

Chapter 14: Mutual Legal Assistance and Extradition

Part 1: Mutual Legal Assistance

General Commentary

Mutual legal assistance refers to the provision of legal assistance by one state to another state in the investigation, prosecution, or punishment of criminal offenses. Given the transborder nature of criminality, such as organized crime, trafficking in persons and drugs, smuggling in persons, and so forth, mutual legal assistance is an invaluable tool. Mutual legal assistance is usually governed by bilateral or multilateral legal assistance treaties that regulate the scope, limits, and procedures for such assistance, although domestic legislation will suffice in many cases. Treaties are often supplemented by domestic legislation in a criminal procedure code or as a separate piece of legislation. Mutual legal assistance may also be given informally through bilateral cooperation and the sharing of information between policing or judicial officials in different states.

Most international and regional crime conventions contain provisions on mutual legal assistance relevant to their specific subject matter, all of which are listed in the subsection “Legal Instruments” of Further Reading and Resources toward the end of the volume. These treaties place specific requirements on states that have signed and ratified these treaties. In addition, the Arab League Convention on Mutual Assistance in Criminal Matters, the Inter-American Convention on Mutual Legal Assistance in Criminal Matters (and its optional protocol), the Economic Community of West African States Convention on Mutual Assistance in Criminal Matters, and the European Convention on Mutual Legal Assistance in Criminal Matters (and its two additional protocols) deal specifically with mutual legal assistance at a regional and subregional level. The United Nations has drafted the United Nations Model Treaty on Mutual Assistance in Criminal Matters (which is supplemented by a *Revised Manual on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters* that was drafted by the United Nations Office on Drugs and Crime). Other useful references on mutual legal assistance are the United Nations International Drug Control Programme (UNDCP; now United Nations Office on Drugs and Crime) Model Mutual Legal Assistance in Criminal Matters Bill, the *Legislative Guide to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, and the *Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols* (which contain detailed descriptions of international mutual legal assistance requirements and samples of domestic legislation), and the Mutual Legal Assistance Treaty Creator, developed by the United Nations Office on Drugs and Crime, a program to assist states in designing and drafting mutual legal assistance treaties.

In drafting Part 1 of Chapter 14, the drafters drew largely upon the international and regional conventions to develop the framework and implementation structure for the delivery and receipt of mutual legal assistance. Given that the implementation of mutual legal assistance measures in another state is largely a matter for that state and therefore is beyond the legislative scope of a requesting state, the MCCP deals mostly with the situation where mutual legal assistance is requested from another state.

Article 302: General Principles Governing the Provision of Mutual Legal Assistance

[Insert name of state] will provide other states with the widest measures of mutual legal assistance in investigations, prosecutions, and judicial proceedings through treaties, bilateral or multilateral agreements, or the MCCP.

Commentary

This general principle—that states will provide each other with the widest degree of assistance—is taken from Article 18(1) of the United Nations Convention against Transnational Organized Crime, which is duplicated in Article 46(1) of the United Nations Convention against Corruption.

Article 303: Application of Treaties, Agreements, and the MCCP to Mutual Legal Assistance

1. The provisions of the MCCP do not affect the obligations of [insert name of state] under any treaty or bilateral or multilateral agreements governing mutual legal assistance in whole or in part.
2. Chapter 14, Part 1 of the MCCP applies to requests for mutual legal assistance where no treaty or bilateral or multilateral agreement exists.
3. [Insert name of state] and another state with which it has a mutual legal assistance treaty or agreement may opt to apply Chapter 14, Part 1 of the MCCP instead of the treaty or agreement, particularly where doing so would facilitate greater cooperation and assistance.

Commentary

A criminal procedure code exists independently of any mutual legal assistance treaties or other agreements. In a state where no such agreements or treaties exist—common in many post-conflict states, where legislative reform may have been neglected for years during conflict—this code, supplemented by the provisions of the MCCP or mutual legal assistance, could serve as a primary source of mutual legal assistance. Where international conventions or agreements exist, the relevant state may thus opt to apply the provisions of the code on mutual legal assistance. The use of the code rather than a pre-existing agreement would be most relevant where the agreement was outdated or unclear and did not serve to facilitate the same degree of cooperation and assistance as the code. The post-conflict state, cognizant of the need to afford the widest possible degree of cooperation to a requesting state, may opt to apply the code in lieu of other conventions or agreements. Article 303 is based on the sentiment expressed in Article 18(7) of the United Nations Convention against Transnational Organized Crime, which urges states parties to apply the provisions of the convention instead of other bilateral or multilateral agreements if this would facilitate cooperation.

Article 304: Measures of Mutual Legal Assistance

1. [Insert name of state] must afford mutual legal assistance to a requesting state for any of the following purposes:
 - (a) taking of evidence or statements from persons;
 - (b) effecting production orders;
 - (c) effecting service of judicial documents;
 - (d) effecting searches and seizures, including searches and seizures relating to computer systems and stored computer data;
 - (e) identifying, tracing, seizing, and confiscating proceeds of crime, property, instrumentalities, or other things for evidentiary purposes;
 - (f) undertaking covert or other technical measures of surveillance or investigation;
 - (g) effecting an order for expedited preservation of computer data or telecommunications data;
 - (h) examining objects and sites;
 - (i) providing information, evidentiary items, and expert evaluations;

- (j) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate, or business records;
 - (k) facilitating the voluntary appearance of persons in the requesting state;
 - (l) facilitating hearings by video conference or telephone conference or other means of conferencing;
 - (m) affording protective measures to witnesses under threat;
 - (n) providing copies of government records, documents, or information that is available to the public under the applicable law of [insert name of state]; and
 - (o) any other type of assistance that is not contrary to the applicable law in [insert name of state].
2. [Insert name of state] may also afford another state the following measures of mutual legal assistance:
- (a) the provision of information relating to criminal matters where the authorities in [insert name of state] believe such information could assist the authorities in another state in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request by the other state for measures of mutual legal assistance under Paragraph 1; and
 - (b) the provision of copies, in whole or in part, of government records, documents, or information that is not available to the public under the applicable law of [insert name of state].

Commentary

Paragraph 1: Paragraph 1 contains a list of measures of mutual legal assistance that a requested state could provide to a requesting state under the M CCP. The list of measures has been sourced to a large degree from Article 2 of the United Nations Model Treaty on Mutual Legal Assistance in Criminal Matters, Articles 10 and 19 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Article 18(3) of the United Nations Convention against Transnational Organized Crime, Article 46(3) of the United Nations Convention against Corruption, and Articles 29–34 of the Council of Europe Convention on Cybercrime, although additional measures have been added based on the provisions of the M CCP (including the various investigative measures that may be undertaken under the M CCP).

Paragraph 2: The measures listed under Paragraph 2 are inspired by Articles 18(4) and 18(29)(b) of the United Nations Convention against Transnational Organized Crime.

