The Sheinbein Legacy: Israel's Refusal to Grant Extradiction as a Model of Complexity

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THE SHEINBEIN LEGACY: ISRAEL’S REFUSAL TO GRANT EXTRADITION AS A MODEL OF COMPLEXITY

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INTRODUCTION

As money, fugitives, and contraband cross national and political boundaries, attempts to resolve criminal matters have taken on an international character. In response to this trend, the United States

1. See Abraham Abramovsky & Jonathan I. Edelstein, The Sheinbein Case and the Israeli-American Extradition Experience: A Need for Compromise, 32 VAND. J. TRANSNAT’L L. 305, 326-27 (1999) (discussing the growing nature of international criminal drug trafficking and incidences involving foreign fugitives). Crimes such as drug trafficking have forced governments to rethink the need for international cooperation in criminal matters. See MALCOLM ANDERSON, POLICING THE WORLD, INTERPOL AND THE POLITICS OF INTERNATIONAL POLICE COOPERATION 27 (1989). Organized crime has also become an international phenomenon because members of international organizations hail from many countries, and both money and contraband move across international borders. See Abramovsky & Edelstein, supra, at 339. Additionally, money laundering has emerged as an international crime “through a combination of globalized financial markets, electronic transfer networks, easy access to them through financial havens, and some countries’ laws on banking secrecy.” See Ian Hamilton Fazey, Fighting Money Laundering (visited Jan. 3, 2000) <http://193.123.144.44/interpol.com/keynote/UNDCPmoney.htm>. While private individuals were previously the
has turned to other countries for assistance in seeking justice.\footnote{Israel, for example, agreed to assist the United States in pursuing and extraditing fugitives.} Much to the disappointment of U.S. officials, how-

most frequent targets of criminals, now, with the arrival of certain technological advances, criminals pose a greater threat to communities and governments as a whole. See Michael Fooher, Interpol: Issues in World Crime and International Criminal Justice 209 (1989). The Office of International Affairs of the Department of Justice is largely responsible for the increased United States awareness of international criminal activity. See Ethan A. Nadelmann, The Evolution of United States Involvement in the International Rendition of Fugitive Criminals, 25 N.Y.U. J. INT’L L. & POL. 813, 818-20 (1993). International organizations such as Interpol also play an integral role in international cooperation by developing information technology, increasing the level of cooperation between different police forces, and ensuring the dissemination of vital information. See Office of Int’l Criminal Justice Online: Interpol Expands Services in Global War on Crime (visited Dec. 5, 1999) <www.acsp.uic.edu///oijc/pubs/cje/060409 _2.htm>.


3. See Black’s Law Dictionary 585 (6th ed. 1990) (defining extradition as the “surrender by one state or country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.”); see also M. Cherif Bassiouni, International Extradition: United States Law and Practice 1 (1996) (providing a general historical introduction behind extradition). Bassiouni considers extradition to be “a system consisting of several processes whereby one sovereign surrenders to another sovereign a person sought as an accused criminal or fugitive offender.” Id.: Extradition Convention, Dec. 10, 1962, U.S.-Isr., 14 U.S.T. 1707, art. II, corrected version in 18 U.S.T. 382 (1967) (establishing the agreement between the United States and Israel in which the two countries agreed to extradite nationals); Treaty with Israel on Mutual Legal Assistance in Criminal Matters, Jan. 26, 1998, U.S.-Isr., S. TREATY DOC. No. 105-40 (1998) (facilitating joint cooperation by providing a non-exclusive list of types of mutual assistance, such as locating or identifying persons and transferring persons in custody for testimony); Sari Bashi, Man Fighting Extradition to U.S., AP ONLINE, Mar. 7, 1999, available in 1999 WL 13836102 (discussing the case of Chaim Berger, an American citizen fighting extradition to Israel for charges of fraud and embezzlement); Dina Kraft, After Sheinbein, Parliament Approves New Extradition Bill, ASSOCIATED PRESS NEWSWIRES, Apr. 19, 1999, at 2, available in WL, MDNEWS File (providing some of the more famous and recent examples of extradition between the United States and Israel). There are many additional examples of United States-Israeli cooperation in which United States officials aided
ever, the Israeli Supreme Court recently refused to aid the United States in granting the extradition of Samuel Sheinbein, a Maryland teenager accused of committing one of the most gruesome and violent murders in recent memory. As a result of this decision Sheinbein will serve his sentence in a foreign country, even though he was raised as an American and his crime took place on American soil.

Israel, however, recently amended its extradition law in response to the Sheinbein decision. By establishing that non-residents will face extradition, the new legislation addresses situations, such as Sheinbein’s, where a non-resident Israeli citizen seeks refuge under Israel’s extradition laws. Although this legislative change is a posi-

the Israeli government in prosecuting criminals in Israel. See Abramovsky, supra note 1, at 1903. For instance, law enforcement officials cooperated in prosecuting Israel Mizrahi and Joseph Reisch. See id. The trials of Isaac Kirman, Nadav Nakan, and Yair Orr also illustrate the development of United States-Israeli joint cooperation. See Abramovsky & Edelstein, supra note 1, at 314-15. Further, officials in Israel and the United States cooperated in prosecuting a fugitive who committed murder in California, and fled to Israel to seek refuge from a United States sentence mandating life in prison without parole. See Today: Profile: Maryland State Prosecutor John McCarthy Discusses Case of American Samuel Sheinbein, Who Will be Tried in Israel (NBC television broadcast, Feb. 26, 1999) [hereinafter Maryland State Prosecutor] (detailing this earlier bilateral cooperation).

4. See Dan Izenberg, Court: Murder Suspect Can’t Be Extradited, JERUSALEM POST, Feb. 26, 1999, at 1, available in 1999 WL 8999990 (discussing the ruling of the Israeli Supreme Court, which applied an amendment to the Extradition Convention preventing the extradition of Israeli citizens).


6. See Abramovsky & Edelstein, supra note 1, at 320-21 (stating that Israel will handle the Sheinbein case and apply Israeli domestic law).

7. See Dafna Linzer, Israeli Court Rejects Extradition, AP ONLINE, Mar. 21, 1999, available in 1999 WL 14513111 (noting that Sheinbein was born and raised in the United States). Even if Sheinbein did possess American citizenship status, this would not necessarily preclude him from acquiring Israeli citizenship upon his return to Israel. See infra note 62 (discussing the way in which Israeli law actually enables someone to maintain dual citizenship).

8. See Kraft, supra note 3, at 2 (reporting that the Israeli Parliament, the Knesset, chose to repeal its extradition law in the wake of the Sheinbein ruling to prevent foreign criminals from taking advantage of Israeli laws and using the country as a safe haven).

9. See infra notes 190-91 and accompanying text (discussing how Israel
five step in remedying some of the problems that accompany the non-extradition of nationals, the legacy of Samuel Sheinbein remains. Many Americans are concerned with Israel's recent actions due, in large part, to Sheinbein's evasion of a harsher sentence under United States law. Moreover, the Sheinbein example presents yet another instance of a nation refusing to cooperate in the resolution of an international criminal matter.

This Comment utilizes the Sheinbein case to highlight some of the more pressing and perplexing issues in international criminal extradition. First, this Comment asserts that, despite the legal and policy arguments in support of Israel's refusal to grant extradition, the Israeli decision to deny extradition relies on dubious citizenship claims and fails to serve the United States' punitive interests. Second, this Comment contends that cultural, humanitarian, and foreign policy considerations figured prominently in both Israel's ruling and the change in its extradition law. Finally, this Comment argues that, although flawed, the recent change in Israeli extradition law serves as a model for nations refusing to extradite their nationals.

