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TRANSFER OF PRISONERS[1] AND EXTRADITION CASES BETWEEN EUROPE AND JAPAN

Legal and practical challenges

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1.1 Introduction

Given that Japan and European States[3] have considerable global reach, they are very much exposed to the threats of global crime.[4] However, they are naturally more affected by crime coming from their respective neighbouring regions, with Japan in particular being more of a victim of homegrown than transnational crime.[5] As a consequence, European States and Japan have focused their efforts on establishing cooperation with neighbouring States in Europe[6] and in Asia,[7] respectively. Alongside this, European States,[8] the EU itself,[9] and Japan[10] have concluded agreements with the United States, not an immediately neighbouring country, of course, but one with considerable economic and political global influence.

However, the last 20 years have shown a growing interest in judicial and police cooperation between Europe and Japan. Such cooperation has a varying degree of institutionalisation and intensity depending on the type of assistance requested. In the field of mutual legal assistance (MLA), EU Member States (MSs) can rely on an external agreement concluded by the EU with Japan in 2009.[11] The latter was partially modelled on EU legal standards on judicial cooperation and therefore guarantees effective cooperation and respect of fundamental rights, while requiring the sacrifice of a certain amount of sovereignty in accommodating requests to acquire evidence according to foreign legislation.[12] Moreover, Europol concluded, in 2018, a Working Arrangement with the Japan National Police Agency,[13] and the Council of Ministers of the EU authorised the opening of negotiations for a Passenger Name Record (PNR) data exchange agreement.[14]

Conversely, there is no EU law framework for two other forms of judicial cooperation, namely the transfer of the execution of sentences and extradition. Admittedly, the EU has not concluded any external agreements with third States

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in the field of the transfer of prisoners. However, EU MSs and all Council of Europe members can rely on the 1983 Council of Europe Convention on the Transfer of Sentenced Persons, which is also open to third State signatories, and which Japan joined in 2003.[15] In the field of extradition, the EU has concluded a number of agreements with third parties,[16] but not with Japan. In fact, no EU MS or European State has concluded an extradition agreement with Japan on a bilateral basis. Moreover, Japan is not a party to the 1957 Council of Europe Convention on extradition, to which all EU Member States are.[17] In fact, Japan has concluded only two extradition treaties, one with the US[18] and one with South Korea,[19] and there are discussions about signing an extradition treaty with China and with Vietnam.[20]

If compared with other forms of judicial cooperation, such as mutual legal assistance or exchange of personal data or police information, extradition and the transfer of the execution of sentences are more sensitive from a sovereignty and a fundamental rights perspective. This might explain the lack of bilateral treaties or multilateral EU law treaties between the EU MSs and Japan on this point, and the decision to rely on international law instruments, which leaves more discretion to each party as to whether to grant cooperation.

Indeed, all forms of cooperation can be sensitive from a territorial sovereignty perspective in that they require a State to exercise coercive powers on its territory without any national penal interest, but for the sake of another State's needs in terms of investigations, prosecutions or the enforcement of sentences. Extraditions and transfers of the execution of sentences, especially the transfer of custodial sentences, are nonetheless *particularly* problematic in this respect because the power that a State is requested to exercise, namely restricting individuals' liberty, is especially coercive if compared to other investigative activities, such as telecommunication interception, for instance. Considering the particular sensitivity of transfers of the execution of custodial sentences, among other types of sentences, the remaining part of the chapter will specifically focus on this type of cooperation, referring to it, for the sake of simplicity, as 'transfer of prisoners'. An extradition request requires a State to *arrest* and *detain* a person with the aim of surrendering him/her to another jurisdiction for the purposes of prosecution or of execution of a prison sentence, with no other interest than justice, broadly speaking. And a possible complementary interest of the requested State in complying with an extradition request could be that of setting a precedent for itself as a cooperative State in the eyes of the requesting State. Indeed, the latter State, having received cooperation in this one instance, might then be more likely to cooperate with extradition requests that it might receive from the first State in the future.[21] Via a transfer of prisoners, a person sentenced to imprisonment in a foreign country can be transferred to the State of which he/she is a national to serve the remaining part of the sentence if that increases his/her chances of rehabilitation. In this context, the requested State is required to *enforce a prison sentence*. In this case, the requested State might have an interest in having nationals being repatriated. However, it does not have a *penal* interest in the execution of the sentence, which can imply significant logistic

and financial costs. At most, it has an interest in preventing recidivism, to which rehabilitation of offenders is instrumental.[22] One should add, in this case, that the sentencing State might have a penal interest in transferring offenders to help their rehabilitation, but also a financial interest in unburdening itself from the execution of the imposed interest. However, it also has a countervailing sovereign interest in making sure that the transfer does not imply a shortening of the imposed sentence in the State of destination, which would affect the certainty of punishment and the connected objectives of retribution and deterrence.

With regard to sensitivity in terms of fundamental rights, while naturally all forms of investigation obtained through, among others, MLA Treaties can be intrusive from an individual rights perspective, what is especially at stake in the case of transfers and surrenders is, as mentioned, individuals' right to liberty. In addition to that, any transfer of persons from one jurisdiction to another, be it following an extradition or a request for a transfer of prisoners, implies a responsibility on the 'transferring State' to ensure that no violation of fundamental rights, such as the right not to be subject to torture or to inhuman and degrading treatment, occurs in the 'receiving country'.

Against this background, this chapter explores how both the law and the practice of cooperation between Japan and European States work in the two fields of extradition and the transfers of prisoners, and the challenges they raise. It will investigate to what extent law and practice aim to protect national sovereignty and national interests, the goal of effective cooperation and the individuals' fundamental rights, as well as what kind of balance is struck in cases of conflicting interests.

The chapter focuses on cooperation between Japan, on the one hand, and Belgium and the United Kingdom, on the other, as case studies. These two case studies have been chosen because they illustrate two diametrically opposite experiences in cooperating with Japan, especially with regard to the transfer of prisoners. The chapter nevertheless also includes anecdotical evidence of extradition cases with Italy, the Czech Republic, and Germany when this helps to illustrate specific points. Furthermore, while the focus is on the transfer of persons between European States and Japan, the chapter also looks at each party's cooperation with third, non-European States, as a benchmark for comparison.

