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Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the BRICS Member States and Candidate States

Vitalii Karpovich,

MGIMO University
(Moscow, Russian Federation)

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Abstract. This article analyzes the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the BRICS states. The legal and technical features of the national legal regulations governing extradition in Brazil, India, China and South Africa are analyzed. It is noted that each of these nations (with the exception of Russia) has adopted a special law on extradition, which regulates in detail all procedural aspects of international cooperation in the field of the extradition of criminals. In addition, the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the BRICS candidate states is also analyzed. In particular, this study provides both a general description of the countries' legislation (the different legal systems) and an assessment of the national legal regulations governing extradition in each of the BRICS countries, including such countries as Iran, Argentina, Algeria, Bahrain and the UAE. The mechanisms of interstate and interdepartmental cooperation are deeply described. Furthermore, the prospects of international legal integration of the BRICS states in the field of extradition are assessed, taking into account the possible entry of the candidate states into the BRICS group. Following an analysis of the national legislation of both the BRICS member states and the BRICS candidate states, the idea of creating and adopting a "BRICS Convention on Extradition" is proposed.

Keywords: extradition; international cooperation in criminal matters; legal integration; Brazil; Russia; India; China; South Africa; BRICS; BRICS candidate states.

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Introduction

The institution of extradition of persons for criminal prosecution or the execution of a sentence, as one of the forms of international cooperation in the field of criminal proceedings, ensures the achievement of the goals of the criminal process and the restoration of violated rights, as well as guarantees equality and justice in society and the inevitability of punishment.¹ Nowadays it is almost impossible to imagine a state that does not participate in international cooperation with regard to the extradition of criminals. This was caused by many interdependent factors, such as the global and regional trend of increasing the number of extradition requests, the need to improve criminal law and criminal procedure mechanisms in the field

¹ Volzhenkina, V. (2009). *Extradition in the Russian Criminal Process* (p. 56). Iurlitinform. (In Russian).

of extradition of persons for criminal prosecution or execution of a sentence,² the growth of transnational (cross-border) crimes,³ the influence of global organized criminal groups on the security and stability of states, and the evolving operations activities of international law enforcement organizations (such as Europol, Interpol, Afripol and Eurojust) and international criminal justice bodies.⁴

Successful extradition also makes it possible to fight crime at the international level, particularly in situations where criminals flee from the states in which they have committed illegal acts. It is commonly known that criminals frequently try to avoid criminal liability in this way. In our opinion, the existing challenges and threats can be overcome only by taking into account the improvement of mechanisms of interstate cooperation not only at the international, but also at the regional level.

A special role in the study of problems related to extradition procedures should be given to the grounds for refusal of extradition, although many of them may be, as it may seem at first glance, rather abstract in nature. An illustrative example would be the politicization of the extradition procedure of a person who needs to be extradited for criminal prosecution or execution of a sentence. Thus, many states and their competent authorities refuse extradition if they believe that the request for a person or a specific committed crime is politically motivated. Another common reason for refusing to execute an extradition request can be the unfairness of the justice system, as well as improper conditions of detention of a criminal. These grounds are widely used, but to this day it is not possible to establish clear criteria for such grounds in extradition, and states continue to abuse their right to use such grounds in the process of considering extradition requests.

The legal regulation of the extradition of persons for criminal prosecution or execution of a sentence is carried out at three levels: international law, the national legislation of the requesting state as well as the national legislation of requested state.⁵ This is one of the important conditions in the context of legal regulation of extradition, i.e., its "polysystem nature."⁶ Simultaneously, the establishment of effective links and the search for a legal framework for formal cooperation between the requesting and the requested party is possible only taking into account all levels. In addition to legally established interactions, there is also an exchange of operational information

² Goncharenko, A. (2015). Conditions of Extradition. *Society and Law*, 2(52), 146–149. (In Russian).

³ Veniaminov, A. (2016). Issues of Extradition. *Pravovedenie*, 2, 28. (In Russian).

⁴ Volevodz, A. (2011). *International Law Enforcement Organizations* (p. 344). Prospekt. (In Russian).

⁵ Volevodz, A. (2021). International Cooperation Between Russia and the United States in Extradition of Persons for the Purposes of Prosecution: Challenges and Opportunities. *Law. Journal of the Higher School of Economics*, 13(4), 230–258.

⁶ Reshetneva, T. (2010). To the Issue of the Definition of the Concept of "Extradition" and its Legal Clearance in the Legislation of the Russian Federation. *Bulletin of the Siberian Law Institute of the Ministry of Internal Affairs of Russia*, 3(7), 151–154. (In Russian).

between the competent authorities. Moreover, in the absence of international treaties, cooperation is carried out on the basis of the principle of reciprocity.

As for the framework of international legal regulation of extradition, it includes a set of bilateral and multilateral treaties. Bilateral extradition treaties are concluded between two states, whereas multilateral international (universal) and regional treaties are concluded between two or more states. Along with other international treaties, multilateral treaties on extradition are adopted at the level of international and regional organizations, such as, for instance, the United Nations (UN), Organisation for Economic Cooperation and Development (OECD), Organization of American States, Council of Europe, Center for Internet Security, South Asian Association of Regional Cooperation (SAARC), etc.

BRICS is one of the regional organizations that is actively developing. The legislation of each of the BRICS countries, especially its criminal law and criminal procedure, is constantly evolving and undergoing significant and progressive changes.⁷ In addition to topical issues of international policy, the unification, harmonization and internationalization of legal provisions are actively carried out within the framework of BRICS. Thus, each of the BRICS member states strives to fight crime at the national level by improving its legislation on international cooperation in the field of criminal justice. Taking into account existing developments and practices, as well as national legal traditions, joint communiques are adopted and BRICS-level plenary sessions of BRICS working groups on counterterrorism and meetings of foreign ministers are held. Meetings of the BRICS Anti-Terrorist Working Group are also held on a consistent basis. In this regard, in order to strengthen cooperation and combat transnational crime, it is necessary to consider and analyze the national legislation of the BRICS member states, as well as any of the candidate states seeking to join the BRICS (in particular, Algeria, Argentina, Bahrain, Iran and the UAE), and assess the prospects for legal integration on the extradition of persons for criminal prosecution or execution of a sentence, with a particular focus on considering the possibility of developing and adopting a "BRICS convention on extradition."

As already noted, in addition to examining the legislation of the BRICS member states, one of the goals of this study is also to analyze the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the BRICS candidate states. Thus, it is necessary, first of all, to assess the prospects of these states joining the BRICS group, as well as the presence or absence of barriers to further legal integration, including extradition.⁸

⁷ Markuntsov, S. (2018). Characteristics of Changes in the Criminal Legislation of Russia and China. *BRICS Law Journal*, 5(4), 90–113.

⁸ Nanda, V. P. (1999). Bases for Refusing International Extradition Requests – Capital Punishment and Torture. *Fordham International Law Journal*, 23(5), 1369–1396.

1. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Brazilian Republic

The legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the Brazilian Republic is complex. First of all, the Brazilian Constitution stipulates that no Brazilian can be extradited, with the exception of naturalized citizens and in the event that they commit a common crime before acquiring citizenship or have proven involvement in the illegal transportation of drugs or similar substances in accordance with the provisions of the law (Art. 5, para. 51). It also follows from paragraph 52 of Article 5 that an alien cannot be extradited for a political crime or for a crime in connection with his or her beliefs. Thus, the Constitution prohibits the extradition of indigenous Brazilians (born in Brazil), while naturalized citizens may be extradited in some cases – this is a rather rare rule because, in the context of extradition, states typically do not divide citizens into naturalized and indigenous.