Part I provides a history of the Sheinbein case, including possible reasons why Israel failed to grant extradition. Part II analyzes Israel's reasons for refusing extradition, noting other extradition precedents and their applicability to the Israeli Supreme Court's ruling. Part III presents an assessment of additional factors regarding Israeli extradition law and the application of such factors to the Sheinbein case. Part IV discusses how the denial of extradition affects certain sentencing issues in the Sheinbein case, and how Sheinbein's presence in Israel would, hypothetically, increase the difficulty of conducting

amended its extradition law to prevent situations similar to Sheinbein's). The new law provides that Israeli non-resident citizens will face extradition, whereas Israeli residents will face a trial abroad and serve their sentence at home. See Kraft, supra note 3, at 2.

10. See infra notes 244-47 and accompanying text (providing reasons why the new legislation is better equipped to handle situations in which non-residents attempt to hide behind a nation's extradition laws).

11. See infra notes 210-16 and accompanying text (asserting that Sheinbein will likely receive a lighter sentence under Israeli law).

12. See infra notes 72-75 and accompanying text (providing an assessment of Israel's decision to deny the United States' extradition request and cooperate with Maryland prosecutors in resolving the matter).
a trial. Part V analyzes both the benefits and problems that accompany the new Israeli extradition legislation. Finally, this Comment concludes that, although Israel's change in extradition law deserves praise, the troubling legacy of Sheinbein still plagues the international community.

I. HISTORY OF THE SHEINBEIN CASE AND ISRAEL'S REASONS FOR REFUSING EXTRADITION

On September 16, 1997, in the Washington, D.C. suburb of Aspen Hill, Maryland, Samuel Sheinbein and Aaron Needle, both seventeen years old, choked, stabbed, and beat Alfredo (Freddy) Enrique Tello, Jr. to death. 13 Three days later, police discovered the charred and dismembered body of the victim in a garage near Sheinbein's home. 14 When the police found Tello's body, they already had strong evidence indicating that Sheinbein and Needle committed the murder. 15 Law enforcement officials, however, could not pinpoint a precise

13. See Dean, supra note 5 (describing the time, place, and circumstances of Tello's murder); see also Lee Hockstader & Craig Whitlock, Sheinbein Sentenced to 24 Years, WASH. POST, Oct. 25, 1999, at B1, available in 1999 WL 23310939 (noting the Israeli Court's reaction to the "cruelty, wickedness and malice" of the murder). After murdering Tello, Sheinbein and Needle severed his arms and legs, and burned his torso and head. See Dean, supra note 5; Steve Vogel & Thomas W. Lippman, Death Caused by Cuts, Blows, Strangulation; Claim of Self-Defense Could Be Undermined, WASH. POST, Oct. 9, 1997, at A19, available in 1997 WL 14706277 (setting forth the gruesome details of the murder).

14. See Abramovsky & Edelstein, supra note 1, at 306 (describing the condition in which authorities discovered Tello's body).

15. See ABC 20/20: Accused Teen Killer's Flight to Israel (ABC television broadcast, June 30, 1999) [hereinafter Flight to Israel] (indicating that a trail of blood drops from the victim to Sheinbein's home provided the initial link between the body and the two youths). Investigators also detected a bloodstain on Sheinbein's garage floor. See id. Furthermore, police discovered next to the victim a circular saw that Sheinbein had allegedly purchased. See id. Investigators also found receipts of several items—such as a stun gun, knife, blindfolds, gags, handcuffs, and legcuffs—used by Sheinbein to incapacitate and murder Tello. See id. Neighbors even witnessed Sheinbein and Needle pushing a tarp-covered cart near Sheinbein's home. See Herb Keinon, Fit to be Tried: But Where?, JERUSALEM POST, Oct. 17, 1997, at 11, available in LEXIS, Israel Country Information File.
motive. While officials suspected that Needle was upset with Tello over a woman, they believed Sheinbein committed the murder for pure excitement. Sheinbein and Needle, however, fled to New York City before officials could question them. Once in New York, Sheinbein obtained an Israeli passport with the help of his father, Sol, and flew to Israel.

Upon Sheinbein's arrival in Tel Aviv, Israeli authorities detained him, took him into custody, and awaited an extradition request from the United States. Although the United States wished to extradite Sheinbein to stand trial for murder in Maryland, Israeli officials felt compelled to keep him within their own borders based on a 1978 law that forbade the extradition of Israeli citizens. Sheinbein obtained


17. See id. (offering State's Attorney Douglas Gansler's opinion that Sheinbein's motive for the murder was the sheer thrill of killing); see also Flight to Israel, supra note 15 (suggesting that Sheinbein was in a "thrill-kill mode").

18. See Dean, supra note 5 (detailing the suspects' attempt to escape authorities).

19. See id. (reporting that, while Sheinbein received assistance from his father to fly to Israel, Needle returned to Washington where he was arrested). Authorities later charged Sheinbein's father with obstructing a police investigation in connection with the aid he gave his son. See Hockstader & Whitlock, supra note 13, at B1 (stating that criminal charges are still pending in Maryland against Sol Sheinbein). Because Sol Sheinbein committed a misdemeanor, however, United States officials are unable to prosecute him unless he returns to the United States. See id. Nonetheless, Sol Sheinbein may be disbarred from practicing law in the United States, where he was once a patent and trademark lawyer. See id. In response, Sol Sheinbein claims that he prevented his son from committing suicide by helping him flee to Israel. See Flight to Israel, supra note 15. Samuel Sheinbein, in fact, did attempt suicide by swallowing sleeping pills. See id. Meanwhile, Aaron Needle, Sheinbein's accomplice, was successful in his attempt to take his own life on the eve of his trial. See id.

20. See Abramovsky & Edelstein, supra note 1, at 306 (discussing the course of events that took place once Sheinbein arrived in Israel). Israeli authorities detained Sheinbein after his admission to a hospital following his suicide attempt. See Flight to Israel, supra note 15.

21. See Abramovsky & Edelstein, supra note 1, at 306 (providing details on the way Israeli authorities handled Sheinbein once he arrived in Israel).

22. See Penal Act (Offenses Committed Abroad [Amendment of Enactments]
refuge as an Israeli citizen through an Israeli nationality law that accorded him the benefits of his father’s citizenship. This law shielded him from United States prosecution despite a 1962 Extradition Treaty between Israel and the United States and a long history of cooperation between the two nations. Meanwhile, United States law enforcement officials and political figures became increasingly frustrated with Israel’s willingness to provide refuge for the youth. This criticism gave rise to growing United States-Israeli tensions.

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23. See Thomas W. Lippman & Barton Gellman, *Israel Still Seeks Legal Way to Return Suspect to U.S.*, WASH. POST, Oct. 8, 1997, at B1, available in 1997 WL 14706119 (explaining that Sheinbein could be an Israeli citizen if the court found that his father retained his Israeli citizenship while living in the United States); see also *Acquisition of Israeli Nationality* (visited June 12, 1999) <http://israel.org/mfa/go.asp?MFAH00mz0> [hereinafter *Israeli Nationality*] (discussing the Law of Return, which grants a “Jew” the right to return to Israel and become an Israeli citizen if he or she is a child or grandchild of a Jewish person). Sol Sheinbein claimed Israeli citizenship based on his birth in British-ruled Palestine in 1944. See Lippman & Gellman, *supra*. United States officials attempted to discredit these claims through affidavits demonstrating that the Sheinbein family intended to renounce their Israeli citizenship. See id.

24. See *Extradition Convention*, *supra* note 3, arts. I & IV, 14 U.S.T. at 1708, 1710 (requiring each country to extradite criminals found within its territory and prohibiting a country from refusing to extradite a national).

25. See *supra* note 3 and accompanying text (describing the relationship between the United States and Israel with respect to resolving criminal matters).

26. See *infra* notes 28-38 and accompanying text (detailing the United States’ reaction to Israel’s refusal to grant extradition); see also Abramovsky & Edelstein, *supra* note 1, at 307 (expressing frustration and anger on the part of Maryland prosecutor Robert Dean and former Louisiana Representative Robert Livingston).

