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The accommodation of precursor crimes within extradition.

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Chapter 16 – The Accommodation of Precursor Crimes within Extradition

1. Introduction

Extradition is the formal legal process whereby accused and convicted persons are transferred from one state or territory to another. It has a considerable pedigree and contains some common features. Several of these features have evolved in the late 20th and early 21st centuries in the wake of heightened efforts to address transnational criminality. This evolution has included a weakening of the political offence exception and changes to the approach taken to double criminality. A limitation of the *prima facie* evidence requirement and a jurisdictional widening of extradition crimes have also taken place. Further, extradition has come to be conditioned with human rights protection in certain states. Alongside these developments has been the emergence of terrorism precursor crimes. Simply, states have criminalised certain acts related to terrorism in order to take the fight against it "further up the field".[1] In light of both of these changes a question that arises is whether, and if so how, the law of extradition accommodates the emergence of precursor crimes. This chapter traces the evolution of extradition law in the particular light of the enhanced efforts by states to address terrorism. It argues that the evolution of extradition law has been such that the challenges arising from the emergence of precursor crimes have been met. The chapter also suggests that the impact of human rights law within the process has usefully acted to condition inter-state co-operation where the rights of requested persons are seriously or disproportionately threatened.

2. Extradition Law

2.1 Origins

The existence of agreements and procedures to effect the transfer of suspected criminals date from the time of Moses.[2] The Jay Treaty between the US and Great Britain in 1794 is a notable early treaty. It contained a single provision on extradition, article 27, which in part provided:

> "It is further agreed, that his Majesty and the United States… will deliver up to justice all persons, who, being charged with murder or forgery, committed within the jurisdiction of the other, provided that this shall only be done on such evidence of criminality, as, according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed...".

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[1] Anderson, D**.,** Sheilding the Compass: How to Fight Terrorism without Defeating the Law, (2013) European Human Rights Law Review 233 at p 237.

[2] See Congressional Research Service, Extradition to and From the United States: Overview of the Law and Contemporary Treaties, 2016, at p 1 cited at https://www.everycrsreport.com/reports/98-958.html.

This provision is useful to note because it contains several features that later became wide-spread. These include double criminality, a jurisdictional limitation upon the definition of extradition crimes and an evidential requirement.

2.2 Traditional Features

A number of features are traditionally found in extradition law.[3] They have been commonly seen in the type of instrument most widely governing extradition internationally, bilateral treaties. One such treaty is the Extradition Agreement between the United States and Spain 1971.[4] Common provisions within it include that requiring extradition when the conditions in the treaty are met (article 1), the double criminality requirement (article 2), a provision excluding nationals from extradition (article 4)[5] and the political offence exception (article 5(4)). A further notable provision is the article on *prima facie* evidence (article 10D). A number of these features have been subject to modification. The law of extradition that largely developed in the 19th century in fact retains relatively few features that have not been revised. These changes reflect a number of considerations including the relative ease in modern times in which crimes can be committed transnationally, the enhanced efforts by states to act to address such crime and new approaches to political offences, nationality and criminal jurisdiction. These considerations have combined to lead to a general streamlining of the extradition process and widening of the crimes coming within its purview – including precursor crimes.

3. The Modern Evolution of Extradition Law

Extradition law has evolved in broad conjunction with the increased attempts by states to address terrorism. This evolution has taken place within both national and international law – although these are of course often related. The main vehicle effecting change has been multilateral treaties – be they extradition-specific or of a substantive criminal nature. Bilateral agreements have also played a role. Amongst the leading agreements are the Council of Europe's European Convention on the Suppression of Terrorism 1977 and the Convention on the

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[3] There is not, of course, a single body of extradition law. It is found within the domestic law of all states, in public international law and in EU law. There is also a traditional divergence in practice in some respects between common and civil law states.

[4] Cited at https://internationalextraditionblog.files.wordpress.com/2011/03/spain.pdf. It should be noted that the treaty has been amended by the Extradition Agreement between the United States and the European Union 2003, cited at http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=5461.