The jurisdiction of the Union includes the powers to extradite criminals (Art. 22 of the Brazilian Constitution). The Federal Supreme Court, as a court of first instance, is authorized to initiate the process and make a decision in relation to extradition cases from a foreign requesting state (Art. 102 of the Brazilian Constitution). Certain procedural provisions are contained in the Code of Criminal Procedure; in particular, execution requests of a sentence from a foreign court that has not concluded an extradition treaty with Brazil will depend upon the decision of the Minister of Justice (part 1 of Art. 789 of the Criminal Procedure Code of Brazil). Furthermore, requests from the competent authorities of foreign states will be considered if they are sent by diplomatic channels and Brazilian legislation does not exclude extradition (Art. 784 of the Criminal Procedure Code of Brazil).

The fundamentals of migration legislation are established by the Federal Republic of Brazil Law No. 13,445 of 2017.⁹ Chapter 8, in particular, is devoted to international cooperation in the field of criminal proceedings, while section 1 regulates issues of interstate and interdepartmental cooperation in the field of extradition. In general, the conditions of extradition and the grounds for a refusal are quite typical, but political crimes warrant special attention.¹⁰ Thus, Article 81 states that the Supreme Court may refuse to consider any attempt on the head of state or any authorities as a political crime (i.e., politically motivated), as well as a crime against humanity, a war crime and crimes of genocide and terrorism. Thus, the extradition of a citizen is prohibited, but the extradition of a naturalized person is possible in cases provided for by the Brazilian Constitution. Article 96 provides that the requesting state must

⁹ Lei nº 13.445, de 24 de maio de 2017 [Law No. 13,445 of May 24, 2017]. Plano. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm

¹⁰ Souza, A. (2019). Extradition in South America: The Case of Brazil. *ERA Forum*, 19, 313–337.

provide guarantees to replace life imprisonment, corporal punishment or the death penalty with imprisonment, provided that the maximum sentence does not exceed thirty years.

Decree-Law of the Federal Republic of Brazil No. 394 of 1938 regulates some of the foundations of international cooperation in the field of extradition.¹¹ Currently, according to the official website of the Brazilian government, this law retains its legal force; however, this is limited to only those provisions that are not in conflict with new laws. For example, the law provides for refusal of an extradition if the Brazilian laws for the requested crime stipulate the term of imprisonment to be less than a year, while Law No. 13,445 specifies two years of imprisonment. Such a collision is obviously resolved in favor of Law No. 13,445. Extradition is also not carried out if the crime is of a military, religious or political nature. It is noteworthy that this law also contains provisions that exclude the use of grounds for political crimes, in particular, attacks on heads of state or any person exercising authority. Additionally, acts of anarchism, terrorism and sabotage, along with any propaganda of war or violent acts with the aim of undermining political or public order are not considered political crimes.

2. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Russian Federation

In the Russian Federation, there is no special legal act directly regulating the extradition of criminals. The Russian legislator has incorporated these provisions into a separate chapter of the Criminal Procedure Code. Moreover, there is currently no well-established and uniform understanding of extradition among representatives of the scientific doctrine since it is not legally enshrined in the legislation of the Russian Federation.¹²

While some representatives of Russian legal science claim that extradition relates to international (criminal) law, others refer it to criminal procedure law (international cooperation in criminal proceedings). Thus, A.V. Grinenko asserts that “the main types of international cooperation in the field of criminal justice are now ... extradition for criminal prosecution or execution a sentence.”¹³ L.V. Golovko similarly considers the extradition of persons for criminal prosecution or execution of a sentence one of the directions of such cooperation. He defines extradition as “the transfer of a person who has violated the criminal law of a country to a state authorized to investigate

¹¹ Decreto-Lei nº 394, de 28 de abril de 1938 [Decree-Law No. 394 of April 28, 1938]. Planto. https://www.planalto.gov.br/ccivil_03/decreto-lei/del0394.htm

¹² Reshetneva, 2010.

¹³ Grinenko, A. (2023). *Criminal Procedure: Textbook and Practicum for Universities*. Iurait. (In Russian).

him and consider a criminal case on this fact.”¹⁴ In addition, the issue of extradition is touched upon in such dissertation studies for the degree of Doctor of Law, such as “Legal Foundations of New Directions of International Cooperation in the Field of Criminal Procedure” by A.G. Volevodz,¹⁵ “Extradition in International Criminal Law: Problems of Theory and Practice” by N.A. Safarov,¹⁶ as well as in PhD dissertations, such as “Extradition in the Criminal Process of the Russian Federation” by A.K. Stroganova¹⁷ and a number of others. Such theses confirm that there is uncertainty in Russian legal science, in particular, about the place of the institution of extradition of persons for criminal prosecution or execution of a sentence.¹⁸

The system of legal acts regulating the procedural aspects of extradition in the Russian Federation is as follows:

1. The Constitution of the Russian Federation.
2. Ratified international treaties (multilateral and bilateral).
3. The Criminal Procedure Code of the Russian Federation.
4. The Criminal Code of the Russian Federation.
5. Departmental regulatory legal acts.

In fact, international treaties occupy a dominant position in practice in the implementation of interstate cooperation since they describe in detail the procedure for such interaction, the conditions for the extradition of a criminal, the competent authorities, as well as the grounds for refusing extradition.

Extradition is traditionally recognized as one of the most widespread forms of bilateral cooperation in the Russian Federation in the field of criminal proceedings. According to Article 61, “a citizen of the Russian Federation may not be expelled from the Russian Federation or extradited to another State.” Furthermore, Article 63 of the Constitution of the Russian Federation provides that the extradition of persons who are accused of committing a crime is carried out in accordance with a federal law or an international treaty of the Russian Federation.¹⁹

¹⁴ Golovko, L. (2017). *Course of Criminal Procedure* (2nd ed.). Statut. (In Russian).

¹⁵ Volevodz, A. (2002). *Legal Framework of New Areas of International Cooperation in the Field of Criminal Process* (Doctoral Thesis). Research Institute for Problems of Strengthening Law and Order at the Academy of the Prosecutor General's Office of the Russian Federation. (In Russian).

¹⁶ Safarov, N. (2007). *Extradition in International Criminal Law (Problems of Theory and Practice* (Doctoral Thesis). MGIMO University. (In Russian).

¹⁷ Stroganova, A. (2004). *Extradition in the Criminal Process of the Russian Federation* (PhD Thesis). Moscow University of the Ministry of Internal Affairs of Russia. (In Russian).

¹⁸ Klevtsov, K. (2022). Discussion on the Place of International Cooperation in the Field of Criminal Justice in the Legal System. *International Criminal Law and International Justice*, 2, 6–8. (In Russian).