27. See J.J. Goldberg, *The Sixth Borough: Testing A Strong Friendship; Will Case of Fugitive Murder Suspect Fray Ties Between Israel and the U.S.?*, JEWISH
The matter seemingly reached a conclusion on September 6, 1998, when a lower Israeli court held that Israel must extradite Sheinbein to the United States. Problems for United States-Israeli relations, however, remained due to the Israeli Supreme Court's ability to hear the case on appeal. This appeal proved detrimental to the United States' interests when the Israeli high court ruled that the country could not extradite Sheinbein to the United States. In a split deci-

28. See Lee Hockstader, Judge Says Israel Can Extradite Sheinbein; Appeal of Ruling May Take Months, WASH. POST, Sept. 7, 1998, at A1, available in 1998 WL 16554468 (discussing Jerusalem District Court Judge Moshe Ravid's ruling that Israel may extradite Sheinbein to stand trial for first-degree murder in the United States). Although the judge conceded that Sheinbein could be a citizen of Israel, he did not believe that the suspect had sufficient connections with the country, thereby making Sheinbein's citizenship devoid of all meaning. See id. Judge Ravid specifically noted that Sheinbein was born and raised in the United States, and had never lived in Israel. See id. On a broader level, Judge Ravid also reasoned that to rule otherwise would mean other nations would not honor their extradition agreements with Israel. See Ann LoLordo et al., Judge OKs Extradition for Sheinbein: Decision Means Teen Would Return to U.S. to Face Murder Charge; 'The Trip is Almost Over'; Teen Fled to Israel after 1997 Killing of Man, 19, in Wheaton, BALTIMORE SUN, Sept. 7, 1998, at 1B, available in 1998 WL 4983411.


30. See Israel—Basic Law: Judicature (visited June 12, 1999) <http://www.uni-wuerzburg.de/law/is03000_html> (describing the ability of the Supreme Court to hear appeals from the District Courts); see also Hockstader, supra note 28, at A1 (discussing Sheinbein's right to an appeal that would be heard by the Israeli Supreme Court).

31. See Izenberg, supra note 4, at 1 (reporting the Israeli Supreme Court deci-

32. See Izenberg, supra note 4 (stating that the Court had no right to interpret Israel’s citizenship law because the original intent of the legislators was clear as to the law’s purpose).

33. See Abramovsky & Edelstein, supra note 1, at 321 (explaining the judges’ refusal to recognize two categories of citizenship and allow any international obligations to override domestic law); see also Israeli Justices Refuse to Extradite U.S. Teen in Maryland Murder, CHI. TRIB., Feb. 26, 1999, at 19, available in 1999 WL 2847540 (discussing the position of the judges on Sheinbein’s extradition). In a minority opinion, Judge Barak opined that the justifications for not extraditing an individual were not applicable in this case, and that extradition was a paramount factor in achieving international cooperation on criminal matters. See Izenberg, supra note 4, at 19. Barak also asserted that immunity from extradition can only be given to an individual “for whom Israel is the center of his life and who participates in its life and joins his destiny to that of the country.” See Reinfeld, supra note 31.

34. See Hillel Kuttler et al., US Officials Upset at Sheinbein Ruling, JERUSALEM POST, Feb. 26, 1999, at 1, available in 1999 WL 8999994 (discussing the extreme disappointment of officials such as Attorney General Janet Reno and State’s Attorney Douglas Gansler). Reno stated: “[w]e much prefer that the case be tried where the crime was committed. Again, a community should be able to speak out against such injustice and such conduct.” Id. Even former Israeli Prime Minister Binyamin Netanyahu felt apologetic for the decision, but asserted that the Israeli Supreme Court is an apolitical body whose decisions are autonomous under the principle of separation of powers. See id.

35. See Linzer, supra note 7 (discussing State’s Attorney Gansler’s feelings of hopelessness about the case). Israel’s Attorney General petitioned the Israeli Supreme Court to reconsider its decision, but the Court refused to do so. See Abramovsky & Edelstein, supra note 1, at 321.

36. See Sheinbein Charged in Tel Aviv with First-Degree Murder, JERUSALEM POST, Mar. 23, 1999, at 5, available in 1999 WL 9000950 (relating that dozens of
bein,\textsuperscript{37} United States and Maryland officials became discouraged by several delays in Sheinbein’s arraignment hearing, \textsuperscript{38} as well as an unexpected not-guilty plea entered by the accused.\textsuperscript{39} Even though Sheinbein eventually changed his not-guilty plea,\textsuperscript{40} several sentencing issues still troubled United States officials.\textsuperscript{41}

II. ANALYSIS OF ISRAEL’S REFUSAL TO GRANT EXTRADITION

A. CITIZENSHIP, THE LAW OF RETURN, AND THEIR APPLICATION TO THE SHEINBEIN CASE

Several factors influenced the outcome of the Israeli Supreme Court’s ruling in the Sheinbein case.\textsuperscript{42} The decision, however, ultimate

\footnotesize{witnesses, including United States police investigators, would have to be flown to Israel for a possible trial).


38. See Katherine Shaver & Ramit Plushnick-Masti, Sheinbein Hearing in Israel Delayed for a Month; Defense in Slaying Case Asks for More Records, WASH. POST, May 17, 1999, at B1, available in 1999 WL 17003402 (discussing the Maryland State’s Attorney’s frustration with the Israeli court’s decision to further delay the hearing, referring to the delays as “stalling tactics”); see also Katherine Shaver, Sheinbein is Given 2nd Delay, WASH. POST, June 14, 1999, at B1, available in 1999 WL 17008718 (referring to Gansler’s implication that the Israeli judicial system is not taking the Sheinbein case seriously).

39. See Heidi J. Gleit, Sheinbein Pleas Innocent to Murder. Confesses to Mutilating Tello’s Body, JERUSALEM POST, July 6, 1999, at 4, available in 1999 WL 9005306 (explaining that although Sheinbein did not plead to murder as Maryland prosecutors had hoped, he admitted to certain facts surrounding the murder). Sheinbein apparently misled prosecutors by indicating that he would plead guilty in exchange for the prosecutor’s assurance that they would prevent his extradition. See id.


42. See infra notes 116-88 and accompanying text (presenting several factors
mately turned on the interpretation of Israeli citizenship and nationality laws in the context of extradition. This section analyzes the reasoning behind the Israeli Supreme Court's decision, and places the decision in an international context by comparing the ruling with other extradition decisions and international standards.

Unlike the lower court, the Israeli Supreme Court refused to recognize more than one category of citizenship in the absence of legislative authority. The law of citizenship upon which the court based its reasoning has its origins in the Israeli Constitution. The constitution guarantees the right of nationality to every Jewish person, provides for citizenship to individuals born to a national, and establishes that a person cannot lose his nationality other than through legislative means. A person may acquire nationality in several ways, one of which is through the Law of Return.

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43. See supra notes 30-33 and accompanying text (discussing the reasoning behind Israel's refusal to grant the United States' extradition request).
44. See Abramovsky & Edelstein, supra note 1, at 321 (delineating the underlying reasoning behind the Court's decision).
45. See CONST. ISR., sec. B(a) (setting forth the Israeli concept of citizenship). The Constitution provides that, "[e]very Jew has the right to immigrate to Israel and to acquire Israel nationality ... [which] shall not be limited except under law for the protection of the public and its health." Id.
46. See id. (providing nationality guarantees to all Jewish people).
47. See id. sec. B(b) (securing Israeli nationality for persons born to Israeli nationals who are residents). The applicable provision reads, "the law shall secure the acquisition of [I]sraeli nationality by a person born to anyone who is an [I]sraeli national and a resident of [I]srael." Id.
48. See id. sec. B(c)(1) (stating that "A person shall not be deprived of his Israeli nationality except under law.").
49. See The Law of Return, 1950, 4 L.S.I. 114, (1950) (explaining that an "oleh" is a Jewish person immigrating into Israel); The Nationality Law arts. 1-2, 1952, 6 L.S.I. 50 (1952) (stating that an oleh may acquire Israeli nationality through various means: through birth in Israel before or after its establishment, by coming to Israel after its establishment, or by a person receiving an oleh certificate under the Section 3 of the Law of Return); see generally ARIEL BIN-NUN, THE LAW OF THE STATE OF ISRAEL 40-41 (1992) (explaining the liberal nature of citizenship as pertaining to the Law of Return); Acquisition of Israeli Nationality (visited June 12, 1999) <http://israel.org/mfa/go.asp?MFAHOOmzO> (delineating the four ways through which an individual can become an Israeli national: birth, the
The Law of Return endows every Jewish individual with the right to come to Israel as an immigrant and subsequently gain Israeli nationality. This law also sets forth three specific exceptions to a Jewish individual’s right to immigrate. The definition of a Jewish individual within this law, however, is open to interpretation. The failure of the original version of the Law of Return to address the question of “who is a Jew?” created doubts as to the term’s scope. As a result, the Israeli Supreme Court and a 1970 Amendment to