[5] The rule prohibiting the extradition of nationals has been relaxed somewhat in recent times. Whilst never adhered to by the UK or the US, civilian states have traditionally refused to extradite their nationals. The reasons behind this policy are that the judges of one's nationality are considered best suited to adjudge the crime, that states owe a duty of protection to their nationals and the fear of an unfair trial abroad, see Gilbert, G., *Responding to International Crime*, Martinus Nijhoff, Leiden, 2006, at p 167 et seq.

Prevention of Terrorism 2005[6] and Amending Protocol 2015, and the Extradition Agreement between the United States and the European Union 2003. Relevant treaties addressing substantive acts which contain provisions on extradition include the Hostages Convention 1979[7] (articles 9 and 10) and the International Convention for the Suppression of Terrorist Bombings 1997[8] (articles 8, 9 and 11). Of considerable importance both internationally and within the EU is the Framework Decision on the European Arrest Warrant 2002. In addition to international agreements and EU law the jurisprudence of a number of courts has influenced extradition law. Leading the way in subjecting modern extradition law to a degree of judicial scrutiny in Europe has been the European Court of Human Rights (ECtHR). The main changes effected by these agreements and jurisprudence as far as they relate to extradition law and precursor crimes will be discussed presently.

3.1 Political Offence Exception

The political offence exception acts to block an extradition where a request is either made for the purpose of prosecuting a person for a political crime or where the individual is being prosecuted for political or other reasons apart from the alleged crime.[9] The exception came to be introduced in extradition law in the early 19th century led by the practice of France.[10] Prior to being introduced extradition was employed for the explicit purpose of seeking persons for offences directed against the state. Three forms of political offence have been identified – the pure political offence directed solely at the political order, (treason being the paradigmatic example), the 'délit complexe' directed at public and private interests, and the 'délit connexe', being an act closely connected to one directed at public interests.[11] This is germane to our present discussion as precursor crimes appear to fall under the latter two categories – examples given include the theft of guns to prepare for a rebellion and robbing a bank to provide funds for subversive activities.[12] Regardless of the classification of political offences it is evident that the political offence exception is relevant to the attempts by states

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[6] Importantly as regards precursor crimes article 19 of the 2005 Convention provides, *inter alia*, that the crimes of public provocation to commit a terrorist offence, recruitment for terrorism, training for terrorism and the related ancillary offences are to be extraditable offences as between the parties. The Additional Protocol 2015 adds further offences, see https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/196 and https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/217 respectively.

[7] Cited at https://treaties.un.org/doc/db/Terrorism/english-18-5.pdf.

[8] Cited at https://treaties.un.org/doc/db/Terrorism/english-18-9.pdf.

[9] See generally Gilbert, G., supra note 5, Chapter 5. See also Petersen, A.D., Extradition and the Political Offence Exception in the Suppression of Terrorism, (1992) 67(3) Indiana Law Journal 767 and van den Wyngaert, C., The Political Offence Exception to Extradition, (1989) 19 Israel Yearbook on Human Rights 297.

[10] Shearer, I., *Extradition in International Law*, Manchester University Press, Manchester 1971 at p 166.

[11] See Gilbert, supra note 5 at pp 202-204, and Shearer, ibid at p 181-185.

[12] Gilbert, supra note 5 at p 204.

to address terrorism including through precursor crimes. An example of the exception is found in Article 3(1) of the European Convention on Extradition 1957 which provides "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence".