¹⁹ Constitution of the Russian Federation (adopted by popular vote on December 12, 1993, with amendments approved during the all-Russian vote on July 1, 2020). The Ministry of Foreign Affairs of the Russian Federation. <https://mid.ru/upload/medialibrary/fa3/xwhwumdwunawy9iprvhcxqdqs1lzx-qdx/CONSTITUTION-Eng.pdf>

Part 5 of the Criminal Procedure Code of the Russian Federation is devoted to international cooperation of the Russian Federation in the field of criminal proceedings. As for the institution of extradition itself as one of the directions (forms) of such cooperation, Chapter 54 titled "Extradition of a person for criminal prosecution or execution of a sentence" is devoted to it separately.²⁰ The Prosecutor General's Office of the Russian Federation, in particular, its General Department of International Legal Cooperation, has exclusive competence in the field of the extradition of criminals.²¹

Meanwhile, it is possible to single out judicial practice, which, although formally not considered a source of law in the Russian Federation, has a huge practical role in the interpretation of legal norms. The resolutions of the plenum of the Supreme Court of the Russian Federation play a special role here. In order to interpret and apply the provisions of legislation in the field of extradition, one should refer to the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11.²² Departmental normative legal acts, namely instructions and orders of the Prosecutor General's Office, also play an important role for the effective execution of the practical activities of employees (prosecutors) of the General Department of International Legal Cooperation of the Prosecutor General's Office (which has exclusive competence in extradition matters).^{23/24}

Russia has also concluded about sixty-five existing bilateral extradition treaties with foreign countries. For those states that are signatories to the above-mentioned international treaties, in the event that no bilateral treaties have also been negotiated with the state, the possibility of extradition is provided on the basis of the conventional mechanisms. At the same time, as for example, in the Republic of India, extradition may be possible on the basis of the principle of reciprocity in the absence of a common international agreement or a bilateral agreement.

²⁰ Criminal Procedure Code of the Russian Federation No. 174-FZ of December 18, 2001. WIPO Lex. <https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/en/ru/ru065en.pdf>

²¹ Regulations on the Main Directorate of International Legal Cooperation of the Prosecutor General's Office of the Russian Federation (approved by the Prosecutor General's Office of Russia on September 6, 2021). ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_396362/. (In Russian).

²² Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11 of June 14, 2012 "On the Practice of Consideration by Courts of Issues Related to the Extradition of Persons for Criminal Prosecution or Execution of a Sentence, as Well as the Transfer of Persons to Serve a Sentence." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_131317/. (In Russian).

²³ Order of the Prosecutor General's Office of the Russian Federation No. 297 of June 3, 2020 "On the Procedure for International Cooperation by Bodies and Organizations of the Prosecutor's Office of the Russian Federation." ConsultantPlus. <https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=EXP&n=745136#DqksaVU4UcJEmEZ21>. (In Russian).

²⁴ Instruction of the Prosecutor General's Office of the Russian Federation No. 116/35 of March 5, 2018 "On the Procedure for the Work of the Prosecutor's Office of the Russian Federation on the Extradition of Persons for Criminal Prosecution or Execution of a Sentence." ConsultantPlus. https://www.consultant.ru/document/cons_doc_LAW_294316/. (In Russian).

In accordance with part 1 of Article 460 of the CPC, the Russian Federation may send a request to a foreign state through the Prosecutor's office for an extradition of a person for criminal prosecution or execution of a sentence on the basis of either an international agreement made between the Russian Federation and this state or a written obligation of the Prosecutor General of the Russian Federation to extradite persons to this state in the future based on the principle of reciprocity in accordance with the legislation of the Russian Federation.

Part 1 of Article 13 of the Criminal Code of the Russian Federation contains similar provisions as Article 61 of the Constitution of the Russian Federation and provides that "citizens of the Russian Federation who have committed a crime on the territory of a foreign state should not be extradited to this state." That is, it establishes the principle of non-extradition for its own citizens. In turn, part 2 of Article 13 of the Criminal Code of the Russian Federation establishes the principle of extradition of foreign citizens and stateless persons who have committed crimes outside the territory of the Russian Federation.

The Russian Federation has signed and ratified a significant number of international treaties that provide for a procedure for the extradition of criminals. The Russian Federation also provides for the possibility of extradition in the absence of bilateral treaties with those states that are signatories of such international treaties. As mentioned before, extradition is possible on the basis of the principle of reciprocity in the absence of a general international agreement or a bilateral agreement.

3. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Republic of India

The influence of Indian organized crime organizations strongly affects the criminogenic situation of the entire region. The transnational nature of Asian crime invariably leads to the need for international cooperation in the fight against crime. Integration and globalization processes have become significant reasons for establishing broad interstate contacts and establishing channels of information exchange between special services.

Extradition of persons for criminal prosecution or execution of a sentence remains one of the most common forms of international cooperation in India. At the same time, statistics on extradition in India indicate that there is no global scale of activity in this area. For example, from 2002 to 2019, only seventy-four criminals were extradited to India. About 150 fugitives are subject to extradition, but for a number of reasons they have not been transferred to India.²⁵ Most often they hide in nearby states within the Asian region itself.

²⁵ Kancharla, B. (2019, June 15). 74 Fugitives Extradited to India Since 2002, Another 150 Yet to Be Extradited. *Factly*. <https://factly.in/74-fugitives-extradited-to-india-since-2002-another-150-yet-to-be-extradited/>

The Republic of India has signed and ratified the following international treaties, which provide for the mechanism of extradition: "Convention of the Association for Regional Cooperation of South Asia on Mutual Cooperation in Criminal Matters";²⁶ "United Nations Convention against Transnational Organized Crime" and its three Protocols;²⁷ "United Nations Convention against Corruption";²⁸ "International Convention for the Suppression of Acts of Nuclear Terrorism."²⁹ At the level of bilateral international cooperation, the Republic of India has concluded forty-three extradition treaties with foreign States.³⁰ The central authority responsible for sending and reviewing extradition requests in the Republic of India is the Ministry of Foreign Affairs of the Republic of India, namely the Department of Consular, Passport and Visa Division.³¹

Extradition powers are assigned to the Union under Article 246 of the Constitution of the Republic of India. Article 105 of the Criminal Procedure Code of India contains some procedural provisions concerning the transfer of convicted persons; other than that, there is no detailed regulation pertaining to extradition in the Criminal Procedure Code.

However, India has adopted a special law, namely, the Extradition Act of 1962.³² This law defines extradition crimes, the procedure for extradition of criminals to states with which the country has signed a bilateral agreement, and in the absence of such an agreement, on the basis of the principle of reciprocity. It describes in detail and regulates the procedure of interstate cooperation in the field of extradition and the actions of competent authorities, the conditions for the execution of an extradition request and the grounds for refusal of extradition.³³

Article 34 of the Extradition Act duplicates the provisions of the Indian Criminal Code and establishes extraterritorial jurisdiction, which means if an Indian citizen

²⁶ SAARC Convention on Mutual Assistance in Criminal Matters, 2008. Ministry of External Affairs, Government of India. <https://www.mea.gov.in/Portal/LegalTreatiesDoc/08M0401.pdf>

²⁷ United Nations. (2000). Convention against Transnational Organized Crime (adopted by General Assembly resolution 55/25 of November 15, 2000). United Nations Office on Drugs and Crime. <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

²⁸ United Nations. (2003). Convention against Corruption (adopted by General Assembly resolution 58/4 of October 31, 2003). United Nations Office on Drugs and Crime. https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

²⁹ United Nations. (2005). International Convention for the Suppression of Acts of Nuclear Terrorism. United Nations Treaty Collection. https://treaties.un.org/doc/source/RecentTexts/English_18_15.pdf

³⁰ Ministry of External Affairs of the Republic of India. <https://www.mea.gov.in/leta.htm>

³¹ Ministry of Home Affairs of the Republic of India. (2019). Guidelines on Mutual Legal Assistance in Criminal Matters. https://www.mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines_16032020.pdf

³² The Extradition Act, 1962. India Code. <https://www.indiacode.nic.in/bitstream/123456789/1440/1/196234.pdf>

³³ Goel, S. (2016). Extradition Law: Indian Perspective. *SSRN*. <https://doi.org/10.2139/ssrn.2712453>

commits a crime in a foreign country, he or she is subject to criminal liability in India.³⁴ It is noteworthy that Article 34A of the Extradition Act provides for competent authorities to independently carry out criminal prosecution of a person even in case of a refusal of extradition to a foreign state.

