, directly or indirectly; and (iii) do not entail a fugitive's delivery as a function of sheer fortuity.*

[14] Although rare, a State may choose not to actively seek the custody of fugitives and therefore pursue neither extradition nor one of its alternatives. For example, until 1982, with one notable exception (*i.e.*, the requested extradition of naturalized U.S. citizen Hermine Braunsteiner Ryan in 1973 for multiple counts of murder committed while she was a guard at the Lublin Concentration Camp in Poland), the Federal Republic of Germany did not seek extradition from the United States of former Nazis, as it was reluctant to prosecute Ukrainians, Lithuanians, and other individuals not of German origin and who acted beyond the territorial borders of Nazi Germany during World War II. James W. Moeller, *United States Treatment of Alleged Nazi War Criminals: Int'l Law, Immigration Law, and the Need for Int'l Cooperation*, 25 Va. J. Int'l L. 793, 810 & n.86 (1985).

abroad.[15] It addresses how States – whether working alone, in cooperation, or with the assistance of third parties – strive to secure the custody of fugitives for the purpose of prosecution or punishment,[16] while evaluating the propriety of those pursuit efforts under international law where applicable.

At the same time, this book in no way purports to suggest that the extradition system is broken or hollow – indeed, it serves an indispensable function, operates reasonably well in most instances,[17] continues to

[15] Even if a pursuing State ultimately succeeds in bringing a fugitive to justice, however, the potential future injury and damage he can cause, directly or through his agents, does not necessarily cease, even if sentenced for life. A fugitive could escape from incarceration, including with the help of associates or while on a furlough or during a conjugal visit; he could eventually be set free early based on a grant of amnesty or a political deal struck, and return to a life of crime; he could wreak havoc from his prison cell through agents he still controls (a major Mexican drug kingpin, Joaquín Guzmán (a/k/a El Chapo), was indicted in 1994 with operating his cartel from prison through his brother, *see* Bruce Zagaris, *Mexico Arrests El Chapo with Help from the United States*, 30 IELR 175, 176 (2014)); or his associates could seek his release through blackmail, ransom, or violence. *See, e.g.*, Mary Anne Weaver, "Terrorist's Extradition Ends Greek Legal Battle," *Wash. Post*, Oct. 4, 1976, at 24 (discussing how Rolf Pohle, a member of West Germany's Baader-Meinhof group, was set free after only eighteen months of a six-and-half-year prison term as ransom for a West Berlin mayoralty candidate who had been kidnapped by the group); Note, *The Abu Daoud Affair*, 11 J. Int'l L. & Econ. 539, 540 (1977) ("[o]n March 1, 1973, members of Black September seized the Saudi Arabian Embassy in Khartoum, killing the American Ambassador and two others when their demand for [Abu] Daoud's release was not met.").

[16] Criminal punishment frequently, but not always, consists of a prison term; other possibilities include fines, forfeitures, curfews, discharges, community service, hard labor, or the death penalty. For simplicity sake and because extradition treaties characteristically call for conduct punishable by some form of prison sentence or deprivation of liberty, imprisonment is the presumed type of criminal sentence at issue for present purposes. In addition, to be clear, a reference in this discourse to "punishment" in the context of "prosecution or punishment" means that a fugitive would serve out whatever period is stipulated under, or remains of, an imposed prison sentence based on a criminal conviction rather than, say, be penalized arbitrarily on account of his political views.