50. See *The Law of Return*, 1950, 4 L.S.I. 114, (1950) (explaining that all Jewish persons possess the right to immigrate to Israel as an *oleh*). The Law of Return further states: “a]n *oleh’s* visa shall be granted to every Jew who has expressed his desire to settle in Israel.” *Id.* Israel enacted the Law of Return in reaction to years of anti-Semitic persecution and ill-treatment. See Nancy Caren Richmond, Comment, *Israel’s Law of Return: Analysis of Its Evolution and Present Application*, 12 DICK. J. INT’L L. 95, 96 (1993); *World Jewish Congress—Policy Dispatch # 6* (visited July 7, 1999) <http://www.virtual.co.il/orgs/vjc/dis6issu.htm> (noting that the Law of Return resulted from the horrors of the Holocaust, as well as the idea that Jewish people were entitled to return to the safety of their homeland). Israel is the only country in the world that grants automatic nationality in such a manner. See Richmond, *supra*, at 99.

51. See *The Law of Return*, 1950, 4 L.S.I. 114, (1950) (detailing that the grant of a visa pursuant to the Law of Return is conditioned upon the Minister of the Interior’s satisfaction that the applicant meets certain characteristics). These qualifications include that the applicant did not “engage in an activity directed against the Jewish people; [n]or is likely to endanger public health; [n]or is a person with a criminal past, likely to endanger public welfare”. *Id.*

52. See Richmond, *supra* note 50, at 101 (stating that the Knesset originally failed to define what it meant by the word “Jew”).

53. See Ariel Bin-Nun, *The Law of The State of Israel: An Introduction* 15-17 (1992) (explaining that the Law of Return fails to provide a clear definition because secular and religious authorities cannot forge an agreement over the scope of who is a “Jew”). See also Schachar, *supra* note 49, at 246-47 (framing the debate between Orthodox and non-Orthodox groups over what it means to be a “Jew” and some of the judicial and legislative events that came about as a result).

54. See Shalit v. Minister of the Interior, 23 P.D. 477 (1969) (allowing children who did not practice the Jewish religion to be registered as Jews because they maintained an allegiance to the Jewish people). But see Ruffheisen v. Minister of the Interior, 16 P.D. 2428 (1962) (ruling that one could not forsake Judaism and maintain their Jewish nationality at the same time).
the Law of Return attempted to further define Jewish individuals in terms of nationality.55

In contrast to these attempts, the amended Population Registry Law56 liberalized citizenry standards and broadened the overall meaning of the word “Jew” by extending rights and privileges to non-Jewish immigrants.57 This law allows a non-Jewish national without a Jewish relative alive or living in Israel to become an Israeli citizen.58

The Israeli citizenship and nationality laws enabled Samuel Sheinbein to remain in Israel.59 Sheinbein’s father, Sol, was born in 1944 British-ruled Palestine and left in 1950, two years after the formation of the State of Israel.60 The elder Sheinbein also held a valid Israeli passport.61 The lower Israeli court, although ruling in favor of extradition, acknowledged that Sol Sheinbein’s citizenship status enabled his son to seek Israeli citizenship.62 As a matter of policy, however,

55. See The Law of Return Amend. No. 2, sec. 1, 1969-70, 24 L.S.I. 28, (1969-1970) (defining a “Jew” as a “person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion”). This amendment bars an individual who does not satisfy either one of these standards from gaining Israeli nationality. See Richmond, supra note 50, at 110.

56. See Law of Population Registry Amend. No. 1, 1970, 19 L.S.I. 288, (1970), cited in Richmond, supra note 50, at 109 (allowing non-Jewish spouses and children to obtain the same rights as Jewish immigrants under the Law of Return). Pursuant to this legislation, these rights no longer depend on whether a Jewish relative lives or settles in Israel. See id.

57. See id. sec. 4(a) (allowing a non-Jew to enter Israel and obtain Israeli citizenship, even if that individual is not accompanied by another Jewish individual); see also Richmond, supra note 50, at 109 (discussing the way the change in Israeli law extended immigration rights to non-Jewish spouses, children, and others).

58. See Richmond, supra note 50, at 109 (discussing the potential implications for the change in the Population Registry law).

59. See supra notes 22-23, 31-33 and accompanying text (explaining how Sheinbein’s citizenship enabled him to survive a United States’ extradition request).

60. See Hockstader, supra note 28, at A1 (discussing Sol Sheinbein’s citizenship status in Israel).

61. See Abramovsky & Edelstein, supra note 1, at 318 (noting that Sol Sheinbein obtained an Israeli passport in 1976).

62. See Hockstader, supra note 28, at A1 (asserting that the lower court recognized the validity of Sheinbein’s citizenship claim, even though it ultimately rejected the notion that he was enough of a citizen to deserve protection under Israeli
the court held that the Maryland youth did not possess sufficient ties with the State of Israel to attain the status of citizenship.\textsuperscript{63} The Israeli Supreme Court subsequently reversed the lower court by deferring to the intent of the legislature in defining Israeli citizenship.\textsuperscript{64}

Although both the lower and the supreme courts acknowledged Sheinbein's citizenship status,\textsuperscript{65} his claim remained problematic. First, although Sol Sheinbein\textsuperscript{66} was an Israeli citizen when he left Israel in 1950, Israel did not pass its citizenship law until 1952, two years after he left.\textsuperscript{67} Accordingly, the law was not in effect when he

\begin{itemize}
\item See also LoLordo et al., supra note 28, at 1B (asserting a notion of citizenship that is acquired through blood). Judge Ravid ruled that citizenship "is won through blood which is automatic and does not require knowledge or acceptance. It is granted whether the person who receives it wants it or not." Id. According to Israeli law, "the offspring of an Israeli parent automatically acquires Israeli citizenship at birth, regardless of the place of birth or the family's effective ties to Israel." See Schachar, supra note 49, at 266. Although Sheinbein was arguably an American citizen at the time he fled to Israel, this would not preclude him from gaining Israeli citizenship; under Israeli law, immigrants can establish citizenship upon return to Israel. See id. Israeli citizenship status is actually considered to take priority over all other possible citizenship claims. See id. This remains the case even if an individual lives outside of Israel for an extended period of time and, in that time, becomes a citizen elsewhere. See id. For a discussion on historical, as well as recent trends in dual nationality, see generally Peter J. Shapiro, Dual Nationality and the Meaning of Citizenship, 46 EMORY L.J. 1411 (1997) (suggesting that dual nationality may not pose the problems that it once previously did, and, instead could become part of larger movement to embrace "the multiple ties of civil society.").

\item 63. See Hockstader, supra note 28, at A1 (averring that, because Sheinbein possessed an American passport and visited Israel only a few times, he failed to create real ties with Israel). The court reasoned: "citizenship that is empty of meaning and all feelings and interest is not enough" to afford protection of extradition." Id.

\item 64. See supra notes 31-33 and accompanying text (explaining the reasons for the Israeli High Court's refusal to grant the United States' extradition request).

\item 65. See supra notes 30-33, 60-62 and accompanying text (discussing both the lower and High Court rulings on Sheinbein's extradition).