From a methodological perspective, the chapter relies on a hybrid methodology combining a textual analysis of national – Japanese, Belgian, and United Kingdom – law and international law, and empirical collection of data via expert interviews.[23] The choice in favour of expert interviews is justified in light of the possibility they give to gain access to knowledge from authoritative sources, which was not recorded in official documents or which was included in documentation to which we either did not have access or could not read due to linguistic barriers. The interviewees have been selected on the basis of their unparalleled insight and knowledge, given their direct involvement in the handling of the cases discussed. The interviewees include Nereda Thouet, former Legal Advisor, Belgian Federal Public Service Justice, Directorate General Legislation, Office

for European and International Criminal Law, International Co-Operation Unit;[24] Kris Van Opdenbosch, Legal Advisor, Belgian Federal Public Service Justice, Directorate General Legislation, Office for European and International Criminal Law, International Co-Operation Unit;[25] Catherine Crutzen, Belgian Consul in Japan,[26] Graham Wilkinson, at the time of the interview, Head of Foreign National Operational Practice, Her Majesty Prison and Probation Service;[27] Anne-Marie Kundert, Unit Head, Extradition International Justice and Organised Crime Division Crown Prosecution Service, United Kindgom, 23 April 2020;[28] Lukáš Starý, National Member for Czech Republic, Eurojust;[29] Jacub Pastuszek, Head of Unit of International Criminal Law, International Department for Criminal Matters, Ministry of Justice of the Czech Republic;[30] Takashi Ito, Attorney at Law expert in extradition and transfer of prisoners matters, Japan;[31] the Director of International Investigative Operations Division, National Police Agency, Japan;[32] Yusuke Kitamura, former First Secretary, Mission of Japan to the EU;[33] Guy Stessens, Administrator at the Council of the EU in the area of Criminal Justice, Data Protection and Fundamental Rights between 2002 and 2015.[34]

The chapter is structured as follows. The next two sections respectively discuss the law and the practice of the two mechanisms, the next section focusing on the transfer of prisoners (Section 1.2), and the following one on extradition (Section 1.3). The last section draws general conclusions from the analysis of both mechanisms, the common challenges faced in both cases, and what weight is given to the protection of fundamental rights, securing effective cooperation and preserving national sovereignty (Section 1.4).

1.2 Transfer of prisoners between European States and Japan

As mentioned before, the relevant legal framework for the transfer of prisoners between the European States and Japan is the 1983 Council of Europe Convention on the Transfer of Sentenced Persons. The next subsection analyses the text of the Convention and especially enquire into what extent it allows State parties to maintain control over the procedure so as to protect their sovereignty (Section 1.2.1). The following subsection looks at the implementation of the Convention both in law and in practice in the two case studies, looking especially at the volume of transfers (Section 1.2.2). The final subsection discusses the legal and practical challenges that transfers face (Section 1.2.3).

1.2.1 The international legal framework for transfers between European States and Japan: The 1983 Council of Europe Convention

The Convention's preamble clarifies that the text is meant to provide a legal basis for transfers of offenders to their State of nationality if this can help the

offender in his/her process of desistance and reintegration into society.[35] There is no obligation either to comply with a request for a transfer or, when complying with it, to formally justify transfers on the basis that they will enhance the offenders' rehabilitation prospects. However, it was argued that a routinely use of the Convention for purposes other than the rehabilitation of offenders could be challenged.[36]

The formal conditions for transfers are listed in Art. 3 of the Convention. These include that both the sentencing State (the one which has imposed the sentence) and the executing State (the one where the person should be transferred and complete his/her sentence) consent to the transfer; and that so does the offender him/herself. Notably, there is no list of *exhaustive* grounds for refusing a transfer. It can therefore be assumed that each party retains full discretion. Once the transfer is authorised, the responsibility for enforcing the sentence shifts to the executing State. This means that first it has to take a decision on whether to continue to enforce the sentence which was originally imposed or to convert it into a national sentence prescribed in its domestic law for the same offence.[37] In any case, the enforcement shall be governed by the law of the executing State,[38] except for a few exceptions concerning pardon, amnesty and commutation,[39] and review of the judgement.[40] Most importantly, the executing State's rules on early conditional release would apply, and the decision on whether to grant early release would rest with its national courts.

Having the execution of the sentence regulated by the executing State's penitentiary rules is naturally meant to preserve the said State's territorial sovereignty over the administration of criminal justice on its territory. This can, however, be problematic for the sentencing State if early conditional release is more generously granted in the executing State than in the sentencing one, and the sentence would *de facto* be reduced due to the transfer. This could affect the certainty of punishment and the related retribution and deterrence objectives. Conversely, offenders might fear spending more time *intra muros* in the opposite situation, namely if the executing State is less generous with early conditional release. The system of tripartite consent introduced by the Convention allows both States that are involved and the offender the possibility to preserve their interests in the procedure. Sentencing States have the possibility to delay or refuse a transfer if they feel that it will not guarantee the certainty of punishment. Executing States have the option to refuse enforcing on their territory sentences which they have not imposed, especially if their criminal justice system already suffers from prison overcrowding. Offenders can refuse a transfer if they believe that it will not help their rehabilitation.

For the purposes of our analysis, it can be said that the Convention preserves the possibility for States to exercise full control over the procedure, even if this might affect how smoothly transfers are executed. In this, the Convention is, however, not a particularly conservative tool for judicial cooperation but actually follows the standard of other international instruments[41] or bilateral treaties.[42] In this respect, the transfer of prisoners is said to be apart from other forms of

cooperation.[43] For instance, modern international treaties in the field of mutual legal assistance, including the one between Japan and the EU, set an obligation to cooperate and define, in a relatively precise manner, the scenarios in which assistance can be refused,[44] leaving less discretion to cooperating States.

In order to foster the effectiveness of transfers, the First Protocol to the 1983 Convention,[45] which Japan has, however, not ratified, allows the consent of offenders to be waived in some cases, as do a number of bilateral treaties concluded, for instance, by the United Kingdom with Libya, Rwanda or Ghana.[46] While this policy choice leaves the discretion of cooperating States intact, it is highly problematic from an offender's fundamental rights perspective.

Only the EU law Framework Decision on the Transfer of Prisoners[47] significantly reduces the possibility for the executing State to refuse a transfer.[48] However, this system is regulated by the specific principle of mutual recognition, which only applies to EU MSs and cannot be exported to regulate relations with third countries.

1.2.2 Different balances between sovereignty and effectiveness in the domestic implementation of the Convention: Comparing Belgium, the United Kingdom, and Japan

In implementing the Convention, some States, including Japan, the United Kingdom, and Belgium, have made a number of declarations which should make the transfer procedures smoother. These include opting for directly enforcing foreign sentences as they were imposed without taking advantage of the possibility offered by the Convention to declare that foreign sentences would have to be first converted into national sentences.[49] Moreover, Japan and Belgium have declared that they will also accept requests in English, something which some EU MSs, notably Greece and Spain, did not.[50] However, Japan in particular has also made at least two specific choices which allow its authorities to have a particularly tight control over the procedure, thus safeguarding its sovereignty. However, this could also slow down cooperation.