[17] *See* Richard Downing, Recent Development, *The Domestic and Int'l Legal Implications of the Abduction of Criminals from Foreign Soil*, 26 Stan. J. Int'l L. 573, 577 (1989–90). Extradition's potential effectiveness can be exemplified by Colombia, which extradited an average of more than 130 alleged offenders per year between 2002 and 2010 mostly on drug trafficking charges in the U.S. and, at least partly as a result, witnessed a much improved security environment on the ground. Hannah Stone, "With Extradition Law, Honduras Outsources Justice to U.S.," *Insightcrime.org*, Jan. 30, 2012, *available at* www.insightcrime.org/news-analysis/with-extradition-law-honduras-outsources-justice-to-us (last visited on May 27, 2016). It should not be overlooked, however, that effecting an arrest in connection with to an extradition request can present its own set of risks. For example, in May 2010, when, pursuant to a U.S. extradition request, Jamaican police sought to apprehend Christopher (Dudus) Coke, the leader of Tivoli Gardens in West

represent the generally preferred means of bringing fugitives to justice,[18] and its very threat can have powerful, even mortal, consequences.[19] Similarly, there is no intention here to imply that alternatives – such as informal law enforcement cooperation or a lure and capture operation – should displace extradition altogether, but rather acknowledges that in today's world neither extradition nor its alternatives alone will suffice.[20] The two must co-exist while serving complementary functions.

Indeed, while recognizing the additional risks and legal complications that alternatives to extradition can impose and while seeking to mitigate those risks (*see* recommendations in the Conclusion), this book adopts an agnostic posture regarding the relative policy desirability of extradition or its alternatives in a given instance. Likewise, while this book adopts the vantage point of law enforcement in tracking down fugitives and holding them accountable, the legal analysis strives to be balanced, and accordingly is neither ideologically pro- nor anti-fugitive in its orientation.

With that perspective in mind, it is hoped this book will contribute to the work of government officials who handle international law enforcement

Kingston, a "garrison community" that he effectively controlled, the assault resulted in the deaths of no fewer than seventy-four persons while failing to locate Coke, who was only discovered adventitiously a month later at a roadblock disguised as a woman. Mattathais Schwartz, *A Report At Large: A Massacre in Jamaica*, The New Yorker, Dec. 2011, at 64, 69.

[18] Nadelmann, Cops, *supra* n.12, at 398.

[19] *See* Stone, *supra* n.17 ("former [Honduran] Security Minister Alfredo Landaverde, who was assassinated on the streets of Tegucigalpa in December [2011], had spoken out in favor of extradition in one of his last public appearances"; and "[i]n Colombia, many lives were lost as powerful drug traffickers fought to prevent the government allowing extradition in the 1980s and 90s, with traffickers famously declaring: 'Better a grave in Colombia than a prison in the U.S.'"). *See generally* Lord Inglewood, Chairman, House of Lords, Select Comm. on Extradition Law, Extradition: U.K. Law and Practice, 2d Report of Sess., 2014–15, HL Paper 126, Mar. 10, 2015 ("Extradition will always be a complex, sensitive and potentially controversial issue. In many instances, the stakes are high on a personal and, occasionally, international level.").

[20] *See* Bruce Swartz, Dep'y Asst. AG, in Testimony before the Crim. Justice, Drug Policy, and Human Resources Subcomm. of the House Gov't Reform Comm. on Oct. 1, 2003 ("Solving the Extradition Problem") ("Although important and effective, formal extradition is not the only mechanism available for obtaining the international surrender of fugitives."); David P. Warner, *Challenges to Int'l Law Enforcement Cooperation for the U.S. in the Middle East and North Africa: Extradition and Its Alternatives*, 50 Vill. L. Rev. 479, 507 (2005) (observing that "[e]xtradition and its alternatives are tools that enable governments to locate, apprehend and return fugitives to face justice. In the context of the Middle East and North Africa, the focus must be on the alternatives given a dearth of bilateral extradition treaties between the United States and countries throughout the region.").

matters, principally those hailing from foreign affairs and justice ministries. The aim is to assist such officials when contemplating extradition or one of its alternatives to ensure they make informed, sound, and lawful decisions by appreciating the full range of options available and their corresponding implications.[21] This book also should prove beneficial to policy and legal scholars, analysts, and students with an interest in international law enforcement; legal practitioners and human rights lawyers representing fugitives; private investigators, bail bondsmen, and bounty hunters; and policymakers, journalists, diplomats, prosecutors, judges, judicial clerks, and immigration officials focused on or managing fugitive cases.