Article 305: Central Authority for Receiving and Transmitting Requests for Mutual Legal Assistance

1. A central authority for receiving and transmitting requests for mutual legal assistance must be established by the competent legislative authority.
2. The central authority is responsible for receiving and transmitting requests for mutual legal assistance.
3. The central authority must transmit all requests for mutual legal assistance to the competent trial court for a hearing under Article 307. The competent trial court must then decide on the permissibility of the request and the manner in which it must be executed, if at all.
4. Where the competent trial court orders the execution of requests for mutual legal assistance under Article 307, the central authority must inform the competent authorities responsible for their execution.
5. The central authority must ensure the speedy and proper execution of requests for mutual legal assistance and must keep the requesting state informed of the progress and outcome of the request for mutual legal assistance.
6. The existence of the central authority does not prejudice direct contacts between the judicial authorities in [insert name of state] and the judicial authorities in another state and requests for mutual legal assistance through these channels.
7. Where direct contacts have been made between the judicial authorities in [insert name of state] and the judicial authorities in another state, the relevant communications must be forwarded to the central authority.
8. In urgent cases, a request may also be transmitted by the judicial authorities or the police of another state through the International Criminal Police Organization (INTERPOL). The request must state the reasons for the urgency.
9. Where direct contacts have been made between INTERPOL and the judicial authorities in [insert name of state], the relevant communications must be forwarded to the central authority.

Commentary

Requests for mutual legal assistance of the sort outlined in Part 1 do not go directly to the judiciary, the police, or the prosecution but instead should be directed to a designated central authority. This requirement is contained in Article 3 of the United Nations *Model Treaty on Mutual Assistance in Criminal Matters*, Article 18(13) of the United Nations Convention against Transnational Organized Crime, and Article 46(13) of the United Nations Convention against Corruption, along with a number of additional requirements/duties that the central authority must undertake. This central authority acts as the focal point for requests for mutual legal assistance. It is required to pass on requests for mutual legal assistance to the competent court for a formal hearing under Article 307. Where a request is granted, the central authority must ensure that the body required to implement the order (e.g., the policing authority) carries out the order from the trial court. The central authority must also keep the requesting state informed about how the request for mutual assistance is proceeding and the outcome of the request.

The transmission of a request for mutual legal assistance is not the only method by which a state can obtain assistance from another state in a criminal investigation. The judicial authorities in one state may make direct contact with those in another state, a procedure that is usually completed in the format of “letters rogatory” (a request from a court to a foreign court for legal assistance in the absence of a treaty or agreement, which is done through diplomatic channels). Police and judicial authorities may also make informal contact with each other, which may lead to informal information sharing (to the extent permissible under the applicable law). Where a request is made directly between judicial authorities, the MCCP requires that the central authority—given its coordinating role in the provision of mutual legal assistance—be informed. In urgent cases, as set out in Article 46(13) of the United Nations Convention against Corruption and Article 18(13) of the United Nations Convention against Transnational Organized Crime, a request for assistance under the MCCP may also be transmitted to the judicial authorities through INTERPOL.

Article 306: Form of a Request for Mutual Legal Assistance

1. A request for mutual legal assistance transmitted to the central authority in [insert name of state] must contain the following:
 - (a) the identity of the authority making the request;
 - (b) the subject matter and nature of the investigation, prosecution, or judicial proceedings to which the request relates and the name and functions of the authority conducting the investigation, prosecution, or judicial proceedings;

- (c) a summary of the relevant facts, except in relation to a request for the service of documents;
 - (d) a statement or text of the relevant law, except in relation to a request for the service of documents;
 - (e) a description of the assistance sought and details of any particular procedure that the requesting state wishes to be followed in order to comply with its applicable law;
 - (f) any deadlines that must be complied with and the reasons for the deadlines;
 - (g) where possible, the identity, location, and nationality of any person concerned;
 - (h) the purpose for which the evidence, information, or action is sought; and
 - (i) any other relevant documents.
2. Requests for mutual legal assistance, and any documents supporting them, must be in or be accompanied by a translation into an official language of [insert name of state], unless the central authority exempts the requesting state from this obligation.
 3. Requests for mutual legal assistance and any other communications relating to mutual legal assistance may be forwarded by or addressed to the central authority through any electronic or other means of telecommunication provided that the original and the written record of the request or any other communication can be produced upon demand.
 4. The central authority or the competent trial court may require that an irregular or incomplete request be modified or completed without that requirement precluding the possibility of the authority or court taking provisional measures prior to the receipt of the modified request.
 5. The central authority or competent trial court may request additional information where such information appears necessary for the execution of the request in accordance with the applicable law in [insert name of state] or where the additional information could facilitate execution of the request.

Commentary

Paragraph 1: Paragraph 1 draws on and augments the provisions of Article 18(15) of the United Nations Convention against Transnational Organized Crime, Article 46(15) of the United Nations Convention against Corruption, and Article 5 of the United Nations *Model Treaty on Mutual Assistance in Criminal Matters*.

Paragraph 2: This paragraph is taken from Article 5(2) of the United Nations *Model Treaty on Mutual Assistance*.

Paragraph 3: This paragraph is inspired by Article 18(14) of the United Nations Convention against Transnational Organized Crime and Article 46(14) of the United Nations Convention against Corruption.

Paragraph 5: Paragraph 5 is inspired by Article 5(3) of the United Nations *Model Treaty on Mutual Assistance*.

Article 307: Hearing of a Request for Mutual Legal Assistance

1. A request for mutual legal assistance must be heard by a panel of three judges of the trial court.
2. Mutual legal assistance may be refused by the competent trial court where:
 - (a) the request is not made in conformity with Article 306;
 - (b) [insert name of state] considers that the execution of the request is likely to prejudice its sovereignty, security, public order, or other essential interests;
 - (c) domestic law in [insert name of state] prohibits the authorities from carrying out the actions requested with regard to a similar criminal offense had it been subject to investigation, prosecution, or judicial proceedings in [insert name of state];
 - (d) it would be contrary to the applicable law of [insert name of state] for the request to be granted;
 - (e) the investigation, prosecution, or judicial proceedings in the requesting state are not consistent with internationally recognized human rights standards;
 - (f) there are grounds to believe that the request has been made for the purpose of prosecuting or punishing a person on account of his or her race, gender, sex, national or ethnic origin, religion, political or ideological opinions, position, or membership in a particular social group or that the person may be discriminated against for any of these reasons;
 - (g) cooperation with the request for mutual legal assistance may lead to judicial proceedings by a court of exceptional jurisdiction or where the request concerns the enforcement of a penalty passed by a court of exceptional jurisdiction;