\item 66. See Ramit Plushnick-Masti, A Family's Shame: Sheinbein's Parents Describe Their Pain, Bafflement, WASH. POST, Nov. 5, 1999, at B1 (commenting that Sol Sheinbein faces being disbarred if he returns to the United States for helping his son flee to Israel). Sol Sheinbein explained, "[W]ith all due respect to the law, I am first of all a father and only after that a citizen." Id.

\item 67. See Hockstader, supra note 28, at A1 (discussing Sol Sheinbein's departure from Israel).
\end{itemize}
was a resident of Israel. Second, evidence indicated that Samuel Sheinbein's grandparents renounced their Israeli citizenship when they came to the United States, consequently barring them and the rest of their family from making any future claims to Israeli nationality. Sheinbein's grandmother undermined these claims, however, when she testified that she renounced her Israeli citizenship because of threats from her husband. Such circumstances of duress could nullify her renunciation of Israeli citizenship.

**B. ISRAEL'S REFUSAL TO EXTRADITE ITS NATIONALS**

**1. The Israeli Supreme Court's Interpretation of Extradition**

Once Israel determined that Sheinbein was an Israeli citizen, the Israeli Supreme Court followed its well-established practice of refusing to extradite its nationals. Israel's decision rested on a 1978 change in its extradition law providing that the country could not extradite its nationals unless the crime or offense took place before the individual became a national.

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68. See Abramovsky & Edelstein, supra note 1, at 318 (questioning the Israeli's Supreme Court's application of the Law of Return as it did not come into effect until after the elder Sheinbein left Israel).

69. See id. (providing possible flaws in Sheinbein's citizenship based on evidence that his grandparents renounced their Israeli citizenship).

70. See Ramit Plushnick-Masti, Grandmother Testifies at Sheinbein Hearing, WASH. POST, Mar. 18, 1998, at B5, available in 1998 WL 2473761 (stating that Sheinbein's grandmother signed exit documents renouncing Israeli citizenship because her husband physically threatened her if she refused). Based on this testimony, Samuel Sheinbein might be able to claim Israeli citizenship. See Abramovsky & Edelstein, supra note 1, at 318.

71. See Plushnick-Masti, supra note 70, at B5 (stating that the facts relating to the history of Sheinbein's family are crucial to the Israeli court's decision).

72. See supra notes 30-33 and accompanying text (discussing the Israeli High Court's decision to deny the United States' request for extradition based on Sheinbein's citizenship status).

73. See Offenses Committed Abroad (Amendment of Enactments) Law, sec. 2, 32 L.S.I. 63, 64 (1978) (Amending Extradition Law of Aug. 23, 1954) (establishing that an Israeli national shall not be extradited "save for an offense committed before he became an Israeli national"); see also INTRODUCTION TO THE LAW OF ISRAEL 392 (Amos Shapira & Karen C. DeWitt-Arar eds., 1995) (noting that the amendment to Israel's extradition law protected nationals from extradition so long as they committed the crime in question before becoming an Israeli citizen).
extradition treaty explicitly forbade either party from declining to extradite nationals,\textsuperscript{74} the Israeli Supreme Court interpreted the more recent change in Israeli extradition law to take precedence and preempt the treaty.\textsuperscript{75}

2. The International Standard in Refusing to Extradite Nationals

Although Israel’s denial of extradition conflicted with the United States’ interests,\textsuperscript{76} other nations similarly deny an extradition request when the accused is a national.\textsuperscript{77} For example, many European and

\textsuperscript{74} See Extradition Convention, \textit{supra} note 3, art. IV (establishing that neither party to the treaty may decline an extradition request solely because the accused is a national). The Extradition Convention states, in part, that “[e]ach Contracting Party agrees... reciprocally to deliver up persons found in its territory who have been charged with or convicted of any of the offenses mentioned in Article II of the present Convention committed within the territorial jurisdiction of the other...” \textit{Id.} art. I.

\textsuperscript{75} See Abramovsky & Edelstein, \textit{supra} note 1, at 321 (explaining how Justice Orr considered Israel’s extradition law to hold primacy over its international obligations, thereby forcing the Supreme Court to follow it). Because Israeli courts apply the rule of \textit{lex posterior derogat priori}, the 1978 amendment takes precedence over Israel’s previous extradition law and ultimately forces Israel to act contrary to its original treaty obligations. \textit{See Petkunas, supra} note 22, at 219-20. \textit{See also} BLACK’S LAW DICTIONARY 822 (5th ed. 1979) (defining \textit{lex posterior derogat priori}, or the last-in-time-rule, as a doctrine which holds that a later statute debilitates a prior one by either repeal, or language that is repugnant to the prior statute).

\textsuperscript{76} See supra notes 34-35 and accompanying text (discussing the United States frustration with Israel’s denial of extradition).

\textsuperscript{77} See Joshua S. Spector, \textit{Extraditing Mexican Nationals in the Fight Against International Narcotics Crimes}, 31 U. MICH. J.L. REF. 1007, 1018 (1998) (noting that many governments, particularly European and other civil law nations, refuse to extradite their nationals). Among the reasons for declining extradition are: (1) a State’s general duty is to protect its own citizens; (2) the State is capable of prosecuting their nationals at home; (3) concern with excessive or cruel punishment in other countries; and (4) the disadvantages of conducting a trial in a foreign land. \textit{See id.} at 1018-19. States declining extradition may also articulate the position that: (1) most States have legislation punishing citizens who commit offenses abroad, thereby lessening the need for extradition; and (2) a superior right of trial exists in the country where the fugitive is a citizen. \textit{See Christopher C. Joyner & Wayne P. Rothbaum, Libya and the Aerial Incident at Lockerbie: What Lessons for International Extradition Law?}, 14 MICH. J. INT’L L. 222, 242 (1993). \textit{But see id.} (asserting that the non-extradition of nationals results from cultural xenophobia and the tendency of nations to view different judicial systems with suspicion).
Latin American nations refuse to extradite their nationals. Some nations have maintained this policy since the early nineteenth century. More importantly, international law on extradition does not explicitly prohibit nations from refusing to extradite their citizens. The United Nations (UN), for example, determined that the refusal to extradite nationals is an acceptable limitation on extradition. The UN, however, provides that when a nation refuses to extradite one of its nationals, that nation must take domestic action against the requested fugitive. In addition to a UN resolution, the Restatement of Foreign Relations Law also recognizes that it is acceptable to refuse extradition requests for nationals. The Restatement also provides several ways to define the nationality of an individual in relation to the crime or offense committed.

78. See Spector, supra note 77, at 1018 n.90 (noting that Germany, Switzerland, and France do not extradite their nationals); see also Nadelmann, supra note 1, at 851 (stating that most Latin American governments refuse to extradite their citizens). The United States typically allows for the extradition of United States nationals, even to nations explicitly prohibiting the extradition of their own nationals to the United States. See Bassiouuni, supra note 3, at 594.

79. See Nadelmann, supra note 1, at 851-52 (providing a historical backdrop for certain nations who do not extradite their nationals).

80. See infra notes 81-84 (providing several international legal standards that allow States to refuse to extradite their nationals).

81. See G.A. Res. 116, UN GAOR, 45th Sess., Annex, Agenda Item 100, at art. 4(a), UN Doc. A/RES/45/116 (1991) (establishing that nations may, at their option, refuse to grant extradition if the requested individual is a national of that State).

82. See id. (providing that a State must, at the request of the other nation, submit the case to the necessary authorities and take the appropriate action).

83. See Restatement (Third) of Foreign Relations Law of the United States sec. 475, cmt. f (1987) (noting that some treaties provide that States will not grant extradition of their nationals). Whereas some treaties prohibit the extradition of nationals, others leave it to the discretion of the States involved. See id. cmt. g. In general, a State may use its discretion in refusing to grant extradition. See id.