First, while the default rule in the Convention is that transmission should occur between Ministries of Justice (Art. 5), Japan has added a declaration that requests must be transmitted through diplomatic channels, namely Ministries of Foreign Affairs. To make a comparison, with the exception of Lithuania, which has stated that it *allows* diplomatic channels, no other EU MS has made a similar declaration. This arguably adds a further diplomatic filter to cooperation. Going further into the details, Japan's domestic law implementing the Convention requires that the requests for inbound and outbound transfers must be sent to the Ministry of Foreign Affairs, which then forwards them to the Minister of Justice with an attached opinion.[51] When it comes to inbound transfers – Japanese citizens sentenced abroad who wish to return to Japan – the Ministry of Justice must then decide on whether it is reasonable to comply with the demand for transfer. If the inbound transfer stems from an initiative of

Japan, which would like to request a foreign State to transfer a Japanese citizen back home, the Minister of Justice must hear the opinion of the Minister of Foreign Affairs before taking said initiative.[52] Whenever the Minister of Justice believes that a transfer might be authorised, it must transfer the file to the Chief Prosecutor of the Tokyo District Public Prosecutor Office and order the Chief Prosecutor to require an examination by the Tokyo District Court.[53] If the Court retains that the transfer can be authorised,[54] the Ministry of Justice then takes its final decision on the opportunity of the transfer.[55] If this is the case, the Minister of Justice entrusts the Tokyo District Public Prosecutor Office with the procedure.[56]

With regard to outgoing transfers – foreigners sentenced in Japan who wish to return home – the procedure similarly implies the final decision being taken by the Ministry of Justice,[57] although, in some cases, the opinion of the Minister of Foreign Affairs is also necessary, namely when the initiative for the transfer comes from the Japanese authorities[58] or when the initiative comes from the State of nationality of the offender, and the Japanese Minister of Justice decides to refuse the transfer.[59] In this case, there is no involvement of judicial authorities in the procedure. Such an internal procedure is more complicated than the one envisaged, for instance, by UK domestic legislation, where the procedure involves only the Home Secretary and where there is no involvement of judicial bodies or of the Foreign and Commonwealth Office (Art. 1(b)).[60] It is also more complex than the procedure established by Belgian domestic legislation,[61] where the requests are dealt with by the Ministry of Justice and where there is similarly no role for judicial bodies and for the Ministry of Foreign Affairs.[62]

Second, while the Convention leaves the parties full discretion as to when to authorise or refuse a transfer, Japan's domestic law explicitly codifies some specific grounds for refusal. Among others, the transfer of foreigners convicted in Japan to their home countries cannot be authorised if the offender has been sentenced to an additional penalty other than imprisonment, for instance, a financial penalty or 'detention in a workhouse in place of payment of fines', and these penalties have not been complied with.[63] The inclusion of this provision arguably points to a desire to safeguard the State's interest in the certainty of punishment, from a retribution and deterrence perspective, possibly to the detriment of rehabilitation. As explained further in the following paragraphs, this provision has slowed down cooperation in practice. Interestingly, Belgian law also includes a further ground for refusal, which was not in the Convention, namely to refuse transfers towards foreign States if the offender is at risk of discrimination on the basis of political, racial or religious discrimination.[64] This ground is, however, aimed at protecting fundamental rights rather than State sovereignty.

However, surprisingly, no domestic legislation in the United Kingdom, Japan, and Belgium reproduces the condition listed in the Convention of the Council of Europe that transfers can occur only if at least six months of the imposed sentence remain to be served.[65]

1.2.3 Transfer of prisoners between European States and Japan: volume and direction of the transfers

When looking at the practice of transfers, one immediately notices that the number of outbound transfers from Japan to European States is considerably higher than the number of inbound ones. From 2004 (when the Convention entered into force in Japan) until 2017, there have reportedly been only ten transfers of Japanese people sentenced abroad back to Japan.[66] None of the Japanese prisoners came from Europe but rather from the United States (5), Thailand (3), and South Korea (2).[67] Conversely, in the same time span, Japan transferred 423 prisoners back to their home countries.[68] Among these, interestingly, European States are the leading destinations, with 61 prisoners being transferred to the United Kingdom since the Convention entered into force, and seven prisoners being transferred in 2019 alone.[69] Other examples include the Netherlands, which received 51 prisoners from Japan in total,[70] as well as Germany (17), Spain (14), France (1), from 2013 until 2017,[71] and the Czech Republic (6) from 2013 until 2019.[72] At the moment, there are reportedly 1,600 foreign prisoners in Japan, 40% of which come from countries that are signatories to the 1983 Council of Europe Convention, and 146 Japanese in foreign prisons, 50% of which in States that are signatories to the Convention.[73]

While one cannot generalise about the volume of cross-border crime affecting Japan and the EU simply on the basis of this data about transfers, what the numbers *suggest* is a very limited level of activity of Japanese criminals abroad. This is not to say that Japanese organised crime syndicates do not operate transnationally, thereby harming foreign States, but that there simply seem to be few Japanese foreigners that travel abroad to commit crimes and that are caught and sentenced there.

By contrast, foreigners committing crimes in Japan seem to be following a clear pattern. A very high percentage of the transfers concern foreigners sentenced for drug-related offences[74] and violations of customs laws.[75] This was the case for all transfers in 2017 and 2016, and for 37 out of 43 transfers in 2015, 31 out of 33 in 2014, and 22 out of 25 in 2013.[76] These data interestingly match the data on the Japanese requests for MLA from EU MSs, which also concerned for a great part drug offences.[77] One of the interpretations that our interviewees suggested for this pattern is that these offenders are people transiting through Japan with the intent of smuggling drugs into other South East Asian States.[78] Japan has a particularly strict anti-drugs policy and an effective system for customs checks, which would therefore allow foreign drug smugglers to be arrested at the airports.[79]

1.2.4 The challenge in enforcing Japanese sentences abroad: Retribution and certainty of punishment vs rehabilitation

In practice, transfers of European citizens sentenced in Japan to serve their sentence in their home country can go more or less smoothly depending on the country of destination. For instance, transfers to the United Kingdom seem to have faced relatively few challenges. Initially, cooperation between the two

countries reportedly faced administrative difficulties in that it was not really clear which documents each party needed to produce. Once these aspects were clarified, thanks to the support of the British embassy in Tokyo, transfers have run quite smoothly.[80] In another example, the experience of transfers to the Czech Republic is similarly positive. In this context, the only issue highlighted was the long duration that transfer procedures can take, from when the request for a transfer is submitted to when the person is actually transferred, which lasts on average around two years.[81] Delayed transfers can be problematic because if there is not sufficient time left to develop a rehabilitation project in the country of destination, the rehabilitative purpose of the transfer risks being delayed and therefore jeopardised. The Convention's requirement of there being at least six months of the sentence left to serve mentioned above[82] – which, however, was not implemented by Japan, the United Kingdom, or Belgium – follows this rationale. Similarly, if a rehabilitation project has conversely been going on in the sentencing State, to interrupt it halfway with a transfer can lead to a breach of the offenders' trust in the authorities as they might feel 'abandoned' and lose hope in the process of change, which is equally problematic in terms of rehabilitation prospects.[83]