- (h) any of the facts in question are punishable by the death penalty or with a penalty that would result in the irreversible injury of a person's bodily integrity;
 - (i) the request is made in relation to a criminal offense that is under investigation in [insert name of state];
 - (j) the person in question has previously been finally convicted or acquitted of the criminal offense in question as provided for in Article 8 of the MCC; or
 - (k) the act does not constitute a criminal offense under domestic criminal law, except if the criminal offense is an internationally recognized criminal offense, including, but not limited to, genocide, crimes against humanity, war crimes, organized crime, trafficking in persons, migrant smuggling, money laundering, corruption, serious drug offense, sale of children, child prostitution and child pornography, and terrorist offenses.
3. Request for mutual legal assistance may not be refused by the competent trial court:
- (a) on the grounds of secrecy of banks or other similar financial institutions;
 - (b) on the sole ground that the criminal offense is considered to involve fiscal matters; or
 - (c) on the sole ground that it relates to acts for which a legal person is not liable in [insert name of state].
4. Prior to refusing a request, the competent trial court must consider whether mutual legal assistance may be granted subject to certain conditions. Where the requesting state accepts assistance under these conditions, the trial court may grant the request for mutual legal assistance.
5. Where no grounds for the refusal of a request for mutual legal assistance exist, the competent trial court must order the execution of the request.
6. After ordering that a request for mutual legal assistance should be granted, the competent trial court may postpone the execution of the request on the grounds that it interferes with an ongoing investigation, prosecution, or judicial proceedings.
7. The order of the competent trial court must be in writing and must contain:
- (a) the name of the competent trial court and the identity of the authority that made the request;
 - (b) a description of the assistance granted to the requesting authority;
 - (c) details of any particular procedure that the requesting state wishes to be followed to comply with its applicable law;

- (d) details of any deadlines to be complied with in the execution of the order;
 - (e) the identity, location, and nationality of any person concerned, where this information was provided by the requesting state;
 - (f) the purpose for which the evidence, information, or action is sought;
 - (g) the date on which the assistance may be executed;
 - (h) the body responsible for executing the order for assistance;
 - (i) a request to the requesting state to notify the central authority promptly if assistance is no longer required;
 - (j) the date of the order; and
 - (k) the name and signature of the competent judge.
8. The order of the competent trial court granting the request for mutual legal assistance must be promptly forwarded to the requesting state by the central authority.
 9. Where the competent trial court refuses to grant a request for mutual legal assistance, it must prepare a written decision giving reasons for the refusal. The central authority must promptly forward the written decision to the requesting state.
 10. Where the competent trial court orders the postponement of the execution of the order granting the request for mutual legal assistance, it must prepare a written decision giving reasons for the postponement. The central authority must promptly forward the written decision to the requesting state.

Commentary

Paragraph 1: A judicial determination is required once a request for mutual legal assistance is received by the central authority.

Paragraph 2: Paragraph 2 is inspired by Article 18(21) of the United Nations Convention against Transnational Organized Crime, Article 46(21) of the United Nations Convention against Corruption, Article 4 of the United Nations Model Treaty on Mutual Assistance in Criminal Matters, domestic legislation on mutual legal assistance, and international human rights jurisprudence (relating to Paragraph 2[e]–[h]).

Paragraph 2(k): Under Paragraph 2(k), a request for mutual legal assistance may be refused where the criminal offense in question is not also a criminal offense in the requested state. This is subject to the exception that a refusal may not be made where the criminal offense—while not recognized in the requesting state—is recognized internationally. The offenses listed in Paragraph 2(k) are those that are recognized in various international treaties. The rationale behind Paragraph 2(k) is to ensure that

the broadest possible measures of mutual legal assistance be provided by the requested state. Where the legal framework of the requested state does not provide for the offenses listed in Paragraph 2(k), given the serious nature of these offenses and their international recognition, this must not be used as an excuse to refuse assistance.

Paragraph 3: This paragraph draws on Article 18(8) and (22) of the United Nations Convention against Transnational Organized Crime and Article 46(8) and (22) of the United Nations Convention against Corruption.

Paragraph 4: This paragraph draws on Article 18(26) of the United Nations Convention against Transnational Organized Crime and Article 46(26) of the United Nations Convention against Corruption.

Paragraphs 5, 7, 8, 9, 10: Once the court finds that no grounds to refuse a request for mutual legal assistance exist, taking into account Paragraph 2, it must make an order for mutual legal assistance. This order must be transmitted to the central authority, which, under Article 305, is required to pass the order on to the authority responsible for carrying it out. Where grounds to refuse the request for mutual legal assistance exist or where the court postpones the execution of an order for mutual legal assistance, the court must draft a written decision. The central authority must transmit the order for mutual legal assistance or the written decision refusing it to the requesting state immediately.

Paragraph 6: This paragraph is inspired by Article 18(25) of the United Nations Convention against Transnational Organized Crime and Article 46(25) of the United Nations Convention against Corruption.

Article 308: Execution of a Request for Mutual Legal Assistance

1. A request for mutual legal assistance must be executed in accordance with the applicable law in [insert name of state], to the extent that it is not contrary to the domestic law of the requesting state, and, where possible, in accordance with the procedures and formalities specified in the request.
2. Where the competent trial court orders the execution of a request for mutual legal assistance under Article 307, the central authority must forward the order to the competent authorities responsible for its execution.
3. The request for mutual legal assistance must be executed as soon as possible and must take as full account as possible of any deadlines suggested by the requesting state and any procedures outlined in the order.

4. The requesting state may make reasonable requests for information on the status and progress of measures taken by the authorities in [insert name of state].
5. The central authority in [insert name of state] must respond to reasonable requests by the requesting state about the progress of its handling of the request.
6. The requesting state must promptly inform the authorities in [insert name of state] when assistance is no longer required.
7. In executing a request for mutual legal assistance, the authorities in [insert name of state] may take measures for the protection of witnesses.

Commentary

Paragraph 1: This paragraph is inspired by Article 6 of the United Nations Model Treaty on Mutual Assistance in Criminal Matters.

Paragraphs 3–6: These paragraphs draw upon Article 18(24) of the United Nations Convention against Transnational Organized Crime and Article 46(24) of the United Nations Convention against Corruption.

Article 309: Execution of a Request to Facilitate the Appearance of a Person in a Requesting State

1. In the execution of a request for the facilitation of the appearance of a person in the requesting state under Article 304(1)(k), where the person is detained or imprisoned in [insert name of state], the request may be granted only where:
 - (a) the person freely gives his or her informed consent; and
 - (b) the authorities of both states agree, subject to such conditions as both states deem appropriate.
2. In the execution of the request, the requesting state has authority to keep the person transferred in detention, unless otherwise requested or authorized by [insert name of state].

3. The requesting state must implement its obligations without delay and must return the transferred person back to [insert name of state] as agreed beforehand.
4. The requesting state must not require [insert name of state] to initiate extradition proceedings for the return of the transferred person.
5. The transferred person must receive credit for service in [insert name of state] for any time spent in detention in the requesting state.
6. Unless the states agree otherwise, the transferred person, whatever his or her nationality, must not be prosecuted, detained, punished, or subjected to any other restriction of his or her liberty in the requesting state in respect of acts, omissions, or convictions prior to his or her departure from the requesting state.