The law also contains a list of crimes that are excluded from the list of political crimes (in the appendix); these crimes include those listed under the Indian Penal Code, crimes subject to special Indian laws, as well as crimes provided for by international conventions ratified by India.³⁵

4. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the People's Republic of China

A special extradition act is dedicated to the legal regulation of the extradition of persons for criminal prosecution or execution of a sentence in the People's Republic of China, while in the process of searching, detaining and direct transfer of a person, public security officers are guided by the provisions of the Criminal Procedure Code of the People's Republic of China.

Furthermore, the Constitution of the People's Republic of China does not contain provisions on the extradition of criminals. The basic act regulating the procedural aspects of extradition is the Extradition Law of the People's Republic of China.^{36/37} The conditions of extradition are as follows: for double criminality, the minimum term of imprisonment is one year or more of severe punishment in the case of extradition for criminal prosecution, or there must be at least six months remaining before the expiration of execution of a sentence (i.e., serving the sentence). Article 3 states that "no cooperation in extradition matters may prejudice the sovereignty, security or public interests of the People's Republic of China." The extradition of Chinese citizens is also prohibited.

In addition to other well-known grounds for refusal of extradition, the law provides that extradition may be refused on the grounds of age, health or humanitarian considerations. Similar provisions are also contained, in particular, in the legislation of Afghanistan.³⁸ There are no exceptions to the categorization of political crimes, that

³⁴ Indian Penal Code, 1860. India Code. <https://www.indiacode.nic.in/bitstream/123456789/2263/1/A1860-45.pdf>

³⁵ Shestak, V., & Karpovich, V. (2022). Institute of Extradition of Persons for Criminal Prosecution: Experience of the Republic of India. *International Criminal Law and International Justice*, 3, 18–22. (In Russian).

³⁶ Huang, F. (2006). The Establishment and Characteristics of China's Extradition System. *Frontiers of Law in China*, 1(4), 595–615.

³⁷ Extradition Law of the People's Republic of China, 2000. Asian Legal Information Institute. <http://www.asianlii.org/cn/legis/cen/laws/el161/>

³⁸ Shestak, V., & Karpovich, V. (2022). Modern Features of Cooperation Between the Russian Federation and the Islamic Emirate of Afghanistan in the Fight Against Crime. *Bulletin of Moscow University of the Ministry of Internal Affairs of Russia*, 3, 318–325. (In Russian).

is, any crime in the process of resolving the issue of extradition can be recognized as politically motivated.

As for the procedural aspects, extradition requests are received by the Ministry of Foreign Affairs of the People's Republic of China. It should be noted that China has concluded fifty-nine extradition treaties, of which thirty-nine have been ratified. Before the competent authorities of foreign states formally request extradition from China, they may send a request in the form of written requests, such as diplomatic channels or the International Police Association, or by mail, telegram and telegraph, requesting temporary enforcement measures against the person requesting extradition.

Upon receiving notification of an extradition, the person subject to extradition has the right to engage Chinese legal representation to present the opposing reasons for the extradition request to the relevant authorities within fifteen days. At the same time, the Supreme People's Court of the People's Republic of China checks the legality and validity of the extradition request, as well as conducts an assessment of the evidence. The court makes a decision to either refuse extradition or to execute an extradition request. This decision is submitted to the Ministry of Foreign Affairs of China and subsequently to the approval of the State Council of China.

The actual, physical (referred to as "direct") transfer of the criminal is carried out by public security agencies on behalf of the Ministry of Foreign Affairs of the People's Republic of China with the requesting state. A temporary delay in extradition may result in the person requested for extradition having the opportunity to flee without any punishment due to the fact that the requesting party failed to meet the deadlines. As a result, in order to avoid such a scenario, Chinese authorities may decide to consent to a temporary extradition if it is deemed feasible at the request of the requesting country.

5. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in the Republic of South Africa

The legal regulation of extradition in South Africa is mainly based on special regulatory legal acts. The Constitution of South Africa does not contain specific provisions on extradition.³⁹ As for the Criminal Procedure Act of South Africa, it contains a provision that allows a police officer to make an arrest without a warrant if a reasonable statement has been filed against him/ her or there are suspicions that a person has committed a crime abroad and it is punishable under South African law, provided that he is subject to arrest or detention for this crime (Art. 40).⁴⁰

³⁹ Constitution of the Republic of South Africa, 1996. Parliament of South Africa. <https://www.parliament.gov.za/storage/app/media/Acts/constitution/SACConstitution.pdf>

⁴⁰ Criminal Procedure Act 51 of 1977. South African Government. https://www.gov.za/sites/default/files/gcis_document/201503/act-51-1977s.pdf

The Republic of South Africa has, however, much like India, adopted a special law to address the issue of extradition, more precisely, The Extradition Act 67 of 1962.⁴¹ The conditions of extradition under this law are quite typical – that is, double criminality and the presence of a concluded bilateral extradition treaty. Let us consider some specific provisions of this law.⁴² For instance, Article 3 provides for the possibility of extradition of a criminal in the absence of an extradition treaty with a foreign state if there is a written decision from the President on this. In the event that a criminal who is extradited to South Africa has been acquitted in this criminal case or a criminal case has not been initiated, or criminal prosecution has not been carried out within six months, then by decision of the Minister of Justice of South Africa, that person is subject to being transferred back to the requesting state (Art. 20). The South African Minister of Justice receives extradition requests through diplomatic channels. Thus, the Minister of Justice of South Africa has exclusive competence in the issue of extradition, while the court performs the function of verifying evidence on behalf of the requesting party.⁴³

In the case of *President of the Republic of South Africa v. Quagliani*, the Constitutional Court of South Africa ruled on the legal nature of extradition, recognizing that it includes something more than just international relations or an extradition based on the principle of reciprocity.⁴⁴ Extradition includes three important components: the sovereign actions of two states; the appeal of one state to another state with a request for the extradition of an alleged criminal and the extradition of the requested person for the purposes of trial and sentencing on the territory of the requesting state (in Russia, such procedures are called extradition for criminal prosecution or execution of a sentence). Thus, extradition co-exists without violating state sovereignty or the principle of (international) “politeness” between states and also functions at the intersection of domestic and international law.

6. Legal Regulation of Extradition of Persons for Criminal Prosecution or Execution of a Sentence in Some BRICS Candidate States

Currently, the number of countries that have submitted official applications to join the BRICS organization stands at seven – these are Algeria, Argentina, Egypt, Bahrain, Saudi Arabia, the UAE and Iran. Several other countries have also expressed their desire to join the BRICS group, namely Indonesia, Mexico, Greece, Thailand, Turkey and many others.