Japan–Belgium cooperation on the transfer of prisoners has conversely faced more difficulties. From 2005 to 2019, there have been 13 requests for transfers from Japan to Belgium.[84] Out of these, only two transfers have been authorised in 2015 and one in 2018. In one of the 2015 cases, however, the person was released in Belgium a few months after the transfer when he still had several years to serve of his original Japanese sentence. This was due to legislative differences between Japan and Belgium. The person had been sentenced to ten years in Japan. However, once transferred to Belgium, the sentence was converted into a five-year prison term, since Belgian law only admits ten-year-long prison penalties for offences which are committed in conspiracy. Since it was not clear from the Japanese judgement whether this was the case, the decision was converted.[85] With the person having already served five years in Japan, he was released right after the conversion took place.[86] This case led to an erosion of confidence of Japanese authorities in the Belgian authorities' capacity to ensure certainty of punishment following a transfer, which had an influence on the outcome of at least one case pending at the time, as explained below.

Incidentally, and by way of comparison, findings from a different research project show that very similar challenges as to sensitivity regarding the possibility of an early release after the transfer have materialised in transfer cases involving France and the People's Republic of China.[87]

Out of the other ten requests for transfer, one, submitted in 2005, was not completed as the person withdrew their consent to the transfer. Six requests for transfer from Japan to Belgium have been refused by Belgium authorities in, respectively, 2008, 2012, 2015, 2016, and 2018, because it was judged that the offenders had limited ties with Belgium, which therefore made their transfer unlikely to contribute to their rehabilitation.[88]

Interestingly, while the 1983 Council of Europe Convention generically refers to rehabilitation as the objective of the transfers, the Belgian law implementing the Convention does not even mention rehabilitation and only speaks of authorising transfers when appropriate and in the interest of the offender.[89] One can therefore wonder if Belgium's strict approach in these cases was also aimed at preserving a national interest in not using national resources to enforce, on national territory, a sentence in which it had no penal interest.

Two other requests for transfers submitted, respectively, in 2006 and 2009, did not end well because the person was conditionally released in Japan before the procedure for the transfers could be finalised. The case initiated in 2009 is symptomatic of the various sets of difficulties that the transfer of prisoners from Japan to Belgium can face. The person was serving a prison sentence for having smuggled drugs into Japan and had also been sentenced to the payment of a fine for having violated customs regulations in the act of smuggling, which had been turned into a 'detention in a workhouse in place of payment of fines' (Art. 18 Japanese Penal Code) since the offender could not pay the fine.[90] However, Belgian criminal law does not envisage this kind of work-based penalty. This posed problems as to how to convert this double Japanese sentence in Belgium post-transfer.[91] Moreover, following the erosion of confidence of the Japanese authorities in the Belgian authorities, which the 2015 case had led to, Japanese authorities also requested assurances that the person would serve, in Belgium, a prison term equivalent to that which he would have served in Japan, considering Japanese delays for early conditional release.[92] Belgian authorities were, however, not in a position to assure this. The authorities in charge of transfer depended on the Ministry of Justice. Whereas the competence for granting early conditional release, or conversion of the penalty, lies with the *juge d'exécution des peines* (penitentiary judge), which does not depend on the Ministry of Justice. The authorities negotiating the transfers could thus not take agreements on behalf of authorities which were not under their authority. The solution found was that the person would serve his sentence in Japan up to the date for conditional release in Japan, which was in 2017, and was only afterwards expelled to Belgium.[93] Belgian authorities also reported that one of the difficulties in this case was to obtain a firm, positive or negative, reply on the possibility of the transfer, which added to the delay.[94] What this case clearly illustrates is the insistence of Japanese authorities on the need to preserve the certainty of punishment and therefore retribution and deterrence rather than the aim of rehabilitation of the offender. In this context, this actually prevented the transfer from taking place and, with that, its rehabilitative objective. However, in any case, even if the transfer had taken place, the simple fact that it had taken so long could have had a major impact on the offenders' chances of rehabilitation for the reasons explained above.

Other than these issues linked to the differences in legal systems, it was reported that the contact between the Belgian and Japanese Ministers of Justice was cordial and effective. Interestingly, in some recent cases, despite the official procedure requiring reliance on diplomatic channels, direct contact between

the Ministries of Justice was allowed, which ensured smooth cooperation. This could be a spillover effect of the cooperation in the field of mutual legal assistance, which, as per the EU–Japan MLA Agreement, takes place through the central authorities. Having appreciated the added value of direct contact in that field, the same practice might have been adopted in the field of transfer of prisoners.[95] Furthermore, as was stated in the case of the United Kingdom, mediation through the national embassy in Tokyo is key, especially in explaining and clarifying the differences between the two criminal justice systems.[96] Interestingly, one point on which there have not been questions on the side of Japan is the State of Belgian prisons and prison overcrowding,[97] which, conversely, represents a problem for intra-EU transfers.[98]

1.3 The law and the practice of European States' extradition with Japan

As mentioned earlier, contrary to what happens in the field of the transfer of prisoners, there is no bilateral or multilateral extradition treaty between European States and Japan. The next subsection therefore formulates a number of hypotheses to explain this lack of extradition treaties (Section 1.3.1); the following subsection looks at domestic legislation in Japan, Belgium and the United Kingdom to assess on which basis extradition can still be authorised in the absence of an extradition treaty (Section 1.3.2); and finally the third subsection investigates the limited extradition practice involving Japan and European States, highlighting the challenges that the existing cases faced and what is the role for protection of sovereignty (Section 1.3.3).

1.3.1 Practical and policy reasons for the lack of extradition treaties between European States and Japan

There is no official explanation as to why Japan does not have extradition treaties with European States. Interestingly, the 2014–2015 House of Lords Report on extradition openly admits that, while in some cases diplomatic reasons prevent cooperation with some States, for instance, Taiwan, it is less clear why the United Kingdom has no treaty with Japan.[99] Such a lack of interest in concluding extradition treaties can have different reasons. First, one could argue that there is a limited number of cases of offenders abroad wanted by Japanese authorities or foreign offenders on Japanese soil. The effort of entering into negotiations and concluding an agreement might not seem worthwhile. The statistics for extradition cases are assessed in the next section. However, assuming that this perception is correct, it is worth noting that the low number of cases was similarly raised as an objection to the conclusion of the EU–Japan MLA Agreement. However, once the agreement was finally concluded and entered into force, the number of MLA cases between Japan and EU MSs has significantly increased, showing that the limited number of cases was

due, among other things, to a lack of an international agreement to deal with them.[100] One could think that, also in the field of extradition, the apparent limited number of cases might also be because of the lack of an institutionalised procedure to request for assistance and that the conclusion of an agreement could boost cooperation.