The political offence exception is the first traditional feature of extradition law that states addressed in the attempt to enhance efforts against terrorism. A leading treaty is the European Convention on the Suppression of Terrorism 1977. It was designed to ensure that persons suspected of terrorism could not evade prosecution by crossing a border.[13] Under the Convention parties agreed a list of offences which were not to be regarded as political for the purposes of extradition.[14] In the UK context, the 1977 Convention led to the enactment of the Suppression of Terrorism Act 1978 which, in general terms, gave effect to it. The UK-US Extradition Treaty 2003 takes a somewhat similar approach. It firstly provides for the exception and then lists a number crimes that are not to be considered political offences.[15] In EU law, the Framework Decision does not include an exemption for political offenders with respect to extradition (technically surrender) within the EU. It confirmed the position taken under the Convention relating to Extradition between Member States 1996 which provided the exception could no longer be relied upon in intra-EU extraditions as regards any offence.

The multilateral, bilateral and unilateral efforts by states to limit the political offence exception have led to its increasingly limited relevance. Two very different examples where overtly political acts have engendered extradition requests are the cases of Abu Hamza and Clara Ponsati. In regard to the former, the US sought Hamza from the UK having accused him of a number of crimes including conspiracy to provide material support to a foreign terrorist organisation (al Qaeda) (under 18 United States Code section 2339B) and conspiracy to provide material support to terrorists (18 USC § 2339A). The facts behind the charges included his assistance to persons who later travelled to the US in an attempt to set up a terrorist training camp and his involvement in an associate's travel to Afghanistan to meet a suspected al Qaeda official. Clearly both sets of circumstances are political – and precursor crimes. Hamza's arguments against

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[13] See Baker, S., Perry, D. and Doobay, A., A Review of the United Kingdom's Extradition Arrangements, 2011, at p 38, cited at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/117673/extradition-review.pdf.

[14] An Amending Protocol was adopted by the Council of Europe in 2003 which adds to the list of offences deemed not to be covered by the exception – it is not yet in force.

[15] In article 4(2)(a)-(g), cited at https://www.state.gov/documents/organization/187784.pdf. The UK's Extradition Act 2003 does not contain an exemption for persons sought for crimes of a political character. It does, though, contain a bar on extradition if requests appear to be made for prosecuting or punishing a person for his or her political opinions, in ss 13 and 81.

extradition failed and he was extradited and later convicted in the US in 2015.[16] In 2017 Spain sought the surrender of Clara Ponsati from the UK (Scotland) following the independence referendum held in Catalonia on 1 October 2017. The EAW provided that Ponsati was charged with rebellion, defined under Spanish law as being involved in a violent uprising, and the misuse of public funds.[17] The crime of 'rebelión' is found in articles 472 and 473 of the Spanish Criminal Code. Ponsati had been acting as the Catalan government's education minister prior to the referendum. Whilst opposition to the request was reported in the press as being based on the fact that it was made for political reasons, it became clear that the argument against the warrant was in fact based upon a lack of double criminality, not the political offence exception. Here, the acts of Ponsati are obviously political. Whether they amount to terrorism and precursor crimes is moot. As it turned out Spain withdrew the EAW prior to the extradition hearing taking place in Edinburgh.[18]

3.2 Double Criminality

The double criminality principle provides that an individual can be extradited only if the act for which he is sought is criminal in the requested state as well as the requesting state. Like the political offence exception it has experienced an evolution driven in part by efforts to address terrorism.[19] This evolution is not new, nor is it complete. In its original form the principle took the form of a list of crimes within the extradition agreement between states. Those crimes were amenable to extradition if found in the criminal law of both parties. This has been

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[16] See Arnell, P., The Legality and Propriety of the Trials of Abu Hamza, (2016) 4(2) Bergen Journal of Criminal Law and Criminal Justice 195. A similar case where the US sought an individual from the EU to stand trial for a precursor terrorist crime is that of Ali Charaf Damache, an Irish national who was extradited from Spain to the US to face charges including conspiracy to provide material support to terrorists, see https://www.irishtimes.com/news/crime-and-law/irish-citizen-pleads-guilty-to-terrorism-charges-in-us-1.3574784.

[17] See BBC News, Clara Ponsati: Arrested Catalan politician released on bail, https://www.bbc.co.uk/news/uk-scotland-scotland-politics-43567678, See further Arnell, P., The Arguments That Could Defeat Spain's Extradition Bid, The National, 13 April 2018, at http://www.thenational.scot/news/16156324.The_arguments_that_could_defeat_Clara_Ponsati_extradition_bid/.