⁴¹ Extradition Act 67 of 1962. South African Government. https://www.gov.za/sites/default/files/gcis_document/201505/act-67-1962.pdf

⁴² Van Zyl Smit, D. (1995). Reentering the International Community; South Africa and Extradition. *Criminal Law Forum*, 6, 369–377.

⁴³ Watney, M. (2012). A South African Perspective on Mutual Legal Assistance and Extradition in a Globalized World. *Potchefstroomse Elektroniese Regsblad*, 15(2), 292–318.

⁴⁴ *President of the Republic of South Africa v. Quagliani* (2009) 2 SA 466 (CC).

It is well acknowledged that each state has its own respective distinctive features and traditions related to the legal regulation of individual institutions and its legislation. Given the recent expansion of the BRICS organization, as well as the systematic and progressive strengthening of cooperation between the Russian Federation and the BRICS member states on a number of key foreign policy issues, this organization should set itself the goal of developing and forming a legal framework for cooperation on legal issues, including in the field of international cooperation in the field of criminal proceedings.⁴⁵

One of such topical issues, in particular, is the extradition of persons for criminal prosecution or execution of a sentence. It should be noted that for a better analysis of the national legal regulation of the extradition of the BRICS candidate states, first and foremost, it is necessary to understand which legal system the state belongs to, what are the main sources of law, whether legislation has been codified, whether special laws on extradition have been adopted and whether the provisions have been incorporated into the national Code of Criminal Procedure.

The **People's Democratic Republic of Algeria** has a mixed (hybrid) legal system. It exists in close interaction between the French legal tradition and Muslim law. At the same time, it is formally fixed that the main source of law comprises normative legal acts (such as the Constitution of Algeria, laws, presidential decrees and by-laws). In turn, the norms of Islamic law govern family law (Algerian Family Code) and probate law.

The basic source of the national legal regulation of extradition in Algeria is the Code of Criminal Procedure.⁴⁶ Section 1, Book 7 of the Algerian Code of Criminal Procedure is dedicated to international cooperation in the field of the extradition of criminals.⁴⁷ This section contains five chapters, namely conditions of extradition, extradition procedure, consequences of extradition, transit and seizure of items and includes Articles 694 to 730, respectively.

Article 694 establishes that “unless otherwise provided by international treaties or conventions, the conditions, procedure and consequences of extradition are determined by this act.” The provisions of international treaties have priority over the Code of Criminal Procedure of Algeria (Art. 132 of the Constitution).⁴⁸ Furthermore, Article 588 of the Code of Criminal Procedure of Algeria, Algeria extends its criminal jurisdiction over crimes committed by a foreign citizen “against the security of the

⁴⁵ Astakhov, E. (2016). The Place of BRICS in World Politics. *Herald of MGIMO University*, 1(46), 42–50. (In Russian).

⁴⁶ International Centre for Missing & Exploited Children. (2022, August). *Algeria, People's Democratic Republic of*. <https://cdn.icmec.org/wp-content/uploads/2022/09/ICMEC-Algeria-National-Legislation-Aug-2022.pdf>

⁴⁷ Algerian Penal Code of Procedure, 2007.

⁴⁸ Algeria's Constitution of 2020. *ConstituteProject.org*. https://www.constituteproject.org/constitution/Algeria_2020.pdf?lang=en

Algerian State,” counterfeiting and the person is subject to criminal prosecution under Algerian law.

The conditions for the extradition of criminals, as well as the sending of an extradition request and the execution of a foreign extradition request are contained in Article 697. In particular, these conditions include the following:

1. The principle of double criminality.
2. The minimum sentence for a crime is two years of imprisonment.
3. The term of serving (execution) of a sentence of an already convicted person is equal to or more than two months.
4. Attempted crime or complicity in a crime is subject to the principle of double criminality.
5. If a person has committed several crimes, the minimum term is determined by the aggregate and must exceed (or be equal to) two years of imprisonment;
6. Military personnel, sailors and other such persons shall be extradited in accordance with Article 697, provided that they have committed a crime under common law punishable by Algerian law.

In accordance with Article 698 of the Code of Criminal Procedure of Algeria, the request for extradition cannot be executed in the following cases: (a) the person at the time of the commission of the crime is recognized as an Algerian citizen; (b) the statute of limitations of the crime has expired; (c) the crime or misdemeanor is of a political nature or the request for extradition is sent on the basis of a political motive; (d) the crime or misdemeanor was committed on the territory of Algeria; (e) the crime was committed outside Algeria, though the person is already being prosecuted or has been convicted in Algeria (the principle of *non bis in idem*) and (f) the person has been amnestied.

Another important source in the field of extradition is the Algerian Constitution.⁴⁹ Article 50 of the Constitution establishes the following: “No person may be extradited except in accordance with a ratified international agreement or in accordance with extradition legislation. Under no circumstances should a refugee legally entitled to political asylum be transferred or extradited.”

In the practice of international cooperation on extradition, the imposition of such a type of punishment as the death penalty is in many cases recognized as the basis for refusing extradition requests. However, it should be mentioned that the death penalty, in accordance with the Algerian Criminal Code, is provided for in more than thirty crimes, that is to say, its use is legalized in Algeria.⁵⁰

The **Argentine Republic** follows the Romano-Germanic legal system. Argentine legislation is recognized as the fundamental source of law. Uncharacteristically for the Romano-Germanic legal system, judicial precedent, in particular, “plenary decisions,” is also considered the source of law in Argentina (the Court of Appeal).

⁴⁹ Constitution of Algeria of 1996. Konstitutsii. <https://worldconstitutions.ru/?p=53>. (In Russian).

⁵⁰ Algerian Penal Code of Procedure, 2007.

Argentina is a federal state, which includes twenty-three provinces. It is noteworthy that Article 8 of the Argentine Constitution in this regard establishes the obligation for all provinces to extradite criminals on a reciprocal basis.⁵¹

Argentina has also adopted Law No. 24,767 "On International Cooperation in Criminal Matters."⁵² It includes such key issues of legal regulation of international cooperation in the field of criminal proceedings as extradition, mutual legal assistance in criminal cases, execution of sentences, establishing criminal jurisdiction etc. The central authority responsible for the extradition of criminals is the Ministry of Foreign Affairs, International Trade and Worship of Argentina.

In accordance with Articles 6 and 7 of this Law, the following conditions for the extradition of criminals are established:

1. Extradition for criminal prosecution – a minimum period of one year;
2. Extradition for execution of a sentence – the minimum term of serving (execution) the sentence of a convicted person must exceed one year at the time of sending the request for extradition;
3. If a person is accused of several crimes, it is sufficient for extradition that at least one crime is recognized as extraditable;
4. Compliance with the principle of double criminality.

Additionally, Article 8 of the Law establishes the following grounds for refusal of extradition:

1. A person may be subjected to torture or harsh treatment;
2. The crime for which extradition is requested is political in nature;
3. If the crime in connection with which extradition is requested is a crime under military criminal law but at the same time is not a crime under ordinary criminal law;
4. The person is being prosecuted on the basis of race, nationality etc.;
5. A death penalty is imposed for a crime, and the requesting party has an obligation not to use it.