Alongside these empirical aspects, there are, however, also legal and policy reasons for the lack of extradition treaties. As was mentioned, extradition is a delicate mechanism of cooperation. Similarly to the transfer of prisoners, it implies a responsibility to ensure that the person who is subject to extradition is not subject to fundamental rights violations in the requesting State. However, contrary to the transfer of prisoners, refusing an extradition request in order to preserve territorial sovereignty on the administration of criminal justice can lead to impunity and cause diplomatic tension.[101] Interestingly, when compared with the Council of Europe Convention on Transfer of Sentenced Persons, the Council of Europe Extradition Convention has been significantly less successful as a global standard, as only three non-Council of Europe States have signed it.[102] This alone seems to suggest that States, including Japan, might be more inclined to have bespoke arrangements in the field of extradition with various countries, which could provide specific safeguards, rather than joining a general standardised treaty.

A specific issue which could be hindering the conclusion of extradition agreements between Japan and any EU MS is the presence of the death penalty in Japan.[103] Members of the Council of Europe have a legal obligation, stemming from the European Convention on Human Rights, to refuse extradition if the requested person might be subject to capital punishment in the executing State.[104] Moreover, EU MS are also bound by the EU Charter of Fundamental Rights, which prohibits the death penalty.[105] For EU MSs to be able to comply with this obligation when cooperating with the United States, the EU insisted on having a clause in the EU–US Extradition Treaty, which gives EU MSs the possibility to request assurances that the suspect or the offender, if extradited, would not be subject to capital punishment.[106] The inclusion of such a clause was, however, a source of tension during the negotiations.[107] If European States were to negotiate an extradition agreement with Japan, similar issues are likely to arise.

When negotiating the EU–Japan MLA Agreement, the EU insisted on and managed to have a clause included in the agreement allowing EU MSs to refuse cooperation with Japan in cases involving capital punishment.[108] However, this created tensions and the clause was not well received politically in Japan, as it was argued that cooperation would not be on equal terms, with the EU having, *de facto*, a further ground for refusal.[109] One can assume that Japan would find it equally sensitive to negotiate an *extradition* agreement with a partner which requests a death-penalty-based ground for refusal. Nevertheless, the question has neither materialised so far nor is it likely to materialise in the near future. Indeed, the States with which Japan has concluded extradition agreements, namely the

United States and South Korea, and the ones with which it might conclude them in the future, that is Vietnam and China,[110] are all retentionist States.

1.3.2 Possible legal basis for extradition between European States and Japan

Despite the lack of bilateral extradition treaties, cooperation between European States and Japan can be based on sectorial international treaties that include an extradition clause. Japan and a large number of European States, including all EU MSs, are jointly party to a large number of international treaties criminalising, among other things, illicit drug trafficking,[111] corruption,[112] bribery,[113] nuclear terrorism,[114] organised crime,[115] terrorist bombing,[116] terrorist financing,[117] and torture,[118] which explicitly state that they can be relied upon as a legal basis for extradition concerning the relevant offences.

In the absence of *any* bilateral or multilateral international treaty which can serve as a legal basis, for instance, if the relevant offence is not covered by any of the sectorial treaties to which both Japan and European States are party to, extradition might also take place on the basis of reciprocity. This is a traditional concept of extradition law which implies that States would agree to extradite persons present on their territory if the requesting party agrees to grant extradition in return in future cases.[119] This is not allowed by all States, however. While Japanese domestic extradition law[120] and UK law[121] allow extradition on this basis, Belgian law only allows extradition in the presence of an international treaty acting as a legal basis *jointly* with assurances of reciprocity. [122]

Given the lack of bilateral extradition international treaties between European States and Japan, there is naturally no obligation on either side to comply with an extradition request.[123] Moreover, Japanese domestic legislation lists a number of specific scenarios in which extradition must be refused. Among these feature traditional grounds for refusal, such as if the relevant offences do not meet a penalty threshold, and specifically three years;[124] if there is no probable cause of the requested person having committed the offence;[125] if the person is requested for a political offence;[126] and if the requested person is a Japanese citizen.[127] Belgian law similarly forbids extradition in cases in which it is requested for political reasons[128] and prohibits the extradition of nationals (Art. 1 speaks of 'extradition of *foreigners*') but sets, in terms of penalties, a lower threshold of at least one year for extraditable offences.[129] Similarly, UK law only sets a one-year penalty threshold for extradition offences[130] and there is no provision in the UK Extradition Act which bars the extradition of nationals. It should be mentioned, however, that the bar on the extradition of nationals is a rule that is widespread in EU countries, such as Germany, Poland or Italy, for extradition to third countries, the United Kingdom being more the exception than the rule.[131]

At least on paper, Japan's domestic approach to extradition thus appears more restrictive than the Belgian and United Kingdom ones, envisaging more scenarios in which Japan could deny extradition, privileging maintaining supervision

of the procedure, possibly over territorial jurisdiction and/or of the respect of the offenders' fundamental rights. This could work to the detriment of the effectiveness of cooperation. Admittedly, the Japanese Extradition Act allows Japan to derogate from some of these grounds for refusal in international treaties. For instance, the treaties with the US[132] and with South Korea[133] allow for the extradition of nationals at the discretion of the requested party. Moreover, both treaties lowered the penalty threshold for extraditable offences from three years to one.[134] Japan's flexibility on these points, which allows for more cooperation, can be explained at least with regard to the United States in light of a historical alliance between the two countries, and in light of the fact that the original version of the treaty was signed in 1886 when Japan was in a hierarchically inferior position with respect to the USA.[135] However, naturally, these exceptions would not apply to extradition with European States with whom there is no treaty.

From a procedural perspective, it is even clearer that Japan wishes to keep tight control of the executive over the extradition procedure. The Japanese Extradition Act establishes that, first, the Minister of Foreign Affairs is entrusted with a preliminary evaluation as to whether there are no formal grounds for which an extradition request should be refused.[136] If not, then the Ministry of Justice has the task of evaluating the dossiers[137] after having received the authorisation from the Tokyo High Court.[138] It has been argued that the Ministry would rarely deny extradition after receiving a positive decision by the Tokyo High Court.[139] However, before any extradition is refused, the Minister of Justice must again consult the Minister of Foreign Affairs.[140] Legislation in both the United Kingdom and Belgium does not involve the Ministry of Foreign Affairs in the extradition procedures, and the decisions are only left in the hands of the Home Secretary in the United Kingdom[141] and the government in Belgium.[142] Japanese procedure therefore involves more steps where national interests against extradition can be raised, potentially slowing down the effectiveness of cooperation. This mirrors the specific position of Japan on transfers of prisoners, where diplomatic channels are equally involved, while they aren't in the procedure in the United Kingdom, Belgium, or any other MS.