Commentary

Article 309 is based on Article 18(10)–(12) of the United Nations Convention against Transnational Organized Crime and Article 46(10)–(12) of the United Nations Convention against Corruption.

Article 310: Use of Information Obtained from a Request for Mutual Legal Assistance

The requesting state may not transmit or use information or evidence furnished by [insert name of state] for investigations, prosecutions, or judicial proceedings other than those stated in the request without the prior consent of [insert name of state].

Commentary

Article 310 is inspired by Article 8 of the United Nations Model Treaty on Mutual Assistance in Criminal Matters.

Article 311: Costs of Executing a Request for Mutual Legal Assistance

1. The ordinary costs of executing a request for mutual legal assistance are borne by [insert name of state], unless otherwise agreed by [insert name of state] and the requesting state.
2. Where expenses of a substantial or extraordinary nature are or will be required to fulfill the request for mutual legal assistance, [insert name of state] and the requesting state must consult to determine the terms and conditions under which the request will be executed and the manner in which the costs will be borne.

Commentary

Article 311 draws on Article 18(28) of the United Nations Convention against Transnational Organized Crime and Article 46(28) of the United Nations Convention against Corruption. A resource-starved post-conflict state may have great difficulty paying the ordinary costs of executing a request for mutual legal assistance. In many cases, mutual legal assistance may be viable only if the requesting state contributes financially to the execution of the request. The requesting state and the requested state should discuss this situation upon the submission of the request.

Part 2: Extradition

General Commentary

Extradition is a formal process conducted through treaties and other legislation that define the process and conditions under which a person in one state can be sent to another state to be tried or to serve a sentence. Effective extradition legislation and treaty procedures are especially important for transnational offenses where the perpetrator of a criminal offense has fled to another state.

Extradition is regulated by bilateral or multilateral extradition treaties or agreements or by domestic legislation (and sometimes by a combination of them). Examples of multilateral extradition treaties include the Economic Community of West African States Convention on Extradition, the European Convention on Extradition (and its additional protocols), and the Inter-American Convention on Extradition. Other treaties, such as those listed in the subsection “Legal Instruments” of Further Reading and Resources toward the end of this volume, address extradition. Treaties such as the United Nations Convention against Transnational Organized Crime (and its additional protocols on trafficking in persons and migrant smuggling) and the United Nations Convention against Corruption have provisions that states parties may use as a substitute for a dedicated extradition agreement (although only with regard to the extradition of persons in connection with organized crime, trafficking in persons, smuggling of migrants, illicit manufacture and trafficking in firearms and ammunition, and corruption).

Treaties are often supplemented by legislation that addresses many of the operational issues relating to the request for and granting of extradition. Chapter 14, Part 2 assumes the absence of any extradition treaties or agreements and provides a general framework and legislative basis for the extradition of persons to a requesting state.

Where a post-conflict state is drafting an extradition treaty, reference may be made to the United Nations Model Treaty on Extradition and other international treaties or conventions that address the issue (see “Legal Instruments,” in the “Further Reading” section in this volume). Reference may also be made to the United Nations Model Law on Extradition drafted by the United Nations Office on Drugs and Crime and the revised manuals that accompany the United Nations Model Treaty on Extradition and the United Nations Model Treaty on Mutual Assistance in Criminal Matters, also drafted by the United Nations Office on Drugs and Crime. In addition, reference should be made to the *Legislative Guide to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* and the *Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols*, which contain detailed descriptions of extradition requirements and samples of domestic legislation.

Chapter 14, Part 2 draws inspiration from the various international and regional extradition treaties, in addition to other treaties that deal in part with extradition.

A number of terms are used repeatedly throughout Part 2. The term *requesting state* refers to a state that makes a request for extradition to another state. The state that receives a request for extradition is called the *requested state*. The person who is the subject of the request for extradition is referred to as the *person sought*.

Article 312: Application of Treaties and the MCCP to Extradition

1. The provisions of the MCCP do not affect the obligations of [insert name of state] under any bilateral or multilateral extradition treaties.
2. Chapter 14, Part 2 applies to extradition where bilateral or multilateral extradition treaties do not exist between a state requesting the extradition of a person and [insert name of state].
3. Chapter 14, Part 2 of the MCCP does not apply to the surrender of persons to the International Criminal Court or international criminal tribunals.

Commentary

The MCCP exists independently of any extradition treaties or other agreements. In a state where no such agreements or treaties exist—which is common in many post-conflict states where legislative reform may have been neglected for years during conflict—the MCCP could act as the legal source of extradition. Where bilateral or multilateral treaties or agreements are in place between a post-conflict state and another state, these treaties and agreements will serve as the applicable law with regard to extradition.

Paragraph 3: With regard to the International Criminal Court, part 9 of its governing statute on International Cooperation and Judicial Assistance sets out the applicable surrender regime. Article 102 of the Rome Statute of the International Criminal Court distinguishes surrender from extradition, with the former being “the delivering up of a person by a state to the Court” and the latter being “the delivering up of a person by one State to another as provided for by Treaty, Convention or national legislation.” When a request is made to a state by the International Criminal Court for the surrender of a person, the applicable law will be the statute of the International Criminal Court and any domestic implementing legislation.

Article 313: Instituting a Request for Extradition

1. A request for extradition must be in writing and must be filed by a requesting state through the competent body for receiving requests for extradition, which may be:
 - (a) diplomatic channels;
 - (b) the ministry of justice; or
 - (c) any other designated authorities in [insert name of state].
2. The request for extradition must be accompanied by the following:
 - (a) as accurate a description as possible of the person sought, together with any other information to establish his or her identity, including photographs, fingerprints, or similar means of identification;
 - (b) a certificate or other documents relating to the nationality of the person whose extradition is sought;
 - (c) a description of the location of the person being sought;
 - (d) the text of the relevant provision of law containing the criminal offense and a statement of the relevant penalties that can be imposed for the offense;
 - (e) where extradition is requested for the purpose of prosecution in the requesting state, evidence that the person committed a criminal offense;
 - (f) where an arrest warrant or indictment exists against the person, an original or certified copy of the arrest warrant or the indictment; a statement of the criminal offense for which extradition is requested; and a description of the acts or omissions constituting the alleged offense, including an indication of the time and place of its commission;
 - (g) where the person has been convicted of an offense, a statement of the criminal offense for which extradition is requested and a description of the acts or omissions constituting the criminal offense; an original or certified copy of the judgment or any other document setting out the conviction and the penalty or order imposed; the fact that the penalty or order is enforceable; and the extent to which the penalty or order remains to be served;

- (h) where the person has been convicted of a criminal offense but no penalty has been imposed, a statement of the criminal offense for which extradition is requested; a description of the acts or omissions constituting the offense; and a document setting out the conviction and a statement affirming that there is an intention to impose the penalty or order; and
 - (i) a statement that the requesting state consents to the application of the rule of speciality under Article 317(1).
3. Requests for extradition and any documents supporting them must be in, or be accompanied by a translation into, an official language of [insert name of state], unless [insert name of state] exempts the requesting state from this obligation.
 4. Where [insert name of state] considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within a specified reasonable time.
 5. An extradition request must be transmitted from [the competent body for receiving requests for extradition] to the president of the courts in [insert name of state]. The president must convene a panel of judges to hear the request for extradition under Article 315.