b Scope

Beyond the nature and purpose of this inquiry, it is also critical to set clear parameters governing its scope, specifically with regard to the types of players and crimes at issue, the geographic coverage, and the sources and character of applicable law. In the present context, subjects of interest must be *natural* persons – not States[22] or juridical persons such as businesses or organizations. In addition, the subject must be a convicted or alleged criminal who is "wanted" by law enforcement, rather than a mere suspect,[23] a material witness in an investigation,[24] a prisoner of war (POW) not otherwise accused of a violation of international

[21] This analysis does not purport to address individual remedial measures for fugitive defendants, such as the dismissal of an indictment, the reversal of a conviction, or monetary relief under domestic laws, *e.g., Sosa v. Álvarez-Machaín*, 542 U.S. 692 (2004) (addressing liability under the Federal Tort Claims Act (FTCA) and the Alien Tort Statute (ATS)). Likewise, this analysis does not address remedies for the victims of underlying criminal acts. *See generally* Ilaria Bottigliero, Redress for Victims of Crimes Under International Law (2004).

[22] Accordingly, suits brought in the United States under the Foreign Sovereign Immunities Act (FSIA), Oct. 21, 1976 28 U.S.C. § 1602 *et seq*. (2012), lie outside the scope of this inquiry as they concern *State* liability; *e.g., Frolova v. U.S.S.R.*, 761 F.2d 370 (7th Cir. 1985) (per curiam).

[23] When suspects are involved, States typically invoke mutual legal assistance treaties (MLATs) or mutual legal assistance agreements (MLAAs), which typically authorize the collection of evidence, the taking of witness statements, the provision of data, the return of property, and the like. *E.g.*, Mutual Legal Assistance Treaty, Braz.-Cuba, May 21, 2008, Decree 6,462.

[24] A witness in a criminal trial, however, can become a fugitive to the extent he flees the jurisdiction to avoid giving testimony, and thereby is charged with a crime himself. Black's Law Dictionary 741 (9th ed. 2009) (defining a fugitive from justice to include a "witness in a criminal case who flees, evades, or escapes . . . the giving of testimony, especially by fleeing the jurisdiction or by hiding.").

humanitarian law,[25] or a missing person.[26] Convicted criminals include those who have escaped from police custody or prison before receiving or serving out their assigned sentences, while alleged ones have been charged with a crime (or the functional equivalent thereof[27]), whether

[25] POW transfers are principally governed by the Geneva Conv. Relative to the Treatment of Prisoners of War (GC III), Aug. 12, 1949, art. 12, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135 ("Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention.").

[26] Because the focus of this study is on fugitives, it does not address the numerous circumstances in which a State might try to obtain custody over *non-fugitives* to meet various national interests, such as: (i) to return persons illegally seeking immigration (*e.g., Sale v. Haitian Centers Council*, 509 U.S. 155 (1993) (discussing seizures of Haitian boat people on the high seas and returned to Haiti)); (ii) to arrange for a prospective prisoner exchange of one's own spies or other government assets (*e.g.*, in 1964, Greville Wynne, a British spy convicted of espionage by the Soviet Union, was exchanged for Conon Molody, better known as Gordon Lonsdale in the United States, who spied for the Soviets and was convicted to a fifteen-year sentence (AP, "Greville Wynne, Spy for Britain in the Soviet Bloc, Is Dead at 71," *N.Y. Times*, Mar. 2, 1990)); (iii) to serve the language and cultural needs of national spy schools (*see* Justin McCurry, "North Korea's Kidnap Victims Return Home after 25 Years," *The Guardian*, Oct. 16, 2002 (discussing how in the late 1970s and early 1980s more than a dozen Japanese nationals were seized by and taken back to North Korea presumably to train its spies in Japanese culture and language)); or (iv) to impede progress on an enemy weapons program (*e.g.*, Germany's Werner Heisenberg, who had been appointed director of the Kaiser-Wilhelm Institute, a nuclear research facility in Berlin, and was instrumental to its atomic weapons program, was considered as a target for capture). Kai Bird & Martin J. Sherwin, American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer 222 (2005).