84. See id. (providing several timeframes through which States may determine the nationality of the person sought).
C. OTHER EXTRADITION EXAMPLES: ISRAELIS WHO RETURNED AND AMERICANS WHO DID NOT

1. Israeli Extraditions Granted: The Nakash and Manning Cases

The Sheinbein case is not the first example of an individual seeking to gain Israeli citizenship in order to prevent extradition for a pending criminal prosecution. In the other situations, however, Israel granted extradition. Although the facts of these cases are distinguishable from those of the Sheinbein case, they provide several legal standards that the Israeli Supreme Court could have considered in weighing the United States' extradition request.

The case of William Nakash, an individual who fled to Israel and gained Israeli citizenship after allegedly committing a murder in France, provides one of the more famous extradition cases in Israeli history. The Israeli Supreme Court granted France's extradition request, asserting that refusing to extradite was only an option where special circumstances existed, such as political or humanitarian considerations. The court further opined that it could refuse to extradite for non-political reasons only where the foreign nation made an unjustified extradition request or threatened to mistreat the accused.

85. See infra notes 88-93 and accompanying text (providing two other instances where fugitives have sought the safety of Israeli citizenship laws).

86. See infra notes 88-93 and accompanying text (discussing two renowned examples of Israel's willingness to grant extradition in the cases of William Nakash and Robert Manning).

87. See infra notes 89-93 and accompanying text (providing the reasoning behind Israel's willingness to grant extradition in other instances).

88. See Keinon, supra note 15, at 11 (discussing the relevance of the Nakash case in assessing Israel's refusal to grant extradition). In the midst of public debate over Nakash's extradition, the Israeli Justice Minister declared that he would "rather be known as soft-hearted than bear responsibility for sending Nakash to his death in a French prison." Id.

89. See Naomi Hillel, A Digest of Selected Judgments of the Supreme Court of Israel, 23 ISR. L. REV. 506, 508 (1989) (discussing the reasoning behind the majority opinion of the Israeli Supreme Court).

90. See id. (providing further reasoning behind the Israeli Court's willingness to extradite Nakash). In that case, the Israeli Court rejected the argument of the defendant that his circumstances fell within the purview of a "humanitarian consideration," thereby authorizing the Court to decline to extradite him. See id.
In the 1980s, Israel's extradition law became the focus of attention once again when the Mannings, an American couple accused of killing a Southern California woman, fled to Israel and gained Israeli citizenship.\(^9\) Despite arguments that the couple had strong ties to the country, Israel ultimately chose to honor its international commitments and extradite the Mannings to the United States,\(^9\) where Robert Manning received a life sentence.\(^3\)

In adjudicating the Sheinbein case, the Israeli Supreme Court could have applied the standard set forth in the Nakash case, which mandates that Israel can only deny extradition if the extradition is unjustified or there is a threat of mistreatment.\(^4\) Additionally, based on the gravity of the crime and the dubious nature of Sheinbein's citizenship claims,\(^5\) the Israeli Supreme Court could have found

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91. See Court Orders Mannings Extradited To Face Murder Charges in the U.S., JERUSALEM POST, June 9, 1991, at 1, \textit{available in LEXIS, News Library, Arcnws File} [hereinafter Court Orders Mannings] (reporting that the murdered woman opened a package rigged with explosives). Although the Mannings delivered the package, they claimed that they intended for the woman's boss to receive and open it. \textit{See id.}

92. See Carl Schrag, Legal Considerations, and Others, JERUSALEM POST, June 14, 1991, \textit{available in LEXIS, News Library, Arcnws File} (presenting the various legal arguments for and against the extradition of the Mannings). On behalf of the Mannings, some argued, "[w]e are not talking about a person who fled the law . . . [w]e aren't looking at charges connected to a crime committed last month." \textit{Id.} In dismissing these arguments, one Hebrew scholar stated: "[w]e enacted the extradition law and treaty with the U.S. . . . [n]obody forced it on us. The law's purpose is to serve the state that created it. Do we think the U.S. will extradite people to Israel if we refuse to extradite people to the U.S.?” \textit{Id.} Reinforcing this idea, another professor of Jewish law expressed concerns about the implications for Jewish people if they did not abide by their current extradition agreements. \textit{See id.}

93. See Tom Tugend, Robert Manning Gets Life Sentence for Part in 1980 LA Mail-bomb, JERUSALEM POST, Feb. 9, 1994, at 1, \textit{available in LEXIS, News Library, Arcnws File} (informing that the United States District Court imposed a life sentence on Manning, pursuant to which he will be eligible for parole in thirty years). The judge also refused to allow Manning to serve his sentence in an Israeli prison. \textit{See id.}

94. See Hillel, supra note 89, at 508 (setting forth the standards articulated by the Israeli Supreme Court in choosing to grant the extradition of Nakash). A court may use its discretion in determining whether to extradite when there are political or humanitarian considerations. \textit{See id.}

95. See supra notes 63, 66-71 and accompanying text (discussing some of the ways in which Sheinbein was arguably not an Israeli citizen when he committed his crime).
Sheinbein’s extradition justifiable, just as it did in the Manning case. Despite the assertions that Sheinbein could face mistreatment, or even death, in an American prison, some commentators argue that there is no danger of such mistreatment.

While the Nakash and Manning cases are factually similar to the Sheinbein case, his situation could be distinguishable on one important ground. Both the Nakash and Manning cases involved fugitives who were not Israeli citizens when they committed their offenses. Sheinbein, on the other hand, arguably possessed citizenship status from birth through his father. Thus, he was already a citizen when he committed his crime. Based on Israel’s extradition law, this enabled Israel to decline the United States’ extradition request.

96. See Schrag, supra note 92 (presenting several scholarly assertions that, due to the 20-year statute of limitation on murder, and the fact that the crime took place before the Mannings received Israeli citizenship, Israel should honor its commitment with the United States and extradite the couple).

97. See infra notes 161-64 and accompanying text (presenting the viewpoint that Sheinbein faces potential danger or death if forced to serve his sentence in the United States).

98. See Izenberg, supra note 4, at 1 (reporting Justice Barak’s dissenting opinion, in which he states that there are no concerns with respect to United States courts trying Sheinbein, as it is not an unfamiliar system with an untrustworthy judiciary); AJ Congress Says Change in Israeli Extradition Law, to Prevent Future Sheinbein Situations, is ‘Welcome First Step.’ But Accused Should Serve Sentence Where Crime was Committed, Not in Israel, as Legislation Mandates, PR NEWSWIRE, Apr. 20, 1999, available in LEXIS, News Library, News Group File [hereinafter First Step] (statement of the American Jewish Congress) (stating that Israeli extradition laws were intended to protect its citizens from other countries whose courts would prejudice Israelis, not United States courts).

99. See Keinon, supra note 15, at 11 (noting that Sheinbein’s case may differ from Nakash’s and Manning’s cases because Sheinbein committed his crime as an Israeli).

100. See id. (comparing the citizenship status of fugitives in other Israeli extradition examples); see also Schrag, supra note 92 (noting that, despite Israel’s policy of refusing to extradite its nationals, the Mannings could still be extradited because they did not hold Israeli citizenship at the time they committed their crime).

101. See Keinon, supra note 15, at 11 (explaining how Sol Sheinbein’s citizenship status enabled his son to make a claim for Israeli citizenship).

102. See id. (asserting that some individuals, including the justice minister representing Sheinbein, felt that Sheinbein possessed Israeli citizenship when he committed the offense).