Commentary

Paragraph 1: Paragraph 1 is based on Article 5 of the United Nations Model Treaty on Extradition, Article 10 of the Inter-American Convention on Extradition, Article 12 of the European Convention on Extradition, and Article 18 of the Economic Community of the West African States Convention on Extradition. It requires that an authority be designated to receive requests for extradition. In some states, a request is made through diplomatic channels, whereas in other states it is made to the ministry of justice, the court, or the office of the attorney general (or equivalent). A post-conflict state must determine the appropriate mechanism for receiving extradition requests based on its own criminal justice structure.

Paragraph 2: This paragraph is inspired by Section 16 of the United Nations Model Law on Extradition, Article 11 of the Inter-American Convention on Extradition, Article 18 of the Economic Community of West African States Convention on Extradition, Article 12 of the European Convention on Extradition, and Article 5 of the United Nations Model Treaty on Extradition, all of which contain specific requirements on the content of a request for extradition.

Paragraph 3: Paragraph 3 mirrors the language of Article 5(3) of the United Nations Model Treaty on Extradition.

Paragraph 4: This paragraph is based on Article 8 of the United Nations Model Treaty on Extradition, Article 13 of the European Convention on Extradition, Article 12 of the Inter-American Convention on Extradition, Article 19 of the Economic Community of West African States Convention on Extradition, and Section 19(2) of the United Nations Model Law on Extradition.

Paragraph 5: Reference should be made to Article 315. Given the necessity for collaboration between the designated competent authority for receiving requests for extradition and the court system, it would be advisable for these institutions to draft a joint standard operating procedure or memorandum of understanding.

Article 314: Instituting a Request for Provisional Arrest prior to a Request for Extradition

1. An application for the provisional arrest of a person prior to extradition may be made either directly to [insert name of state] or through the facilities of the International Criminal Police Organization (INTERPOL).
2. The competent authority for receiving requests for extradition may authorize a prosecutor to apply to the competent trial court for a provisional arrest warrant of that person pending the presentation of the extradition request where the court is satisfied that there are reasonable grounds to believe that:
 - (a) the person sought is ordinarily resident in [insert name of state], or is in or on his or her way or routinely travels to [insert name of state];
 - (b) the requesting state produced a valid arrest warrant against the person sought to be provisionally arrested; and
 - (c) the requesting state has undertaken to submit a request for the extradition of that person within [insert number] days.
3. The competent body for receiving requests for extradition may order the prosecutor to make an application for a provisional arrest warrant of the person sought where:
 - (a) a warrant for the person's arrest or an order of a similar nature has been issued or the person has been convicted in the foreign state; and
 - (b) it is necessary in the public interest to arrest that person, including to prevent him or her from escaping or committing a criminal offense.

4. The competent trial court may issue a provisional arrest warrant only where the conditions set out in Paragraphs 2 and 3 are met.
5. The provisional arrest warrant must order that the person be arrested and brought without delay before the competent trial court.
6. The provisional arrest warrant must also include:
 - (a) the name of the competent trial court;
 - (b) the name of the person to be arrested and any other identifying information;
 - (c) the name of the requesting state;
 - (d) a summary of the facts that are alleged to constitute a criminal offense and a specific reference to the criminal offense for which the arrest of the suspect is sought, including a reference to the relevant legal provisions;
 - (e) the authority authorized to execute the provisional arrest warrant;
 - (f) the date of the provisional arrest warrant; and
 - (g) the signature of the competent judge.
7. Where a provisional arrest warrant is sought, the trial court may order that the person subject to the warrant be detained or be subject to an order for bail or other restrictive measures.
8. The arrest warrant and any orders for detention or other restrictive measures must be cancelled where:
 - (a) a request for extradition has not been made within the period of time specified in Paragraph 2(c); or
 - (b) a request for extradition has been made but the competent trial court has not granted the request.
9. The release of the person subject to a provisional arrest warrant does not preclude the rearrest and institution of proceedings with a view to extraditing the person sought, if the request for extradition and supporting documents are subsequently received.

Commentary

Article 314 provides a mechanism to arrest a person whose extradition is being sought but where no formal request for extradition has yet been made under Article 313. Article 314 would be employed in urgent cases, for example, where there is a risk that the person who will be subject to the extradition request will flee. The requirement to provide a mechanism for provisional arrest is contained in Article 9 of the United Nations Model Treaty on Extradition, Article 22 of the Economic Community of West African States Convention on Extradition, Article 16 of the European Convention on Extradition.

tion, Article 14 of the Inter-American Convention on Extradition, and in other treaties such as the United Nations Convention against Transnational Organized Crime (Article 16[9]) and the United Nations Convention against Corruption (Article 44[10]). Article 314 is based on these conventions and on Section 20 of the United Nations Model Law on Extradition, which creates a framework for provisional arrest, and Article 9 of the United Nations Model Treaty on Extradition.

Article 315: Extradition Hearing

1. A request for extradition must be heard by a panel of three judges of the competent trial court.
2. The person whose extradition is sought must be present at the extradition hearing.
3. The person whose extradition is sought must be provided with legal assistance under Article 68.
4. The following conditions must be met for extradition to be granted:
 - (a) means for the identification of the accused or convicted person by an accurate description, photographs, fingerprints, or similar means of identification exist and the identity of the person has been established;
 - (b) a certificate or other reliable data about the nationality of the person whose extradition is sought exists;
 - (c) the criminal offense for which extradition is sought is punishable under the laws of the requesting state by a term of imprisonment exceeding one year;
 - (d) the conduct that constitutes the criminal offense would, if committed in [insert name of requesting state], constitute an offense that is punishable under the applicable law of [insert name of requesting state] by imprisonment for at least one year;
 - (e) extradition is sought for the enforcement of a penalty of imprisonment for which at least six months remains to be served or a more severe penalty remains to be carried out;
 - (f) the prosecution or execution of punishment is not barred by the statute of limitations in the requesting state;
 - (g) the person whose extradition is sought has not previously been finally convicted or acquitted of the offense in accordance with Article 8 of the MCC;