The Law also establishes a list of crimes that cannot be recognized as political. Article 9 states that the following acts cannot be recognized as political crimes under any circumstances:

1. War crimes and crimes against humanity;
2. Encroachment on the life, physical integrity or freedom of the head of government or head of state, or a member of their family;
3. Encroachment on the life, physical integrity or freedom of diplomatic personnel or other persons enjoying international protection;

⁵¹ Argentina's Constitution of 1853 (reinstated in 1983, with Amendments through 1994). ConstituteProject.org. https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en

⁵² Ley 24.767 de Cooperación Internacional en Materia Penal [Law 24.767 on International Cooperation in Criminal Matters]. (1996). <http://www.cooperacion-penal.gov.ar/userfiles/LEY%20DE%20COOPERACION%20INTERNACIONAL%20EN%20MATERIA%20PENAL.pdf>

4. An attack on the life, physical integrity or freedom of the population or innocent civilian personnel not involved in violence caused by armed conflict;
5. Any crime that comprises the safety of civil aviation or navigation;
6. Crimes in respect of which the Argentine Republic has assumed an international legal obligation to extradite or prosecute;
7. Terrorist acts.

Article 10 stipulates that an extradition request must be refused if the execution of the request (or the consequences of its execution) may violate the sovereignty, security, public order or other essential public interests of Argentina. In addition to Articles 8 and 10, Article 11 also contains such grounds for refusal of extradition as:

1. The expiration of the statute of limitations of criminal prosecution;
2. The person has already been convicted in the requesting state for the act for which extradition is requested;
3. The person has not reached the age of criminal responsibility under the legislation of Argentina;
4. The Court has rendered a decision in absentia and the requesting state does not provide sufficient guarantees that the case will be resumed to hear the arguments of the convicted person in order to allow him to assert his rights and a fair judgment will subsequently be rendered;
5. If the requesting state, at the time of consideration of the extradition request, has not provided sufficient evidence that the time during which the wanted person is in places of deprivation of liberty is considered the time served by the person in connection with the criminal case that served as the basis for the request.

An Argentine citizen may also voluntarily decide on the place of his own criminal prosecution if criminal prosecution is being pursued by both the requesting state and the requested one, except in cases where a bilateral treaty providing for the obligation of extradition is not applicable to this case (Art. 12). However, the status of an Argentine citizen must be confirmed at the time of the commission of the crime and also be preserved when deciding on the place of criminal prosecution. If an Argentine citizen uses this right, the extradition will be refused. An Argentine citizen is subject to prosecution in Argentina in accordance with Argentine criminal law, provided that the requesting state itself agrees to this, waiving its own jurisdiction over this crime (crimes). Subsequently, the requesting state sends to the requested state the full range and list of available evidence necessary to bring a person to criminal responsibility, as well as for a qualitative investigation of a criminal case.

The **Kingdom of Bahrain** is a mixed (hybrid) legal system. The legislation of Bahrain includes a set of provisions of customary tribal law, Muslim and English law. British influence played a special role in the formation of modern Bahraini law. Now, the Constitution of 1973 (Art. 2), explicitly recognizes sharia norms as the fundamental source of law and Arabic as the state language.⁵³

⁵³ Bahrain's Constitution of 2002. [ConstituteProject.org. https://www.constituteproject.org/constitution/Bahrain_2002.pdf](https://www.constituteproject.org/constitution/Bahrain_2002.pdf)

The provisions on extradition are incorporated into the Criminal Procedure Code of Bahrain (Book 6, Arts. 412–425).⁵⁴ The central authority for extradition is the Ministry of Justice of Bahrain (Art. 417 of the CPC). In turn, the Supreme Criminal Court considers extradition requests, compliance by the requested party with the conditions of extradition and compliance with all procedural rules (Art. 419 of the CPC).

Article 413 regulates the conditions of extradition, namely:

1. The crime must be committed on the territory of the requesting state or outside its territory if the act is recognized as a crime under its legislation;
2. The act is recognized as a felony or a misdemeanor and the principle of double criminality is observed;
3. Imprisonment for a period of at least one year;
4. Conviction by a court sentence of imprisonment for a term of at least six months.

Article 415 of the Code of Criminal Procedure of Bahrain, in particular, also contains a number of grounds for refusing extradition. First of all, a request for extradition cannot be issued for a person who is a citizen of Bahrain. Non-compliance with the principle of *non bis in idem* also serves as a basis for refusal to execute an extradition request. Extradition will be refused if a crime against military service has been committed. In the context of political crimes which are a classic reason for refusing extradition, there are several complex nuances and subtleties. Thus, extradition is refused in the following cases enumerated below regardless of whether a political crime has been committed (even if committed for a political purpose):

1. An attack on kings and heads of state of countries, their wives, direct family members or relatives of the mother-in-law;
2. An attack on crown princes or deputy heads of state;
3. Premeditated murder and theft, accompanied by violence against individuals, representatives of authorities or against transport and communication facilities.

The **Islamic Republic of Iran** is a mixed (hybrid) legal system. It contains the features of the Romano-Germanic and Muslim legal systems. The 1979 Constitution fixed the mandatory compliance of all adopted laws with sharia norms (Art. 4).⁵⁵ Even though at the beginning of the 20th century Iran underwent the Europeanization of legislation, over time (particularly after the 1979 revolution), all the norms were brought into line with Muslim principles and customs; however, the legal and technical component of the Romano-Germanic tradition was preserved.

⁵⁴ Code of Criminal Procedure No. 46 of 2022. UNODC Sherloc. https://sherloc.unodc.org/cld/uploads/res/document/bhr/code-of-criminal-procedures_html/Bahrain_Code_of_Criminal_Procedure_Decree_No_46_of_2002_EN_translation_-_non_official.pdf

⁵⁵ Constitution of the Islamic Republic of Iran of 1979. Konstitutsii. <https://worldconstitutions.ru/?p=83>. (In Russian).

The Iranian Law “On Extradition” of 1960 is devoted to the legal aspects of international cooperation on extradition.⁵⁶ With regard to the conditions of extradition, a request for the extradition of a person must be approved by Iran if the requested person has been prosecuted or convicted of one of the crimes mentioned in this Law (Art. 2), namely:

1. The crime is committed by a citizen of the requesting state on its territory (the territorial jurisdictional principle).
2. The crime is committed by a citizen of the requesting state outside its borders (active personal jurisdictional principle).
3. The crime is committed by an alien outside the requesting state (protective jurisdictional principle).

In all of these instances, we are talking about the establishment of criminal jurisdiction over the committed crimes.⁵⁷ At the same time, the law also has a vague but standard wording for all three mentioned provisions, which is as follows: “provided that the public interests of the requesting state are not harmed.” It is also mandatory to comply with the principle of double criminality (Art. 4) and the principle of *non bis in idem*. However, in the principle of *non bis in idem* there is also an exception (Art. 11):

If a person is already being prosecuted by Iranian law enforcement agencies, the request must be rejected. However, Iran may temporarily extradite a person to the requesting State for the period of investigation only on condition of subsequent extradition back to Iran. This provision applies if the request is made for the purpose of paying the accused debts in the requesting State.

Extradition for criminal prosecution is possible only if the maximum penalty for the crime is at least one year of imprisonment, and extradition for execution of the sentence can be carried out only if the sentence term is more than two months.