103. See Offenses Committed Abroad (Amendment of Enactments) Law, sec. 2,
2. Other Nations’ Failure to Cooperate with U.S. Extradition Requests: Einhorn and Del Toro’s Safeharbor

Recent examples of Americans fleeing the United States in order to evade justice have garnered international attention. These fugitives, like Sheinbein, attempted to use the laws of foreign nations as a shield from United States prosecution. One recent example is the case of Ira Einhorn, an American who fled to Europe after allegedly murdering his girlfriend. French police arrested and detained him while they awaited a United States extradition request. France, however, would ultimately not extradite Einhorn because it believed

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104. See generally Andrew Blankstein, Street Beat; When Police Work May Not Be Enough, L.A. TIMES, Oct. 22, 1997, at B3 (explaining Mexico’s refusal to extradite a United States citizen who killed four people); Anita Snow, Cuban Gives Financier 13-Year Sentence; American Fugitive Robert Vesco Convicted of Economic Crimes Against the State, AUSTIN-AMERICAN STATESMAN, Aug. 27, 1996 (recounting the notoriety of Robert Vesco, who was convicted in a Cuban court after evading American authorities); Michael Georgy, Fugitive In Jordan Describes Slaying of Wife in New Jersey, N.Y. TIMES, July 25, 1994, at A1 (detailing the extradition struggle between Jordan and the United States for a man who murdered his wife in New Jersey, and then fled to Amman, Jordan); see also John Pak, Canadian Extradition and the Death Penalty: Seeking a Constitutional Assurance of Life, 26 CORNELL INT’L L.J. 239, 249-51 (1993) (explaining Canada’s reluctant extradition of both John Kindler and Charles Chitat Ng to the United States, due to fears that the murderous fugitives would receive capital punishment).

105. See S. Res. 171, 106th Cong. (1999) (considering Mexico’s refusal to extradite United States citizen Jose Luis Del Toro to the United States until the State of Florida agreed not to impose capital punishment on him).

106. See French Reject Extradition of Ex-U.S. Guru, DALLAS MORN. NEWS, Dec. 5, 1997, at 12A, available in 1997 WL 16182724 [hereinafter French Reject Extradition] (recounting Einhorn’s disappearance to Europe before his trial for the murder of his girlfriend, whose body was found in a trunk in Einhorn’s closet in 1977). While Einhorn was missing, a Philadelphia jury tried him in absentia and convicted him for murder. See id. Although the Montgomery County State’s Attorney’s Office considered trying Sheinbein in absentia, they felt doing so would be unconstitutional because Sheinbein was never under the jurisdiction of their court system. See Mizejewski, supra note 40, at A1.

107. See French Reject Extradition, supra note 106, at 12A (discussing how French officials finally caught and arrested Einhorn—who operated under the assumed name of Eugene Mallon—in Bordelais, France in June 1997).
that the United States legal system was lacking in fairness.\textsuperscript{104}

The Mexican government's recent refusal to extradite Del Toro, an American fugitive accused of committing a murder in Florida, also provides an illustrative example of a case in which a foreign nation refused to extradite an American citizen.\textsuperscript{109} Del Toro, like Sheinbein, committed a particularly heinous crime,\textsuperscript{110} yet he successfully sought refuge under Mexican extradition law.\textsuperscript{111} Similar to Israel, Mexico chose to harbor the fugitive despite his status as a United States citizen and the existence of an extradition treaty with the United States.\textsuperscript{112}

Although these cases do not have any direct precedential bearing on the Sheinbein case, they suggest that Israel is not alone in its unwillingness to cooperate with United States law enforcement officials seeking to prosecute fugitives.\textsuperscript{113} First, like Israel, these other countries declined extradition due to concerns that the United States would treat the accused unjustly.\textsuperscript{114} Furthermore, these countries re-

\begin{itemize}
\item 108. See Abramovsky, supra note 2, at 325 (explaining France's primary concern that United States law would not guarantee the right to a new trial after a trial in absentia).
\item 109. See S. Res. 171, 106th Cong. (1999) (relating the sentiment that the United States should renegotiate its extradition treaty with Mexico to allow for the possibility of capital punishment).
\item 110. See id. (describing how the victim's two-year old quadruplets likely witnessed the brutal murder, and how her thirteen-year old daughter discovered her in a bloodbath).
\item 111. See id. (reviewing the United States-Mexico Extradition Treaty, which provides that the Mexican government may refuse to extradite persons for crimes punishable by the death penalty); see also infra notes 142-49 and accompanying text (providing the basis for denying extradition on death penalty grounds).
\item 112. See Convention on Extradition, May 4, 1978, U.S.-Mex., 31 U.S.T. 5059, 5061. This Convention states that, "[t]he Contracting Parties agree to mutually extradite . . . persons who the component authorities of the requesting Party have charged with an offense or have found guilty of committing an offense." Id. In addition to Israel and Mexico, other nations are also parties to extradition agreements with the United States. See, e.g., Extradition Treaty, June 8, 1972, U.S.-U.K., art. IV, 28 U.S.T. 227; Extradition Treaty, Dec. 3, 1971, U.S.-Can., art. 6, 27 U.S.T. 983.
\item 113. See supra notes 104-12 and accompanying text (discussing other extradition cases in which nations refused extradition).
\item 114. See supra note 108 and accompanying text (addressing France's reasons for failing to grant extradition).
\end{itemize}
fused to grant extradition even for especially brutal crimes, where an extradition treaty with the United States was in place.115

III. FACTORS INFLUENCING THE EXTRADITION OF ISRAELI CITIZENS AND THEIR APPLICATION TO THE SHEINBEIN CASE

Although the Israeli Supreme Court decision centered on the question of citizenship, three other factors could have influenced the high court’s ruling.116 First, the effect of Jewish culture and traditions figured prominently.117 Second, the court could have feared that a foreign judicial system would subject an Israeli to cruel or severe punishment.118 Finally, foreign relations impacted both the United States and Israel’s role in the extradition case.119

A. THE INFLUENCE OF JEWISH RELIGION, CULTURE, AND HISTORY

Israel’s refusal to grant extradition may be rooted, in part, in its religion, culture, and history.120 The first aspect of Jewish culture that

115. See supra notes 110-12 and accompanying text (discussing the gruesome nature of Del Toro’s crime and the existence of an extradition treaty between Mexico and the United States).

116. See infra notes 120-88 and accompanying text (presenting several factors that likely shaped Israel’s refusal to extradite Samuel Sheinbein to the United States).

117. See infra notes 120-41 and accompanying text (discussing the influence of Jewish religion, culture, and history on the extradition ruling).

118. See infra notes 142-64 and accompanying text (explaining how humanitarian considerations can impact extradition rulings).

119. See infra notes 165-91 and accompanying text (asserting that foreign policy played an important role in the Sheinbein case).

is reflected in Israeli extradition law is found in the Talmudic text itself. The Talmud contains passages rebuking those who aid the government in prosecuting criminals. Some religious interpretations are based on the proviso that only the Lord should judge and destroy the bad elements of society. Hence, individuals should not turn criminals over to secular authorities. Moreover, such interpretations conclude that it is wrong to surrender Jewish suspects to authorities who possess little mercy or respect for the Jewish people. Former Prime Minister Menachem Begin, for example, asserted religious justifications in arguing for the non-extradition of Israeli nationals. As support for his position, Begin quoted a passage from Deuteronomy regarding one’s duty to not surrender a slave to his master.

Historical forces also shaped the desire of the Jewish people to seek protections from foreign persecution. Historically, concerns of a non-Jewish judiciary treating Jewish people with an uneven hand whenever their fate was put in the hands of a non-Jewish judiciary.”

121. See Broyde, supra note 120, at 1142-44 (analyzing provisions of the Talmudic text as an expression of consternation against the prosecution of Jews).

122. See id. at 1141-44 (expressing disapproval of those who aid in prosecuting Israelis). According to one interpretation, the only context in which it is acceptable to help the government prosecute is if the criminal posed a threat to the life of others or the community itself. See id. at 1144.

123. See id. at 1145 n.19 (elaborating on comments by Justice Menachem Elon, in which he used arguments from religious scholars to frame the debate over the extradition of Jews) (citing Aloni v. Minister of Justice, H.C. 852/86, 42(2) P.D. 1 (1987)). Justice Elon stated that, originally, some scholars preferred that God judge wrongdoers, but over time, virtually all scholars agreed that one should hand over Jewish transgressors if they endangered the public. See id.