- (h) the extradition is not sought for a criminal offense for which the death penalty is prescribed, unless the requesting state provides written assurance that the death penalty will not be imposed or carried out;
 - (i) there are no substantial grounds for believing that the person whose extradition is sought will face torture or cruel, inhuman, or degrading treatment or punishment in the requesting state;
 - (j) there are no substantial grounds for believing that a request has been made for the purpose of prosecuting or punishing the person requested on account of his or her race, gender, national or ethnic origin, religion, political or ideological opinions, or membership in a particular social group;
 - (k) the act constitutes a criminal offense under domestic criminal law, except if the criminal offense is an internationally recognized criminal offense, including, but not limited to, genocide, crimes against humanity, war crimes, organized crime, trafficking in persons, migrant smuggling, money laundering, corruption, serious drugs offense, sale of children, child prostitution and child pornography, and terrorist offenses; and
 - (l) the person sought to be extradited will be protected by the guarantees contained in international human rights law.
5. Extradition may be refused where one or more of the following conditions are found to exist:
 - (a) the person whose extradition is sought is a national of [insert name of state];
 - (b) the criminal offense for which the extradition is sought was committed, in whole or in part, in [insert name of state]; or
 - (c) a prosecution for the offense for which extradition is requested is pending in [insert name of state] against the person.
 6. Extradition may not be refused solely on the ground that it involves fiscal matters.
 7. Prior to refusal of a request for extradition, the requesting state must be given ample opportunity to provide information relevant to the state's allegation.
 8. Where the conditions set out in Paragraph 4 are complied with, the competent trial court must order the extradition of the person concerned.
 9. The trial court may, after ordering extradition, postpone the execution of the order, where the person sought is being tried or is serving a sentence in [insert name of state] for a criminal offense other than that for which the extradition is requested. The order may be postponed until the person is entitled to be set free by virtue of acquittal, completed sentence, or commutation

of sentence. No civil suit that the person may have pending against him or her in [insert name of state] may prevent or defer his or her surrender.

10. The trial court may, after ordering extradition, postpone the execution of the order where the surrender of the person sought would, for reasons of health, endanger his or her life; the surrender may be deferred until it would no longer pose such a danger.
11. The order of the competent trial court must be in writing and must contain:
 - (a) the name of the competent trial court and the identity of the authority that made the request;
 - (b) the identity, location, and nationality of the person whose extradition is sought;
 - (c) the location of the person to be extradited;
 - (d) the date on which the extradition order may be executed;
 - (e) the body authorized to execute the extradition order;
 - (f) the reasons for extradition, whether to prosecute the person in the requesting state or to serve a penalty already imposed on the person;
 - (g) the date of the order; and
 - (h) the signature of the judges of the panel of the competent trial court.
12. The order of the competent trial court granting extradition must be forwarded as soon as possible to the requesting state by the authority responsible for receiving requests for extradition in [insert name of state].
13. Where the competent trial court refuses to grant a request for extradition, it must prepare a written decision giving reasons for the refusal. The body responsible for receiving requests for extradition must forward the written decision to the requesting state.
14. Where the competent trial court orders the postponement of the execution of the order for extradition under Paragraph 9, it must prepare a written decision giving reasons for the refusal. The body responsible for receiving requests for extradition must forward the written decision to the requesting state.
15. Where a request for extradition is refused because:
 - (a) the person whose extradition is being sought is a national of [insert name of state];
 - (b) capital punishment is prescribed for the criminal offense that is the subject of the extradition request; or
 - (c) the criminal offense was committed in [insert name of state]

a prosecutor must be appointed to examine the evidence against the person sought relating to the criminal offense alleged in the request for extradition. The prosecutor must formally initiate an investigation under Article 94 where grounds exist.

16. The prosecutor or the person whose extradition was sought may appeal the decision of the trial court under Article 195.
17. If the appeals court finds under Article 315 that the prerequisites for extradition have been fulfilled, or where no interlocutory appeal has been filed under Article 295, the trial court must refer the matter of extradition to [head of the competent authority responsible for authorizing extradition], who must decide on the extradition.
18. The [head of the competent authority responsible for authorizing extradition] must render a ruling on whether the extradition request is granted or rejected. The ruling regarding extradition must be communicated to the requesting state through diplomatic channels.

Commentary

Once it is received by the competent authority, an extradition order must be passed on to the court system, whereupon a panel of three judges should be convened to hear the request for extradition. The panel of judges will determine the matter and will either grant or refuse the request for extradition. Where the request is refused, a written decision must be drafted that must then be transmitted to the requesting state via the competent authority responsible for authorizing extradition. The competent authority is responsible for making the final determination of whether or not extradition should be granted.

Paragraph 1: Under the MCCP, proceedings prior to a trial are usually conducted by a single judge. A panel of three judges is assigned for criminal offenses that carry a maximum penalty of greater than five years, as provided for under Article 6. Because of the complex nature of extradition proceedings and their sensitivity, the drafters of the MCCP incorporated a requirement that all extradition requests be heard by a panel of three judges rather than a single judge, even though the proceedings do not amount to a trial.

Paragraph 2: In accordance with the right to be present during a trial set out in Article 62, Paragraph 2 requires that the person who is the subject of a request for extradition be present during the hearing.

Paragraph 3: Reference should be made to Article 68 and its commentary.

Paragraph 4: Paragraph 4 contains the substantive and procedural grounds upon which extradition must be refused by the requested state. The competent trial court must ensure that none of the instances listed in this paragraph apply to the extradition request under consideration. If one or more grounds exist, extradition must be refused. Some international treaties on extradition contain grounds for refusal if the person has been granted amnesty or pardon relating to the criminal offense set out in the extradition request (see Article 3[e] of the United Nations Model Treaty on Extradition, Article 20 of the Inter-American Convention on Extradition, and Article 16 of the Economic Community of West African States Convention on Extradition). This ground has not been included in the MCCP, but a post-conflict state enacting legislation on extradition might consider adding it.

Another possible ground for refusal of a request for extradition that has not been included in the MCCP is the absence of evidence of a *prima facie* case that the person sought to be extradited committed the criminal offense. In some jurisdictions, the competent court examining the request for extradition goes into the substance and merits of the case in question and looks to see if there is evidence of guilt. This requirement has proven in practice to be a major impediment to extradition. It has also been found to undermine the need for simplicity of evidentiary requirements in extradition proceedings. For these reasons, the drafters of the MCCP adopted another approach that is favored by many states. Under this approach, the court dealing with the request for extradition abstains from examining the evidence of guilt against the person sought and relies instead on the existence of a valid arrest warrant from the requesting state (which should be provided under Article 315), in addition to ensuring that no grounds for refusal of extradition under the applicable law exist.

Paragraph 4(a): These paragraphs are inspired by Section 24 of the United Nations Model Law on Extradition, which requires that the competent trial court be satisfied that the person brought before the court is actually the person sought for extradition.