[18] See BBC News, Spain withdraws Clara Ponsati arrest warrant, at https://www.bbc.co.uk/news/uk-scotland-44884815. Proceedings against the Catalan President, Carles Puigdemont went further in Germany. On 5 April 2018 the Higher Regional Court of Schleswig-Holstein rejected the EAW as it pertained to 'rebelión' because it did not fall within article 2 of the Framework Decision nor appear to meet the double criminality requirement, see Foffani, L., The Case of Puigdemont: the Stress Rest of the European Arrest Warrant, (2018) 8(2) European Criminal Law Review 196.

[19] There is a wealth of writing on the double criminality requirement including in the context of the EU Bachmaier, L., European Arrest Warrant, Double Criminality and Mutual Recognition: A Much Debated Case, (2018) 8(2) European Criminal Law Review 152 and more generally Williams, S., The Double Criminality Rule and Extradition: A Comparative Analysis, (1991) 15(2) Nova Law Review 581.

called a list or enumerative approach.[20] Jay's Treaty, for example, contained the two crimes of murder and forgery. Article 3 of the Agreement between the UK and Germany for the Extradition of Fugitives 1960 listed twenty seven crimes or groups of crimes as being subject to extradition.[21] The first stage in the evolution of the principle of double criminality entailed a change from the enumerative approach to a no-list or eliminative one.[22] The list approach came to be considered unsatisfactory because of the increasing number of crimes included and bilateral treaties being the main form of extradition agreement.[23] The eliminative approach is today predominant. It provides a punishment threshold at which crimes become subject to possible extradition – for example a minimum of one year imprisonment upon conviction. The Treaty on Extradition between the Philippines and China 2001 adopts such an approach.[24] Notably, the Extradition Agreement between the United States and the European Union 2003, which entered into force in 2010, imposed the eliminative approach as between the individual member states of the EU and the US. The significance of the eliminative approach from the perspective of precursor crimes is that explicit specification within the applicable treaty of the crimes amenable to extradition is not required. Extradition will not be prevented if, say, the crime of membership of a terrorist organisation is not listed in the applicable treaty. This does not mean that double criminality *per se* is no longer needed, however. The requirement remains that the act must be criminal in both the requested and requesting states. Notably, though, the second stage in the evolution of double criminality addresses that requirement head-on. It is found in the terms of the EAW.

The adoption by the EU of the Framework Decision on the EAW in 2002 marks a milestone in the development of extradition. A notable facet of which is the approach taken to double criminality. The Framework Decision in essence takes a hybrid approach – relying on the eliminative formula in certain circumstances but also eschewing double criminality completely in others. The latter is governed by article 2(2) of the Framework Decision. It *inter alia* provides that an act falling within a list of 32 crimes or groups of crimes will be amenable to surrender if it is punishable in the requesting state by a sentence of a maximum period of at least three years *without verification of the double criminality of the act*.[25] This is a ground breaking development based on the principle of mutual recognition and

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[20] Williams, ibid, uses the former designation and Gilbert, supra note 6, the latter.
[21] Found at http://treaties.fco.gov.uk/docs/pdf/1960/TS0070.pdf.
[22] This process is not without exception, as can be expected when agreements take the form of bilateral extradition treaties. France, who took the lead in the 18th century in making extradition agreements focused on 'les grands crimes' as extraditable but did not always set out or fully set out those crimes by name, see Harvard Draft Convention on Extradition (1953) 29 AJIL (Supp) at p 72-73.
[23] Harvard Draft, ibid at p 74.
[24] Cited at http://www.oecd.org/site/adboecdanti-corruptioninitiative/39379217.pdf. It is the approach adopted by article 2 of the UN Model Treaty on Extradition 1990, cited at http://www.un.org/documents/ga/res/45/a45r116.htm.
[25] Emphasis added.

the high level of confidence between and amongst member states.[26] As a result precursor crimes may be the basis of an EAW in circumstances where the requested state has not criminalised that act – on the condition that they are found within the Framework List in article 2 and subject to at least three years imprisonment. Within the list are crimes or groups of crimes that indeed cover certain precursor crimes. Perhaps the most relevant are 'participation in a criminal organisation', 'computer-related crime' and 'racism and xenophobia', and indeed 'terrorism' itself.