Moreover, similarly to Japanese law, Belgian law and UK law entrust a judicial authority with the task of looking at the legal aspects of the extradition requests and of giving a preliminary authorisation.[143] However, in the United Kingdom, two degrees of appeal are available, before the High Court[144] and subsequently the House of Lords,[145] and, of course, afterwards to the European Court of Human Rights. Conversely, in Japan, no appeal against the decision of the High Court of Tokyo is possible. In this sense, procedures in Japan favour the effectiveness of cooperation. However, this is to the detriment of the individual's fundamental rights, notably the right to judicial review.

1.3.3 Extradition from and to Japan: The law and the practice

There are unfortunately no official statistics for the number of successful extraditions authorised by Japan per year. Moreover, it is particularly difficult to trace

cases in which extradition requests have been advanced but refused since there is no public hearing in the procedure. However, from the data that we have, the volume of extraditions from and to Japan seems to be, in general, very low. We are aware of 16 cases worldwide involving Japan (three extraditions requested by Japan and 13 extradition requests sent to Japan) in a ten-year period, for instance, from 1984 to 1994, among which most cases involved the United States, and only four, to our knowledge, involved an EU State, namely Germany (one request by Japan and three requests sent to Japan).[146] More recently, statistics for the years from 2007 to 2017 speak of 24 cases of extradition to Japan and nine of extradition from Japan worldwide.[147] Alongside this, we are aware of at least one other extradition case from Japan to the Czech Republic in 2018, as discussed below.[148] As far as extradition requests refused by Japan, besides those high-profile cases which make the headlines, such as the case of Zorzi or Fujimori, discussed below, we are aware of at least three unsuccessful requests being sent by Belgium. [149]

Even admitting that this data is incomplete and that the ones reported amount to half of existing cases, the number would remain fairly low if compared with, for instance, England and Wales, who have an average of ten extradition cases with third countries *per month*.[150]

There is no official explanation for such a low number of extraditions. As of 2017, it was reported that there were 538 foreigners and 130 Japanese having committed a crime in Japan who are estimated to have run away.[151] It is therefore hard to say that there are no suspects abroad. One of the hypotheses advanced for such low numbers of Japanese extradition requests was the difficulties in locating suspects abroad.[152] These difficulties exist despite Japan's intense collaboration with Interpol, to which it is the second contributor in terms of red notices, proportionally, after the United States.[153]

Given the limited number of cases, it is difficult to draw some broad general conclusions as to what extent cooperation works in practice and what is the balance struck between different objectives, such as protection of fundamental rights, effective cooperation and States' sovereignty, if and when they conflict. Few observations can nonetheless be made. First, there are positive examples of requests for extradition being executed even in the absence of bilateral extradition treaties. For example, a request from Belgium was based on the UN Drug Convention and executed on the basis of reciprocity;[154] and, looking beyond our two case studies, it is interesting to note that a request from the Czech Republic to Japan was executed simply on the basis of reciprocity, as there was no relevant sectorial international treaty which could act as a legal basis since the crime was murder.[155]

Second, the difficulties in locating suspects were indeed reported as an issue in the 2018 Czech case mentioned above. The case concerned a murder committed in the Czech Republic by a Chinese national back in 1998, who had received a final imprisonment sentence *in absentia* in 2003. The person was only located in Japan in 2018 and arrested at the airport when trying to leave the country. The Czech Republic asked for the extradition but, considering a significant lapse of

time had passed – the relevant documents dated back to 20 years before – the main challenge was to confirm the identity of the suspect. Moreover, several clarifications were needed on the question of legal qualification and, naturally, on the statutes of limitations under Czech law. Finally, the extradition request was executed in March 2019.[156]

Third, the Czech case is also interesting in that it is a good example of fast and effective communication. Despite the need to formally rely on diplomatic channels, direct contact between the Ministries of Justice of Japan and the Czech Republic was possible and worked particularly well, with Japanese authorities being very cooperative.[157]

Finally, a few words can be said about the Japanese implementation of the ban on extraditing nationals. As was said earlier, this ban can be lifted for requests coming from the United States and, interestingly, there have been cases of Japanese citizens deciding to plead guilty in US cartel crime cases and who voluntarily surrendered to the United States, even in the absence of formal extradition requests.[158] However, when presented with requests for the extradition of nationals, Japan has enforced its ban on the extradition of nationals very strictly. In a very high-profile case in 2001, Italy sent a request to Japan for the extradition of Delfo Zorzi, who had been sentenced *in absentia* to life imprisonment for the crime of 'massacre'. Zorzi had been one of the members of the right-wing terrorist organisation Ordine Nuovo, which was active in the late 1960s and early 1970s and which perpetrated some of the deadliest massacres in Italy's recent history, and of which Zorzi was accused of being one of the material executors.[159] In 1974, Zorzi had fled to Japan, where he had been naturalised as a Japanese citizen. Observing the ban on the extradition of nationals, Japan therefore refused to surrender him to Italian authorities.[160]

Another high-profile case in which the ban on the extradition of nationals was used was the case of Alberto Fujimori, the former president of Peru. Fujimori was accused of charges of multiple murders and torture in Peru and had fled to Japan, of which he was a national through his father. Despite the very sensitive political and diplomatic context, Japan refused his extradition.[161]

It is interesting that, in both cases, the refusal of extradition concerned not only very high-profile figures in diplomatically sensitive cases – in the Fujimori case, the Peruvian government mentioned that the crimes allegedly committed could amount to crimes against humanity[162] – but also of citizens who did not grow up in Japan and were either naturalised or derived their citizenship through family ties. Moreover, in both cases, the Japanese authority's interpretation of citizenship law was actually also contested. It was debatable whether Japanese law actually allowed Zorzi to be naturalised, despite his involvement in terrorist organisations,[163] and it was contested whether Fujimori's Japanese nationality was actually his *effective* nationality as understood under international law.[164]

By way of conclusion, it is interesting to point out that, in a current high-profile case, Japan has found itself on the receiving end of the ban on the extradition of nationals. As is well known, Carlos Ghosn, the head of Nissan, was accused

in Japan of serious financial misconduct. To avoid proceedings in Japan, Ghosn fled to Lebanon, of which he is a national and which has declared that it will not extradite him to Japan as Lebanese legislation does not allow the extradition of nationals.[165] One might wonder therefore if the Ghosn scandal might lead Japan to reconsider its policy on the extradition of nationals and to conclude more bilateral extradition treaties derogating to this rule in the interest of receiving more collaboration. Indeed, if Japan were to amend its policy on the extradition of nationals, then it could expect other States to also extradite their own nationals to Japan on the basis of reciprocity.