Paragraph 4(b): Although some states allow for the extradition of nationals, most states do not. In many states, the constitution prohibits the extradition of their nationals. The reticence of states to extradite their nationals is rooted in the concept of state sovereignty and, more precisely, the sovereignty of a state over a national who has committed a criminal offense. This exception to extradition is recognized in many international conventions, including the United Nations Convention against Transnational Organized Crime (Article 15[3]) and the United Nations Convention against Corruption (Article 42[3]). Article 6 of the European Convention on Extradition gives states parties the “right to refuse extradition of its nationals.” Under the MCCP, where a person is not extradited on the basis of his or her nationality, Article 318, Paragraph 15 requires that a prosecutor examine the evidence with a view to determining whether grounds exist to prosecute the person. Reference should be made to the commentary to Paragraph 15.

Paragraph 4(c)–(e): Under the MCCP, a person may be extradited for a criminal offense that carries a minimum penalty of one year’s imprisonment in the requesting state and one year’s minimum imprisonment in the requested state. Where extradition

is sought for the enforcement of a penalty of imprisonment, there must be at least six months remaining to be served. Paragraph 4(c)–(e) is inspired by Article 2 of the European Convention on Extradition, Article 3 of the Economic Community of West African States Convention on Extradition, and Article 3 of the Inter-American Convention on Extradition, although the latter two conventions provide that the criminal offense for which extradition is sought must carry a minimum penalty of two years. The United Nations Model Treaty on Extradition contains an option of either a one-year minimum or a two-year minimum. In general, all the treaties agree with the principle that, regarding extradition for the enforcement of a penalty, there must be at least six months remaining to be served.

Paragraph 4(f): This ground for refusal of extradition derives from Article 15 of the Economic Community of West African States Convention on Extradition, Article 10 of the European Convention on Extradition, Article 3(e) of the United Nations Model Treaty on Extradition, and Article 4(2) of the Inter-American Convention on Extradition.

Paragraph 4(g): Paragraph 4(g) is inspired by Article 9 of the European Convention on Extradition, Article 13 of the Economic Community of West African States Convention on Extradition, and Article 3(d) of the United Nations Model Treaty on Extradition.

Paragraph 4(h): This paragraph is inspired by Article 17 of the Economic Community of West African States Convention on Extradition, Article 11 of the European Convention on Extradition, Article 9 of the Inter-American Convention on Extradition, and Article 4(d) of the United Nations Model Treaty on Extradition.

Paragraph 4(i): This paragraph is derived from Article 3(f) of the United Nations Model Treaty on Extradition and Article 5 of the Economic Community of West African States Convention on Extradition. This ground is also a requirement of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3).

Paragraph 4(j): The ground set out in Paragraph 4(j) derives from Article 3(b) of the United Nations Model Treaty on Extradition.

Paragraph 4(k): Under Paragraph 4(k), a request for extradition may be refused where the criminal offense in question is not also a criminal offense in the requested state. This is subject to the exception that a refusal may not be made where the criminal offense—although not recognized in the requesting state—is recognized internationally. Where the legal framework of the requested state does not provide for the offenses listed in Paragraph 4(k), given the serious nature of these offenses and their international recognition, this must not be used as an excuse to refuse extradition.

Paragraph 4(l): Paragraph 4(l) is inspired by Article 3(f) of the United Nations Model Treaty on Extradition and Article 5 of the Economic Community of West African

States Convention on Extradition. To ascertain the minimum guarantees contained in international human rights law, reference should be made to the various international human rights treaties (listed in the subsection “Legal Instruments” of Further Reading and Resources toward the end of the volume and incorporated into the MCC and the MCCP) and any case law that defines the nature and scope of the obligations contained in these treaties.

Paragraph 5(a): The practice as to whether a national may be extradited varies from state to state. Some states have constitutional guarantees against the extradition of nationals, whereas other states have no such prohibition. The divergence in practice is apparent in the international treaties on extradition. Some treaties, such as the European Convention on Extradition (Article 6), provide for refusal of extradition on the grounds of nationality, as does the United Nations Model Treaty on Extradition (Article 4). Conversely, the Inter-American Convention declares that the fact that a person sought is a national of the requesting state may not be invoked to decline a request for extradition (Article 7). Ultimately, a state enacting legislation on extradition will need to determine a policy on the extradition of nationals.

Paragraph 5(b): The discretionary ground for refusal of extradition contained in Paragraph 5(b) is inspired by Article 4(f) of the United Nations Model Treaty on Extradition, Article 7 of the European Convention on Extradition, and Article 11 of the Economic Community of West African States Convention on Extradition.

Paragraph 5(c): Paragraph 5(c) is inspired by Article 12 of the Economic Community of West African States Convention on Extradition, Article 8 of the European Convention on Extradition, and Article 4(c) of the United Nations Model Treaty on Extradition.

Paragraph 6: A number of international treaties on extradition (or other treaties that deal indirectly with extradition) require that extradition not be refused purely on the basis that the request concerns fiscal matters, for example, Article 5 of the European Convention on Extradition, Article 9 of the Economic Community of West African States Convention on Extradition, Article 2(3) of the United Nations Model Treaty on Extradition, Article 16(15) of the United Nations Convention against Transnational Organized Crime, and Article 44(16) of the United Nations Convention against Corruption. Paragraph 5 duplicates the substance of these provisions.

Paragraphs 7 and 8: These paragraphs are derived from Article 20 of the Inter-American Convention on Extradition, Article 19 of the European Convention on Extradition, and Article 25 of the Economic Community of West African States Convention on Extradition.

Paragraphs 12–14: Article 10 of the United Nations Model Treaty on Extradition requires that the requested state promptly communicate its decision on the extradition request to the requesting state. Article 10(2) also provides that the requested state give reasons for any complete or partial refusal of the request. The same requirement is

contained in Article 18 of the European Convention on Extradition and Article 17 of the Inter-American Convention on Extradition. On the basis of these requirements, Paragraphs 12–14 require that the decision on extradition be immediately communicated by the authority responsible for receiving requests for extradition and that the trial court prepare a written decision on its refusal to grant an extradition order.

Paragraph 15: Under Paragraph 15, a request for extradition may be refused where the person sought is a national of the requested state, where the person may face capital punishment in the requesting state, or where the criminal offense was committed in the requested state. Where extradition is refused on these grounds, the various international conventions on extradition require that the person who was sought be investigated for the criminal offense alleged by the requesting state. For example, Article 6 of the European Convention on Extradition and Article 16(12) of the United Nations Convention against Transnational Organized Crime require that if the extradition of a national is refused, the case be submitted to the authorities in order that proceedings be undertaken if they are considered appropriate. Article 8 of the Inter-American Convention on Extradition, which applies to all grounds on which a request for extradition is based and not just refusal on the basis of nationality, requires that a state that does not deliver the person sought is obliged (where its law permits) to prosecute the person for the offense for which he or she is charged “just as if it had been committed within its territory, and shall inform the requesting state of the judgment handed down.” Under the MCCP, the list of grounds for refusal that trigger the requirement to prosecute is more limited. It is important to take into account the fact that the requesting state must have jurisdiction over both the person and the criminal offense for it to mount a prosecution. If the offense that was the subject of the extradition order was committed outside the territory of the requested state, sufficient grounds of extra-territorial or universal jurisdiction would be required to legally prosecute the accused person. Reference should be made to Articles 5 and 6 of the MCC, which address extra-territorial jurisdiction and universal jurisdiction, respectively.