Article 8 of this Law establishes the following grounds for refusal of extradition:

1. The person is a citizen of Iran.
2. The crime has a political character (nature) or is based on the essence of the extradition request or it is evident that the extradition is requested for political purposes. In cases of civil wars or internal conflicts, a request for extradition is not executed, except in cases where the crimes committed are cruel and contrary to the rules and customs of warfare. In such cases, the extradition itself will be carried out after the end of civil wars. At the same time, murder cases will not be considered a political crime.
3. Whether a crime is committed on the territory of Iran or whether it is committed outside the territory of the government of Iran, the person is subject to court proceedings, prosecution or conviction within the territory of Iran.

⁵⁶ Extradition Law of 1960. UNODC Sherloc. https://sherloc.unodc.org/cld/en/legislation/irn/extradition_law/chapter_1/article_1-11/chapter_1.html

⁵⁷ Tatarinov, M. (2023). *Criminal Jurisdiction in International Criminal Law* (p. 828). Prometei. (In Russian).

4. The person has committed a war crime.
5. The statute of limitations for criminal prosecution has expired.

The **United Arab Emirates** has a mixed (hybrid) legal system. The UAE Constitution of 1996 recognizes sharia as the main source of law. It is worth noting that the legislation in the UAE is quite codified. In 1970, the UAE adopted the Criminal Code, the CPC and the CPC. Case law also has a special role: the decisions of the Supreme Court are precedent-setting in nature. Moreover, it should be noted that the Supreme Court in its decisions is guided not only by sharia norms and laws but also recognizes customs as a source of law.

UAE legislation criminalizes a number of cross-border (transnational) crimes such as human trafficking, cybercrime, money laundering and terrorist financing. Special laws have been adopted on each of these issues.⁵⁸

The central authority in the field of extradition in the UAE is the Department of International Cooperation of the Ministry of Justice. This Department receives the requests for extraditions, registers them and sends them for consideration to other structural units to resolve the issue of compliance with the conditions of extradition, as well as the absence of grounds for refusing extradition. The main regulatory legal act regulating issues of international cooperation in the field of extradition of persons for criminal prosecution or execution of a sentence is Federal Law No. 39, "On International Cooperation in the Field of Criminal Proceedings" of 2006.⁵⁹ This Law provides for the following conditions for the extradition of a criminal (Arts. 7–8):

1. The minimum term of punishment for a crime or an alleged criminally punishable act must be no less than one year of imprisonment.
2. If there is a request for the execution of a sentence, the minimum term of serving this sentence must be at least six months.
3. When interpreting whether an act is a crime both in the requested and requesting state, the essential characteristics (composition of the crime) of the act itself are taken into account rather than its designation or its individual elements.
4. If extradition is requested in respect of several crimes, it is sufficient that at least one of these crimes is recognized as extraditable.

The grounds for a refusal of extradition are provided for in Article 9 of the above-mentioned law and are as follows:

1. The person for whom extradition is requested is a citizen of the UAE.
2. The judicial authorities of the UAE have complete jurisdiction over the requested crime.

⁵⁸ Ministry of Justice of the United Arab Emirates. (2020). *Guide to the International Judicial Cooperation in Criminal Matters (Surrender of Persons and Things – Judicial Assistance)*. <https://www.moj.gov.ae/Content/Userfiles/Assets/Documents/ce11fada.pdf>

⁵⁹ Federal Law No. 39 of 2006 "On International Judicial Cooperation in Criminal Matters". United Nations Office on Drugs and Crime. https://www.unodc.org/uploads/icsant/documents/Legislation/United%20Arab%20Emirates/English/FEDERAL_LAW_NO.39_of_2006.pdf

3. A crime is recognized as a political or related to a political crime, with the exception of the following crimes:

crimes of a terrorist nature, war crimes, genocide, crimes of aggression against the head of state or any of his family members, his deputies, or any of the members of the Supreme Council or members of his family, or the Prime Minister, or a crime in relation to other persons enjoying international protection in addition to crimes of aggression against the government and the interests protected by it.

4. Extradition is requested for violation of military duties.

5. The request for extradition is based on race, gender, religion, nationality, ethnic origin, political beliefs or if there is an encroachment on the personal position of any person.

6. Non-compliance with the principle of *non bis in idem*.

7. The statute of limitations for criminal prosecution has expired.

8. A person may be subjected to torture, inhuman or degrading treatment or severe punishment that does not correspond to the crime committed in the requesting state or if minimum guarantees of respect for the rights of the person prescribed by the Code of Criminal Procedure may not be provided.

It should be noted that in many cases the conditions of extradition are unambiguous and generally recognized, for example, the principle of double criminality. On the other hand, such grounds as politicization of the crime or ill-treatment of a suspect (convicted) person are evaluative in nature and can be used by the parties at their discretion. In general, in the practice of international cooperation on extradition, there are both general conditions for the extradition of persons and grounds for the refusal of extradition and special ones, which are explained, in fact, by the socio-cultural and legal traditions of a particular state.

Conclusion – Prospects of Legal Regulation of Extradition in the BRICS States

The legal regulation of extradition in the BRICS states is predominantly intricate and complex. There are no serious gaps in the legal regulation of the basic provisions concerning interstate and interdepartmental cooperation in the field of extradition. The majority of the BRICS countries, including candidates for membership in the BRICS, have adopted special acts regulating the extradition of criminals (the only exceptions are Russia, Algeria and Bahrain). All the above-mentioned factors indicate that new opportunities and prospects are opening up in terms of legal integration in the field of extradition in the BRICS states, as well as in some states that have submitted official applications to the BRICS organization. The findings of this study revealed that there are no significant barriers or restrictions for such integration.

The development and possible adoption of a “BRICS convention on extradition” is not a premature decision. Of course, the adoption of such an act requires the will

of the foreign ministers of each BRICS member state. Given the varied legal, religious and cultural traditions in the different BRICS member states, the legal regulation of extradition conditions in these BRICS member states is also different and has its own distinctive features. Moreover, at the national level there is a sufficiently high-quality regulatory and legal framework and well-established judicial practice in the field of the extradition of persons for criminal prosecution or execution of a sentence. In particular, the BRICS member states have adopted a number of special legal acts (including codes and laws) on extradition, which include:

1. Decree-Law of the Federal Republic of Brazil No. 394 of 1938, Law of the Federal Republic of Brazil No. 13,445 of 1980.
2. The Extradition Act of 1962 (India).
3. The Extradition Act of 1962 (South Asia).
4. The Law of the People's Republic of China on Extradition of 2000.
5. The Criminal Procedure Code of the Russian Federation of 2001 (Part 5 "International Cooperation in Criminal Proceedings," Chapter 54 "Extradition of Persons for Criminal Prosecution or Execution of a Sentence").

The mentioned normative legal acts describe in detail the procedure for cooperation in the field of extradition; more specifically, they provide for criminal procedural mechanisms of interstate and interdepartmental cooperation on extradition, define a list of extraditable crimes, regulate the conditions for extradition and the grounds for refusing to execute an extradition request, resolve the problems of establishing the criminal jurisdiction of states over crimes as well as contain other essential provisions (see Table 1 below).