1.4 Conclusions

This chapter examines the law and the practice of cooperation between Japan and European States, in particular Belgium and the United Kingdom, in two fields that are particularly sensitive from a sovereignty and fundamental rights perspective, namely extradition and the transfer of prisoners.

The first element that emerges from the research is that transfers and surrenders of persons seem to be quite mono-directional. If compared with Belgium and the United Kingdom, Japan transfers and extradites many more foreigners than the number of Japanese prisoners or suspects and sentenced offenders that it receives. In general, there is a fairly limited volume of transfers and especially of extraditions from and to Japan.

From this limited number of cases, it can still be appreciated that the law and the practice for cooperation tend to privilege the protection of national sovereignty over the effectiveness of cooperation and occasionally over the interests of the individuals.

First, in terms of the international legal framework, contrary to other areas of cooperation, such as MLA, police cooperation and PNR data exchanges, there is no multilateral EU law treaty (or negotiations that have been opened on this point) organising the transfer or extradition of persons between EU MSs and Japan. Both procedures are regulated both for EU MSs and for all other European States by international law, notably the Council of Europe Convention for Transfer of Sentenced Persons, and general UN conventions or the principle of reciprocity in the field of extradition. This already shows a desire to maintain a certain degree of control over the procedures, which international law allows more than EU law international agreements would do, with the aim of protecting national sovereignty.

Second, domestic procedures for extraditions and transfers show that Japan requires, in principle, the involvement of diplomatic authorities alongside the Ministry of Justice, while the European States we looked at, the United Kingdom and Belgium, do not. This can make the procedure more cumbersome and can affect the effectiveness of cooperation. But communication between European and Japanese authorities has generally been smooth, and the involvement of embassies has helped cooperation.

Third, the practice of cooperation showed that a number of differences exist in terms of legislation, especially on early release schemes and the range of available penalties between Japan and Belgium. These can create difficulties in cooperation, and Japan insists that transfers of prisoners do not lead to offenders receiving considerably more generous treatment in the State of destination, even if this implies slowing and eventually barring cooperation. Similarly, Japan has enforced its ban on the extradition of nationals quite strictly. This was even the case where impunity for very serious crimes and diplomatic relations with other States were at stake, arguably also stretching the boundaries of Japanese citizenship law.

However, the evolution of cooperation on the transfer of prisoners and extradition should, of course, not be considered in isolation, and there might be interesting developments and spillover from cooperation in other areas. For instance, it was mentioned how MLA cooperation between Japan and EU MSs, which occurs through central authorities, might have positively influenced the practice of transfers of prisoners, with Japan agreeing in some cases to direct contacts between Ministries of Justice. One can then speculate as to whether the implementation of the Working Arrangement between Europol and the National Police Agency of Japan, and the conclusion of a PNR data exchange agreement, would also have a positive impact on extradition practice, for instance, helping in the location of more suspects abroad, which was listed as one of the factors contributing to the low number of extraditions.

Notes

1 The expression is used to refer in a simplified form to the form of cooperation traditionally referred to as 'transfer of the execution of custodial sentences'. See in the introduction for a more detailed explanation.

2 This chapter was supported by the JSPS Core-to-Core Program, A. Advanced Research Networks 'The European Union and Japan in a Fluid Global Liberal Order: Establishing an Inter-Regional Studies Centre'. The authors would like to thank all the persons who have kindly agreed to be interviewed and made data available for this research or have provided helpful comments on earlier drafts notably, Yusuke Kitamura, Hans-Holger Matt, Ralf Riegel, Therout Nereda, Graham Wilkinson, Lukáš Starý, Jacub Pastuszek, Takashi Ito, Guy Stessen, Kris Van Opdenbosch, Catherine Crutzen, Megumi Ochi, Anne-Marie Kundert and the Director of international Investigative operations division of Japan national police agency.

3 The expression 'European States' is used in this context, like in the volume's introduction as a catch all expression to refer to EU Member States and the United Kingdom. The choice to associate the United Kingdom with EU Member States is naturally due to the fact that it has been a member of the EU and therefore shares legal history with the other EU Member States. The exception is when reference is made to the Council of Europe, in which case the expression 'European States' refers to all Council of Europe States. When reference is made only to EU Member States this specific expression is used.

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6 Mitsilegas, V., The external dimension of EU action in criminal matters (2007) 12(4) *European Foreign Affairs Review* 457–497.
7 See Matsuzawa's chapter in this volume.
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9 See for the example the Agreement on extradition between the European Union and the United States of America [2003] OJ L 181/27.
10 Japan International Extradition Treaty with the United States, signed 3 March 1978, 31 UST 892; TIAS 9625; 1203 UNTS 225.
11 Agreement between the European Union and Japan on mutual legal assistance in criminal matters [2010] OJ L39/19 [hereinafter EU–Japan MLA Agreement].
12 Weyembergh, A. and Wieczorek., I, Norm diffusion as a tool to uphold and promote EU values and interest – A case study on the EU–Japan Mutual Legal Assistance Agreement (2020) 11(4) *New Journal of European Criminal Law* 440.
13 Working arrangement on establishing cooperative relations between the National Police Agency of Japan and the European Union Agency for Law Enforcement Cooperation, signed 3 December 2018, available at: ile:///Users/irenewieczorek/Downloads/working_arrangement_on_establishing_cooperative_relations_between_the_national_police_agency_of_japan_and_the_european_union_agency_for_law_enforcement-1.pdf
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17 The 1957 Council of Europe, European Convention on Extradition, ETS 024.
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19 Treaty on Extradition between Japan and the Republic of Korea, signed 8 April 2002, available at: https://www.mofa.go.jp/policy/treaty/submit/session154/agree-7-1.pdf
20 Interview with the Director of international Investigative operations division of Japan national police agency, see infra n 32.
21 Costa, M. J., *Extradition Law – Reviewing Grounds for Refusal from the Classic Paradigm to Mutual Recognition and Beyond* (Brill 2019), 20.
22 On the penal interests at stake in transfers of prisoners, see, broadly, Neveu, S, *Le transfert de l'exécution des peines privatives et restrictives de liberté en droit européen: à la recherche d'un équilibre entre intérêts individuels et collectifs* (Anthémis 2016).