A number of precursor crimes in UK law appear to be come within the list. These include membership of a proscribed (banned) organisation under s 11 of the Terrorism Act 2000 and the dissemination of terrorist publications under s 2 of the Terrorism Act 2006. For others, the position is less clear, such as the crime of training for terrorism under s 6 of the Terrorism Act 2006.[27] An example where s 12 of the Terrorism Act 2000 was considered is Dabas v Spain.[28] That section criminalises *inter alia* conspiracy in relation to and supporting and furthering the activities of a proscribed organisation. Giving rise to the case was an EAW issued by Spain for various acts which were said to fall under article 576 of its Penal Code criminalising the collaboration with an Islamist terrorist organisation. The EAW specified that the offence came within the Framework List under the heading 'terrorism' as well as meeting the double criminality requirement under the Framework Decision. Both were challenged by Dabas. It was *inter alia* held that the warrant properly complied with the 2003 Act. Dabas' act came within the Framework List because it did not contain an allegation that he did anything within the UK which could constitute conduct amounting to the offence of collaboration with an Islamist terrorist organisation.[29] The Court went on to hold that even if it was wrong as regards the Framework List, the dual criminality requirement was satisfied in the case. The corresponding offence within UK law was that under s 12 of the Terrorism Act 2000. Dabas' appeal against extradition was dismissed. It is clear, then, that the Framework Decision represents a second stage in evolution of double criminality. Acts which do not satisfy the requirement may still be subject to surrender – if they fall within the Framework List and attract a custodial sentence of at least three years. A likely result of this further evolution is that the surrender of persons accused of precursor crimes within the EU will take place more readily.

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[26] As provided in recitals 6 and 10 of the Framework Decision.

[27] It should be noted that several substantive terrorist crimes are included within the list, including 'terrorism' and 'sabotage'.

[28] [2006] EWHC 971 (Admin). The case was unsuccessfully appealed to the House of Lords, in Dabas v Spain [2007] UKHL 2007.

[29] Ibid at para 21. This is a particular requirement of the 2003 Act, not the Framework Decision. The section within the 2003 Act governing Framework List offences has since been amended by the Anti-social Behaviour, Crime and Policing Act 2014 to, in effect, clarify that where part of the relevant conduct took place in the UK the Framework List does not apply – and double criminality does.

3.3 Two Further Extradition Developments

Two further developments can affect how precursor crimes are accommodated within extradition. The first is the limitation of the *prima facie* evidence requirement and the second a jurisdictional widening of extradition crimes. The *prima facie* evidence requirement is a traditional feature of common law states.[30] Its origins are found in the distance involved and relative inconvenience of a criminal trial that may follow extradition.[31] The requirement demands that requesting states provide evidence sufficient for the requested court to hold that there is a *prima facie* case against the individual sought. It continues to apply in various jurisdictions. In Canada s 29(1)(a) of the Extradition Act 1999 provides that a judge must decide that there is evidence of conduct that would justify committal for trial in Canada had the conduct occurred there.[32] In the UK, the requirement is found in s 84(1) of the Extradition Act 2003. It requires evidence sufficient "to make a case requiring an answer by the requested person as if the proceedings were a summary trial of an information against him". Notably, the requirement has been limited in its application. Under the EAW it does not exist at all – no evidence is required from EU Member States seeking individuals from the UK or as between EU states *inter se*. In the extradition relations between the UK and other countries the requirement can be replaced with the less onerous reasonable suspicion test – that being the standard necessary to justify an arrest or issue an arrest warrant. That dis-application has taken place as regards a number of the UK's extradition partners including the US, the Ukraine and Turkey. The implication of this development for precursor crimes is that it further simplifies the process and demonstrates a heightened degree of trust between the parties. Extradition for precursor crimes may be less likely to be barred for evidential reasons as a result.