[27] To be "charged" does not necessarily mean an individual has been indicted; "[a]n accusation of a crime supported by an arrest warrant [or an intent to prosecute] is sufficient." M. Cherif Bassiouni, International Extradition: United States Law and Practice 888 (6th ed. 2014) (citing *In re Assarsson*, 687 F.2d 1157, 1162 (8th Cir. 1982)). Swedish law is a notable exception; under that system, the national prosecutor, which conducts both the investigation and prosecution, seeks extradition after the preliminary investigation is over but only formally charges an individual after completing the investigation, including an interrogation on Swedish soil. This provision played out in the highly publicized case in which Sweden successfully sought the approved extradition from the United Kingdom of Julian Assange, the founder and editor-in-chief of Wikileaks, a "whistleblower" website responsible for disclosing hundreds of thousands of classified U.S. Government documents, for *pre-indictment* questioning by Swedish prosecutors in connection with one count of unlawful coercion, two counts of sexual molestation, and one count of rape in Stockholm in August 2010, unrelated to his organization's mission or actions, as alleged by two Swedish women who were serving as Wikileaks volunteers. The fact that Mr. Assange was subject to extradition prior to formal indictment was little more than a function of an unusual feature of the Swedish

in public or secret proceedings, and whether as its author, an accomplice, or a co-conspirator.

The subject could be a national of the State seeking his physical custody, of the State in which he is currently located, or even of a third State. The subject must be pursued because of his individual actions – not solely as the agent or representative of, or merely because of an affiliation with, a government.[28] In addition, this book does not address the extradition or any alternative means of securing the custody of minors (*i.e.*, those under the age of majority, typically eighteen), as not only do they represent a negligible percentage of the fugitive population, but also because special protective rules typically apply to them.[29] Furthermore,

criminal law system, wherein indictment only follows a second round of suspect questioning. It is also significant that the prosecutors had identified the legal violations when they issued the extradition request, which reflects a more advanced stage than mere suspect questioning. Furthermore, a European Arrest Warrant (EAW) (discussed *infra*, beginning in Chapter 4.c) was issued by Swedish prosecutors only after it had been subject to independent scrutiny by a Swedish court. The U.K. Supreme Court found that, under the operative EAW system, the Swedish prosecutor was equivalent to a "judicial authority," such as a judge, capable of issuing the arrest warrant. *Assange v. The Swedish Prosecution Auth.* [2012] UKSC 22, *on appeal from* [2011] EWHC 2849 (Admin). Mr. Assange, a then-forty-year-old Australian, had been arrested by British authorities in December 2010, eventually granted bail, and then resided on an estate under house arrest, and later at the Ecuadorean Embassy as a diplomatic asylee in London pending his extradition. Bruce Zagaris, *British Appellate Court Affirms Assange's Extradition to Sweden*, 28 IELR 14, 14–16 (2012). In March 2015, in the face of an extradition impasse and to avoid certain charges under investigation exceeding their statutes of limitations, Swedish prosecutors agreed to question Assange and obtain his DNA in London rather than holding out for his transfer to Sweden. Stephen Castle, "Swedes Offer to Question Assange in London," *INYT*, Mar. 14–15, 2015, at 4.

[28] Ethan A. Nadelmann, *The Evolution of United States Involvement in the Int'l Rendition of Fugitive Criminals*, 25 N.Y.U. J. Int'l L. & Pol. 813, 882 (1993) [hereinafter Nadelmann, *Int'l Rendition*].