Paragraph 17: Under most legal systems, the courts do not have the final say on matters of extradition. Once the court has determined the matter of extradition in accordance with the applicable law on extradition, it is incumbent upon the court to refer the matter to another authority. In many states, the minister for justice makes the final decision on extradition. In others, the minister for the state or minister for foreign affairs is ultimately responsible for confirming a court’s determination on the propriety of an individual extradition request. The term “head of the competent authority responsible for authorizing extradition” is used to signify the person responsible for making the final determination on extradition. The title of the relevant person should be inserted in this paragraph.

Article 316: Surrender to a Requesting State

1. Where the [head of the competent authority responsible for authorizing extradition] approves the extradition, and upon the expiration of the period for filing an interlocutory appeal under Article 295, the competent trial court must ensure that the request for extradition is executed.
2. The requesting state and [insert name of state] must, without undue delay, arrange for the surrender of the person sought.
3. The competent trial court may order the detention of the person sought pending surrender.
4. [Insert name of state] must inform the requesting state of the length of time the person sought was detained with a view to surrender.
5. The person being extradited must be removed from [insert name of state] within such reasonable period as [insert name of state] specifies and, if the person is not removed within that period, [insert name of state] may release the person and may refuse to extradite that person.
6. In exigent circumstances, where the delay in removing the person to be extradited is due to circumstances beyond the control of the requesting state, the competent trial court may extend the period of detention.
7. The surrender of a person sought to the agents of the requesting state must be carried out at a place determined by [insert name of state]. This place must, if possible, be an airport from which direct international flights depart for the requesting state.

Commentary

Article 316 lays down the fundamentals of the procedure for surrendering a person to a state that has requested his or her extradition. This article is inspired by Article 11 of the United Nations Model Treaty on Extradition, Articles 24 and 25 of the Economic Community of West African States Convention on Extradition, Articles 18 and 19 of the European Convention on Extradition, and Articles 19, 20, and 22 of the Inter-American Convention on Extradition. Once an extradition order has been made, both the requesting and the requested state must agree upon a surrender time and place. Where the surrender is not immediate, the competent trial court may order the detention of the person to be extradited pending the surrender. Under Paragraph 4, the requesting state must place a limit on the time that the person to be extradited can be

held without being surrendered. Once this time limit has passed, the requesting state may refuse to extradite the person and may let the person go free. In the Inter-American Convention on Extradition, the time limit for surrender is thirty days, subject to extension in exigent circumstances. In the European Convention on Extradition, Article 18 provides that a person who has not been surrendered after fifteen days may be released at the discretion of the requested state and must be released after thirty days except in the case of circumstances beyond the control of the requesting state.

Article 317: Rule of Speciality

1. A person extradited to a requesting state must not be proceeded against, sentenced, detained, re-extradited to a third state, or subjected to any other restrictions of personal liberty in the territory of the requesting state for any criminal offense committed before the extradition other than:
 - (a) a criminal offense for which extradition is granted; or
 - (b) any other offense in respect of which [insert name of state] consents.
2. A request for the consent of [insert name of state] under Paragraph 1(b) must be accompanied by the materials required under Article 313 and a legal record of any statement made by the extradited person with respect to the criminal offense.
3. Paragraph 1 does not apply where:
 - (a) the extradited person has had the opportunity to leave the requesting state and has not done so within forty-five days of final discharge in respect of the criminal offense for which he or she was extradited; or
 - (b) the person has voluntarily returned to the territory of the requesting state after leaving it.

Commentary

According to the *Revised Manual on the Model Treaty on Extradition* and the *Model Treaty on Mutual Assistance in Criminal Matters* (page 52), the rule of speciality limits the power that the requesting state has over the person surrendered once a request for extradition has been granted. The generally accepted international principle of speciality is set out in Article 14 of the United Nations Model Treaty on Extradition, Article 14 of the European Convention on Extradition, Article 20 of the Economic Community of West African States Convention on Extradition, and Article 13 of the Inter-American Convention on Extradition.

Article 318: Concurrent Requests

1. Where several states request the extradition of the same person for the same criminal offense, priority must be given to the state of which the person is a national.
2. Where the person's state of nationality does not request extradition, priority must be given to the state in whose territory the criminal offense was committed.
3. Where the person's state of nationality does not request extradition and the criminal offense has been committed in the territory of several states or where the site of commission is not known, priority must be given to the state that requested extradition first.

Commentary

Article 318 covers the situation where more than one state makes a request for extradition of the same person. Article 318 is based on Article 16 of the United Nations Model Treaty on Extradition, Article 23 of the Economic Community of West African States Convention on Extradition, Article 17 of the European Convention on Extradition, and Article 15 of the Inter-American Convention on Extradition.

Article 319: Costs of Extradition

1. [Insert name of state] must meet the costs of any proceedings arising out of a request for extradition.
2. [Insert name of state] must meet the costs incurred in the arrest and detention of the person to be surrendered.
3. The requesting state must meet the costs incurred in conveying the person from [insert name of state] to the requesting state, including all transit costs and the costs of any translations.

Commentary

The ordinarily accepted rule relating to the costs of extradition is that the requested state bears the costs of any proceedings arising from the request and the cost of arrest and detention. Any other expenses, such as transit costs, are the financial responsibility of the requesting state. Article 319 is based on Article 17 of the United Nations Model Treaty on Extradition, Article 24 of the European Convention on Extradition, Article 30 of the Economic Community of West African States Convention on Extradition, Article 25 of the Inter-American Convention on Extradition, and Section 41 of the United Nations Model Law on Extradition. Reference should be made to the United Nations *Model Treaty on Extradition* for discussion of additional issues relating to the costs of extradition such as whether legal representation of the requested person should be borne by the requesting state. In relation to the MCCP, Article 68 requires that a person who is subject to an extradition request receive legal assistance and that the costs of this assistance be borne by the requesting state.

Article 320: Requests for Extradition from a Foreign State

1. Where an arrest warrant or indictment has been filed or a judgment has been rendered against a person who resides in a foreign state, [insert name of state] may file a request for his or her extradition from the foreign state.
2. The request for extradition must be sent to a foreign state through [the competent authority for submitting extradition requests] in [insert name of state].
3. A request for extradition must be accompanied by the documents and information set out in Article 313.

Commentary

This article applies to a situation where the state is requesting, rather than being requested for, extradition. It provides the preliminary procedure for requesting extradition. Because the determination of the extradition request will take place in another state (the foreign state) and the applicable law will be the law of that state, the MCCP could regulate only how the request for extradition is filed with the authority that will then transmit the request to the competent authorities in the requested state. The authority designated with sending the request should be the same authority designated to receive requests for extradition under Article 313.