An increase in the number of acts amenable to extradition through the acceptance of greater extraterritorial criminal jurisdiction is a second further development affecting precursor crimes. It has its origins in the international and national law that governs extraterritorial jurisdiction in extradition. Article 2(4) of the UK-US Extradition Treaty 2003, for example, *inter alia* provides "If the offense has been committed outside the territory of the Requesting State, extradition shall be granted in accordance with the provisions of the Treaty if the laws in the Requested State provide for the punishment of such conduct committed outside its territory in similar circumstances….". This is, in effect a jurisdictional double criminality requirement. An example where extraterritorial jurisdiction over a

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[30] See Shearer, supra note 10, at p 150.
[31] Ibid at p 154. It is not, as sometimes considered, a function of the distrust of foreign criminal justice systems.
[32] See, for example, MM v USA [2015] SCR 973, where the Supreme Court held an extradition hearing should not to be an examination of possible defences or the likelihood of conviction but rather an expeditious procedure to determine whether a trial should be held, at para 38.

precursor crime was assumed by the US following extradition is the case of Syed Talha Ahsan. Ahsan's extradition was sought for his role in assisting in the running of jihadi websites based in the UK, but with a mirror site in the US.[33] His physical acts took place within the UK. Ahsan was extradited along with Abu Hamza and others in 2012.[34] He was subsequently convicted in the US of conspiracy to provide material assistance for terrorism. Significantly, in converse circumstances UK criminal law would have applied with Ahsan having committed an offence under s 15 of the Terrorism Act 2000.[35] That section *inter alia* criminalises inviting another to provide money intending it to be used for the purposes of terrorism. Section 63 of the Terrorism Act 2000 extends the scope of s 15 extraterritorially. The precursor nature of the offences for which Ahsan was convicted was noted by the US judge in sentencing him. Judge Hall *inter alia* stated that Ahsan did not have an interest "… in operational terrorist activities but noted that Azzam Publications supported the Taliban…. [she continued] I can only draw the conclusion that… neither of these two defendants [Ahsan and Ahmad] were interested in what is commonly known as terrorism".[36] This example highlights the significance of the jurisdictional widening of extradition crimes, especially as regards precursor crimes. This is of particular relevance because precursor crimes may often lack a clear and strong nexus to any one state and thus be jurisdictionally constrained on that account. Crimes of membership and finance of a terrorist organisation and the dissemination of terrorist information may be readily committed across borders, as seen in Ahsan. Precursor crimes often do not evince the degree of attachment to a single *lex loci delicti* as a terrorist bombing or murder, for example. This development therefore, in conjunction with the particular nature of precursor crimes, expands the scope of extradition quite considerably.

4. Human Rights

From the perspective of international criminal justice the accommodation of a greater number of crimes, including precursor crimes, within the ambit of extradition is to be welcomed. From the point of view of persons accused of such crimes, however, concerns may arise. One such issue is that an extradition may give rise to, or disproportionately engender, a human rights violation. In response to this concern human rights protection has been afforded requested persons in certain states and regions. The leading court here, the ECtHR, has held that this protection applies within the territories of both the requested and the requesting

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[33] See https://www.theguardian.com/commentisfree/2018/feb/07/lauri-love-us-trial-extradited-syed-talha-ahsan.

[34] The ECtHR case paving the way for their extradition is Ahmad v UK (2013) 56 EHRR 1.

[35] The question of what was the 'corresponding offence' was considered in the context of the possible imposition of notification requirements on Ahsan following his return to the UK. See The Commissioner of the Police of the Metropolis v Ahsan, [2015] EWHC 2354 (Admin) at para 33.