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25 Interview held in person on 14 June 2019, in Brussels, transcript in file with the author [hereinafter Interview with Van Opdenbosch].
26 Interview held in person on 30 October 2019, in Tokyo, transcript in file with the author [hereinafter Interview with Crutzen].
27 Interview done by email on 6 December 2019, in file with the author [hereinafter Interview with Wilkinson].
28 Interview done by email on 23 April 2020, in file with the author [hereinafter Interview with Kundert].
29 Interview done by email, on 9 December 2019, in file with author [hereinafter Interview with Starý].
30 Interview done by email on 4 March 2020, 16th April 2020, in file with the author [hereinafter, Interview with Pastuszek],
31 Interview done via Skype on 18 December 2019, transcript in file with the author [hereinafter Interview with Ito].
32 Interview held in person on 31 October 2019, in Tokyo [hereinafter Interview with the Director of international Investigative operations division of Japan national police agency].
33 Interview held by email on 7 June 2019 [hereinafter Interview with Kitamura].
34 Interview held by phone on 19 July 2019, transcript in file with the authors [hereinafter Interveiw with Stessen].
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36 UNDOC, *Handbook on the International Transfers of Sentenced Persons* (2012), 32.
37 Art. 9(1)b of the 1983 CoE Convention.
38 Art. 9(3) of the 1983 CoE Convention.
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85 Interview with Van Opdenbosch.
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94 Ibidem.
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101 Costa, n 21, 26.
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104 The first case in this respect is *Soering v United Kingdom*, of 7 July 1989, Application no. 14038/88, which established that States could not extradite individuals if they were going to be subject to the death row phenomenon which considered inhuman and degrading treatment. More recent cases where it was established that extraditing individuals who risks being subject to death penalty, if no adequate assurance are provided that capital punishment won't be executed amounts to a violation of Art. 2 include *A.L. (X.W.) v. RUSSIA*, of 29 October 2015, Application no. 44095/14. All but two of the States members to the Council of Europe have ratified Protocol n 13 to the European Convention on Human Rights on the abolition of Death Penalty (ETS 187).
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110 See Matsuzawa's Chapter in this volume.

111 Art. 36(2)b(ii), United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UNTS 1582/95.
112 Art. 6(a)(b), United Nation Convention against Corruption, UNTS 2349/41.
113 Art. 10, OECD Convention on Combating *Bribery* of Foreign Public Officials in International Business Transactions.
114 Art. 13(2), International Convention for the suppression of acts of nuclear terrorism, UNTS 2445/89.
115 Art. 16(4), United Nations Convention against Transnational Organized Crime, UNTS 2225/209.
116 Art. 9, International Convention for the suppression of Terrorist Bombings, UNTS 2149/256.
117 Art. 11(2), International Convention for the suppression of the financing of terrorism, UNTS 2178/197.
118 Art. 8, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS 1456/85.
119 Costa, n 21, 23.
120 Art. 3 Japanese Act of Extradition, Act No. 68 of 21 July 1953.
121 Section 194, UK Extradition Act 2003. This is in exceptional cases, and it is very facts specific, extradition might be authorised in one case, but not in another.
122 Art. 1, Belgian Loi sur les extraditions du 15 mars 1874, n 15/30 (modifiée par la loi du 31 juillet 1985).
123 See by comparison Art. I of the Extradition Treaty between Japan and Korea, n 19, which establishes that the party agree to extradite to one another any person present on their territory but for the list of mandatory and optional grounds for refusal.
124 Art. 2(iii), Japanese Act of Extradition, n 120.
125 Art. 2(iv), ibidem.
126 Art. 2(i), ibidem.
127 Art. 2(ix), ibidem.
128 Art. 2bis, Belgian Loi sur les extraditions, n 122.
129 Art. 1(2), ibidem.
130 Section 137, sub-sec 3, para. b, UK Extradition Act, n 121.
131 For instance, to quote one example of Treaties the United Kingdom is party to, the proposed UK–Albania Extradition Treaty does not include a bar on nationality, see Art. 1, of the text of the text between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania Supplementing the European Convention on Extradition 1957, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705421/CS_Albania_1.2018_CM_9594.pdf.
132 Art. 5 Japan–US Extradition Treaty, n 10.
133 Art. 6 Japan–South Korea Extradition Treaty, n 19.
134 Art. 2(1) Japan–US Extradition Treaty, n 10, and Art. 2, Japan–South Korea Extradition Treaty, n 19.
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140 Art. 4(2), Japanese Act of Extradition, n 120.
141 Section. 92 and Section 93 of the UK Extradition Act, n. 121. The Foreign and Commonwealth Office remains the channel through which the documents are transferred but has no decision-making power. In practice, the extradition procedures are handled by the extradition unit of the Crown Prosecution Service, an

independent body which has large, delegated powers, especially as regards incoming cases.
142 Art. 3, Belgian Loi sur les extraditions, n 122.
143 Art. 3, Belgian Loi sur les extraditions, n 122, and Section 75, UK Extradition Act, n 120.
144 Section 103 UK Extradition Act, n 120.
145 Ibidem.
146 Interview with the Director of international Investigative operations division of Japan national police agency.
147 Interview with the Director of international Investigative operations division of Japan national police agency; Interview with Kitamura.
148 Interview with Pastuszek.
149 In one case concerning participation in a criminal organisation, a request was sent but the person ended up not being in Japan. In another case, the person was convicted to six years of imprisonment in Belgium, the request was sent in 2012, Japan demanded a guarantee of reciprocity, but the person was in preventive detention in Japan so was not surrendered. In one last case concerning trafficking in human beings, extradition equally did not go to a good end. Interview with Thouet.
150 Interview with Kundert.
151 Interview with Kitamura.
152 Ibidem.
153 Interview with the Director of international Investigative operations division of Japan national police agency.
154 Interview with Thouet.
155 Interview with Pastuszek.
156 Ibidem.
157 Ibidem.
158 Usami, n 139.
159 Zorzi was finally acquitted in 2014 by the Italian Court of Cassation.
160 Zorzi, D., In Italia non torno i giudici sono inaffidabili, *La Repubblica*, 12 November 2012, available at: https://www.repubblica.it/online/politica/pecorella/zorzi/zorzi.html, last accessed 3 May 2020.
161 Düker, A., The extradition of nationals: Comments on the extradition request for Alberto Fujimori (2003) 4(11) *German Law Journal* 1165.
162 Düker, n 161, 1170.
163 Zorzi, n 159.
164 Düker, n 161, 1169.
165 Lebanon rejects Japanese request for Goshn extradition, *Nikkei Asian Review*, 29 January 2020, available at: https://asia.nikkei.com/Business/Nissan-s-Ghosn-crisis/Lebanon-rejects-Japanese-request-for-Ghosn-extradition, last accessed 3 May 2020.