Table 1
Distinctive Features of the Legal Regulation of Issuance of an Extradition Request

	Special law	Legal system	Exclusion from political crimes
Brazil	+	Romano-German	+
Russia	–	Romano-German	–
India	+	Mixed (hybrid)	+
China	+	Socialist (or mixed)	–
South Africa	+	Mixed (hybrid)	–
Algeria	–	Mixed (hybrid)	–
Argentina	+	Romano-German	+
Bahrain	–	Mixed (hybrid)	+
Iran	+	Mixed (hybrid)	+
United Arab Emirates	+	Mixed (hybrid)	+

Source: Author, based on open data.

It is necessary to comment on the provisions shown in Table 1. For example, Argentina and the UAE have adopted special laws on international cooperation in criminal proceedings with extradition serving as one of the objectives, respectively. There is no special act in Russia and Bahrain, but the provisions on extradition have been incorporated into each country's respective national Code of Criminal Procedure. Previously, the concept of so-called politicized (political) crimes was discussed. Of course, it is also necessary to develop a list of those (special categories) crimes that will not be recognized as political and for which the person will be extradited under any circumstances. Such provisions are provided for in the legislation of the UAE (Art. 9 of the Law "On International Cooperation in Criminal Proceedings"), Iran (Art. 8 of the Law of Iran "On Extradition"), Argentina (Art. 9 of the Law "On International Cooperation in Criminal Matters"), Brazil (Art. 81 of the Brazilian Law No. 13,445 of 1980 and Art. 2 of Decree-Law No. 394 of 1938) and India (Annex of the Extradition Act) legislation. However, Bahrain does include some special political crimes (Art. 415 of the Criminal Procedure Code of Bahrain) for which an extradition request will be refused. Something similar can also be found in the SAARC Convention on the Suppression of Terrorism (Arts. 2).⁶⁰ It mentions that states and their competent authorities may, by agreement, come to the conclusion that certain serious crimes cannot be equated as "a political crime or a crime related to a political crime or a crime caused by political motives." Considering all of these variations and distinctions, it is clear that the issue of the adoption of a BRICS convention on extradition requires discussion and elaboration at the highest level and enough time should be given to making decisions in this area.

According to the data in Table 1, three legal systems are distinguished, specifically mixed, socialist and Romano-German legal systems. It is noteworthy that the exclusion of political crimes from the list of crimes stipulated in the BRICS states is provided for only in the legislation of Brazil and India, whereas four out of five BRICS candidate states do contain provisions on the extradition of political criminals who have committed specific individual crimes.

As for bilateral cooperation on extradition, the Russian Federation has not concluded an extradition treaty with only one BRICS member state, namely the Republic of South Africa. Nevertheless, we believe that one of the initial stages of improving and strengthening cooperation among the BRICS member states should be the conclusion of relevant bilateral extradition treaties. Of course, this is a rather laborious and lengthy process, but it is necessary to eliminate primary disagreements before the immediate development of a BRICS convention on extradition. Thus, Table 2 schematically shows the presence or absence of a concluded bilateral extradition treaty between the different BRICS states (see Table 2 below).

⁶⁰ SAARC Regional Convention on Suppression of Terrorism, 1988. United Nations Treaty Collection. <https://treaties.un.org/doc/db/Terrorism/Conv18-english.pdf>

Table 2
Concluded Bilateral Extradition Agreements Between BRICS States

	Brazil	Russia	India	China	South Africa
Brazil	&	+	+	+	–
Russia	+	&	+	+	–
India	+	+	&	–	+
China	+	+	–	&	+
South Africa	–	–	+	+	&

Source: Author, based on open data.

Based on a study of the detailed legal regulations, the availability of special laws and a clear extradition procedure both in the BRICS member states and in the BRICS candidate states, it can be concluded that there are no serious gaps in extradition issues within the legislation of these states. By carrying out a thorough analysis and taking into consideration the peculiarities of the legislation of these states, the mechanisms of interaction between states and their competent authorities could be elevated to a qualitatively new level. Additionally, it is crucial to address the qualitative development and advancement in the formulation of the international legal framework regulating extradition within the BRICS format.

The research further shows that it is necessary to develop and adopt a BRICS convention on extradition, provided that these candidate states also become full members of the BRICS alliance in the near future. Obviously, such integration processes cannot be imagined without also taking into account the political will of the heads of state and foreign ministries. The basic provisions of the proposed BRICS convention on extradition can be based on existing regional conventions and their criminal procedure mechanisms, for example, the European Convention on Extradition, the Inter-American Convention on Extradition and others. It is also important to pay attention to those extradition procedures that are provided for in universal international treaties, such as the UN Convention against Transnational Organized Crime. At the same time, it is necessary to achieve consensus on a number of controversial issues, such as the grounds for refusing extradition, and make them acceptable to all BRICS member states.

It is worth noting that the adoption of a comprehensive and special act providing for key criminal law and criminal procedure mechanisms within the framework of global international organizations, such as the United Nations, may likely prove to be an impossible task. Nonetheless, the use of regional organizations as a platform for building a dialogue greatly simplifies this task because the fewer participating states, the easier it is to agree and find compromises.

Due to the strengthening of the Russian Federation's cooperation with Asian states and its shift "to the east" in the foreign policy arena, it would be advisable to consider the possibility of legal integration within an organization such as BRICS, including on extradition issues. In addition to topical issues of international policy, the BRICS organization actively implements the integration and harmonization of legal provisions. Thus, each of the BRICS member states strives to fight crime at the national level; subsequently, on the basis of accepted developments and practices and taking into account national legal traditions, joint communiques are adopted within the framework of the BRICS group, and plenary sessions of BRICS working groups on counterterrorism and meetings of foreign ministers, as well as meetings of the BRICS Antiterrorist Working Group are held.

During the process of development and preparation for the adoption of a BRICS convention on extradition, it is essential to reach a consensus on a number of significant and problematic issues, including the following:

1. Eliminate differences in the understanding of certain legal terms as well as criminal procedural mechanisms (e.g., linguistic and semantic country differences).

2. Provide mechanisms for resolving disputes between states and their law enforcement agencies.

3. Take into account the special grounds for refusing the extradition of criminals in accordance with the legislation of the BRICS states.

4. Distinguish in detail the establishment of dispositive and imperative principles in matters involving the extradition of criminals. For example, distinguish between cases in which the state is obliged to extradite a criminal and those in which the law enforcement agencies possess discretion.

5. Establish rules regarding competing requests (collision of requests).

6. Simplify cooperation and minimize the time for consideration of extradition requests.

7. Adopt a standard extradition request.

8. Consolidate the principle of respect for the sovereignty of states in the implementation of interstate and interdepartmental cooperation.

8. Approve the list of crimes that the party shall not recognize as a political crime (politically motivated).

At the same time, in the process of working on the draft convention and subsequently after its adoption, states parties, as well as legislators, need to systematically and progressively come to the need to harmonize, unify and internationalize national legislation and legal provisions in the field of extradition. It is obvious that such integration processes are possible only when taking into account the peculiarities of the legal, socio-cultural and ethnic traditions of each of the BRICS states.

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Information about the author

Vitalii Karpovich (Moscow, Russian Federation) – Chief Specialist-Expert, Legal Department, Federal Financial Monitoring Service (Rosfinmonitoring); Postgraduate Student, Department of Criminal Law, Criminal Procedure and Criminalistics, MGIMO University (39, Bldg. 1 Miasnitskaia St., Moscow, 107450, Russian Federation; e-mail: karpovich.vitalii@yandex.ru).