[36] Cited in the Commissioner of the Police of the Metropolis v Ahsan, ibid at para 8.

states.[37] These two situations, in the words of Lord Bingham, can be termed 'domestic' and 'foreign' cases.[38] Domestic cases arise where the removal of an individual from a state may *per se* be a disproportionate interference with his human rights.[39] Foreign cases occur where there are substantial grounds for believing that there is a real risk that conditions or treatment the individual will receive in the requesting state will violate his or her human rights as guaranteed under the law of the requested state. This latter situation has its origins in the well-known case of Soering v UK.[40] The law here acts to prevent requesting states becoming, in effect, complicit in human rights violations abroad. It should be noted however, that instances where human rights arguments are successfully made in extradition cases are relatively rare.[41] In Ahmad v UK[42], for example, life imprisonment entailing solitary confinement in a so-called 'super-max' prison in the US was held not to violate the prohibition of inhuman and degrading treatment and punishment under article 3 of the ECHR. One of the reasons for the relatively limited impact of human rights has been the reliance upon diplomatic assurances in circumstances concerns exist.[43] This is not to suggest that human rights do not offer a degree of protection to requested persons in a number of jurisdictions, including those within the Council of Europe and Canada. They play an important role. Human rights protection is a counter-point to the developments that enhance the effectiveness and breadth of extradition. In light of the wide range and nature of preparatory activities[44] coming within the realm of precursor crimes this is particularly welcome.

5. Extradition and Precursor Crimes - Conclusion

Extradition and precursor crimes are tools employed by states to address terrorism. They have both experienced an evolution. Modern extradition law has

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[37] The ECtHR is not alone pronouncing in the area. The Human Rights Committee under the ICCPR has also played a role. Nationally, the Supreme Court of Canada has acted similarly. A leading Canadian case is Burns v US [2001] 1 SCR 283 where it was held that the extradition of persons to the US without assurances against the death penalty being imposed would violate article 7 of the Canadian Charter of Rights and Freedoms (protecting persons from *inter alia* the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice).

[38] In R (ex parte Ullah) v Special Adjudicator, [2004] UKHL 26 at para 9.

[39] Most commonly argued in this way is the right to respect for private and family life under article 8 of the ECHR, a leading UK case being Norris v US, [2010] UKSC 9.

[40] (1989) 11 EHRR 439.

[41] See Arnell, P., The European Human Rights Influence upon United Kingdom Extradition – Myth Debunked, (2013) 21 European Journal of Crime, Criminal Law and Criminal Justice 317.

[42] Supra note 34.

[43] See further from a UK perspective Grozdanova, R., The UK and Diplomatic Assurances, (2015) 15 ICLR 369 and as regards deportation Anderson, D., and Walker, C., *Deportation with Assurances*, CM 9462, 2017, cited at https://www.gov.uk/government/publications/deportation-with-assurances.

[44] Macdonald, S., Prosecuting Suspected Terrorists – Precursor Crimes, Intercept Evidence and the Priority of Security, in Jarvis, L., and Lister, M., (eds), *Critical Perspectives on Counter-terrorism*, Routledge, London, 2014, Chapter 7 at p 132.

developed to accept a wider range of crimes within its ambit, and has lowered the hurdles that must be met within the process. The weakening of the political offence exception, changes to double criminality, a limitation of the *prima facie* evidence requirement and the extension of extraterritorial jurisdiction to extradition crimes have all taken place in relatively recent times. As has human rights law coming to place new limits upon extradition. Together, extradition law has evolved to more readily facilitate the prosecution of precursor crimes committed across borders. The evolution of extradition law and the accommodation of precursor crimes notwithstanding however, the process can be a difficult one. Spain's failed attempts to return Clara Ponsati from the UK and Carles Puigemont from Germany demonstrate that political sensitivities, double criminality and indeed differing conceptions of terrorism continue to play a part. It is clear that extradition, terrorism and precursor crimes will never be completely free from such issues.