[29] Some States, for example, refuse to extradite on the grounds that the alleged offender is a minor. *See* Sibylle Kapferer, Dep't of Int'l Protection, U.N. High Comm'r for Refugees, Legal and Protection Policy Research Series, *The Interface Between Extradition and Asylum*, PPLA/2003/05, Nov. 2003, ¶ 112 & n.212 (citing Belgium and Spain as examples). Others impose conditions that require compliance with certain minimum standards; *e.g.*, Extradition Act of Canada, Royal Statutes of Canada (R.S.C.) June 17, 1999, § 47, as *amended*, July 19, 2005 (the Minister may refuse an extradition request if he is satisfied that: "(c) the person was less than eighteen years old at the time of the offense and the law that applies to them in the treaty over which the extradition partner has jurisdiction is not consistent with the fundamental principles governing the Youth Crim Justice Act"); Switz., Federal Act on Int'l Mutual Assistance in Crim. Matters [IMAC], Mar. 20, 1981, art. 33, *as amended* (unofficial translation), *reprinted in* 20 ILM 1339 (1981) (where extradition is requested, juveniles under eighteen "shall, if possible, be repatriated by the juvenile authorities. The same applies for persons between 18 and 20 if extradition could

as this inquiry is concerned with securing the custody of *persons*, it does not address the often closely related legal issues regarding the lawfulness of a seizure and/or the admissibility of physical evidence found in the possession, or on the property, of an accused.[30]

As for the protagonist of this inquiry, the focus is on *States* seeking the return of a fugitive abroad. This means that, while some limited discussion will ensue with respect to the direct, support, or collateral roles of (i) international criminal tribunals,[31] (ii) U.N. peacekeeping missions,[32] (iii) regional organizations,[33] and (iv) sub-national entities such as U.S. states and Canadian provinces, such treatment will be largely by way of contrast with the role of States and exceptionally with respect to any relevant legal commentary or case law issued.[34] When States pursue a fugitive, they may rely on their own "State officials" (*i.e.*, government employees) or, alternatively, on "State agents" who constitute *any non-State officials contracted on behalf of a national government to undertake a specific task, project, or mission whose conduct during such time is attributable to that*

endanger their mental development or social rehabilitation."). Other international instruments also may have direct relevance to extradition or its alternatives; for example, with respect to Article 38 of the Convention on the Rights of the Child (CRC), the Committee on the Rights of the Child adopted a General Comment noting, *inter alia*, that "States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties." Comm. on the Rights of the Child (CRC), Gen. Cmt. No. 6, *Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, U.N. Doc. CRC/GC/2005/6, ¶ 28, Sept. 1, 2005.

[30] *See, e.g., Brulay v. United States*, 383 F.2d 345 (9th Cir. 1967) (addressing the admissibility of amphetamine tablets found in the defendant's car in Mexico absent a search warrant).

[31] *E.g.*, the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR), or the Nazi war tribunals at Nuremberg (the initial International Military Tribunal (IMT) for the major war criminals and the subsequent Nuremberg Military Tribunal (NMT) for lesser war criminals).

[32] *E.g.*, UNOSOM I or II (Somalia) or UNMIL (Liberia), including any endowed with arrest and detention authority and operating on behalf of an international criminal tribunal.

[33] *E.g.*, the Caribbean Community (CARICOM), the European Economic Community (EEC), or the NATO-led Implementation Force (IFOR) in Bosnia and Herzegovina.

[34] In fact, for a number of crimes no international forum has jurisdiction to prosecute alleged perpetrators, so the responsibility for such criminal prosecutions falls by default to States. *See* Margaret L. Satterthwaite, *The Legal Regime Governing Transfer of Persons in the Fight against Terrorism*, N.Y.U. Public Law and Legal Theory Working Papers, Paper 192, May 1, 2010, at 1 n.1 (discussing terrorism crimes).