124. See id. (asserting that the State should not turn over Jews to anti-Semitic authorities).

125. See Abramovsky & Edelstein, supra note 1, at 311 (describing the Prime Minister’s use of religious rhetoric).

126. See id. (delineating the way in which the Prime Minister argued for the non-extradition of Israeli nationals).

127. See id. (referring to the Prime Minister’s quoting of Deuteronomy 23:15 which states “You shall not give up to his master a slave who has escaped from his master to you.”).

128. See Andes, supra note 120 (describing the history of worldwide Jewish persecution and the creation of Israel as a safe-haven for Jews after the Holocaust).
of justice haunted Israeli policy on extradition. With the construction of the Jewish State in the wake of World War II and the Holocaust, these fears intensified. In this light, one of the purposes behind the creation of Israel and its laws was to protect the Jewish people from future persecution. Furthermore, Israel declared itself a haven for every Jew who sought refuge from anti-Semitic attacks.

These historical forces, coupled with several high profile extradition cases, led Israel to profoundly distrust the judicial systems of foreign governments. With the aid of former Prime Minister Begin, 

129. See id. (explaining how Jews historically faced the threat of a biased judiciary). In his concurring opinion in the Sheinbein ruling, Justice Menahem Ilan referred to a medieval account of anti-Semitism in a Muslim ruled judiciary. See generally Stuart Schoffman, Israel's Point of No Return, WASH. POST, Mar. 28, 1999, at B1, available in LEXIS, News Library, Curnws File (discussing Israeli fears of anti-Semitic treatment in non-Israeli jurisdictions).

130. See Kraft, supra note 3, at 2 (stating that Israel passed its anti-extradition law in response to the Holocaust experience); see also Abramovsky & Edelstein, supra note 1, at 312 (noting former Prime Minister Begin’s status as a survivor of the Holocaust and stating that this ultimately shaped his unwillingness to turn Jewish people over to foreign courts); Schoffman, supra note 129, at B1 (asserting that the Jewish State is “predicated on immigration” and seeks to protect any Jewish person that moves there).

131. See BIN-NUN, supra note 49, at 109-10 (providing a history behind the Nazis and Their Helpers (Punishment) Law, 1950, which prosecutes crimes committed against the Jewish people under the Nazi regime). This law applies the death penalty retroactively to crimes committed worldwide, and cannot be limited by double jeopardy. See id.; see also Gloria M. Weisman, World Fact Book of Criminal Justice Systems (visited June 12, 1999) <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjirs.txt> (asserting that the death penalty in Israel is only used in two cases, one of which is a crime against the Jewish people).

132. See DECLARATION OF THE STATE OF ISRAEL (1948) (declaring that the State of Israel will be open for Jewish immigrants and exiles); see also Schoffman, supra note 129, at B1 (explaining how the State of Israel is based on the very notion of immigration and, therefore, the State is willing to welcome even those persons with the tenuous connections to the nation); Israeli Nationality, supra note 23 (discussing the Law of Return, which grants a Jewish person the right to come back to Israel and become an Israeli citizen if they are the child or grandchild of a Jewish person).

133. See supra notes 128-32 and accompanying text (providing some historical justifications for Israel’s anti-extradition position).

134. See Abramovksy & Edelstein, supra note 1, at 311-15 (discussing the effect of high-profile cases such as the Dreyfus Affair in convincing the Israeli government to change its extradition laws). Similarly, Robert Soblen, a United States citi-
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this distrust resulted in Israel’s passage of the anti-extradition law of 1978.135 Begin and the Israeli Parliament’s reasoning, embodied in the 1978 law, foretold of the Israeli Supreme Court’s Sheinbein decision.136

The foregoing concerns, however, were not applicable to Samuel Sheinbein for two reasons. First, Sheinbein sought shelter under Israeli law despite having little or no national ties13 to the nation.116 In that regard, some commentators assert that Sheinbein was merely evading American justice by exploiting more lenient Israeli laws,159 thereby making the country a safe-haven for criminals worldwide.149

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135. See Izenberg, supra note 4, at 1 (describing how Begin supported the extradition law by telling the Knesset to take into account the Jewish situation in other countries); Kraft, supra note 3 (discussing the influence of Prime Minister Begin in the Knesset’s passing of the 1978 law).

136. See Izenberg, supra note 4, at 1 (discussing the reasoning of Justice Or, who felt that the Israeli legislators demonstrated their explicit intent and understood that the law could potentially protect Israelis who had gone to other countries).

137. See Hockstader, supra note 28, at A1 (explaining how Sheinbein’s claims of national ties to Israel are tenuous at best). Sheinbein held an American passport, did not speak Hebrew, and only made a few trips to Israel. See id. In his lower court ruling, Judge Ravid stated that, “[a] citizenship that is empty of meaning and all feelings and interest is not enough” to establish national ties. See id.

138. See Kraft, supra note 3, at 2 (providing a number of extradition examples where the suspect had limited Jewish identity).

139. See Morning Edition: Samuel Sheinbein Case: Carol Van Dam Reports on the Reaction of Jews in the United States to Israel’s Role in the Samuel Sheinbein Case (NPR broadcast, Aug. 12, 1998) (highlighting the Jewish-American reaction to the Israeli Supreme Court’s refusal to grant extradition). Van Dam reports that “[m]any in the Jewish community are . . . outraged that Sheinbein will not spend the rest of his life in jail.” Id.

140. See Matthew Kalman, Israel Amends law; Lets Nonresidents be Extradited, Won’t Apply to U.S. Teenager Who Fled to Avoid Murder Prosecution in Maryland, USA TODAY, Apr. 20, 1999, at 11A, available in 1999 WL 6840218 (quoting Hanan Porat, the head of the Knesset Constitution Law Committee, who stated that the law threatened to make Israel a safe-haven for criminals); see also Robert B. Robbins, Irresponsible Decision, JERUSALEM POST, Mar. 25, 1999, at 8, available
Second, even if Sheinbein legitimately seeks legal refuge in Israel, he should not need protection from the United States judicial system due to his status as a United States citizen.141

B. INTERESTS IN PROTECTING THE FUGITIVE FROM DEATH, DANGER, OR A LIFE SENTENCE

Many nations,142 including Israel, have abolished the death penalty.143 Consequently, these nations prohibit the extradition of their citizens if it could result in the imposition of the death penalty.144 The reasons for withholding extradition in death penalty situations are humanitarian in nature; a State outlawing capital punishment would
likewise be unwilling to subject one of its citizens to capital punishment in a foreign land. The UN memorialized this commitment in its Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). In these documents, the UN declares that no individual should endure cruel or unusual punishment, and that every person maintains the right to life. Consistent with these international standards, Israel prohibits extradition in cases where the suspect could potentially face the death penalty.

In the Sheinbein case, moral considerations regarding the death penalty were moot. Maryland could not have imposed the death penalty.

145. See Craig R. Roecks, Extradition, Human Rights, and the Death Penalty: When Nations Must Refuse to Extradite a Person Charged with a Capital Crime, 25 CAL. W. INT'L L.J. 189, 189 (1994) (discussing the refusal of some States to extradite suspects who may face the death penalty upon their return). These States frequently equate the death penalty with torture or degrading punishment. See id.

146. See Universal Declaration of Human Rights, G.A. Res. 217(A)(III), UN GAOR, 3d Sess., at 71, UN Doc. A/810 (1948) [hereinafter Universal Declaration] (setting forth a prohibition on severe penalties). Under the Universal Declaration, "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Id.

147. See International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), UN GAOR, 22d Sess., Supp. No. 16, at 52, UN Doc. A/6316 (1967) [hereinafter International Covenant]. The International Covenant provides that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Id.

148. See id. (establishing the minimum level of treatment individuals must receive from member nations); see also Nadelmann, supra note 1, at 837 (noting foreign courts' rulings that the extradition of a suspect violates the European Convention on Human Rights, which also prohibits torture or inhumane treatment). In Europe, "the freedom from the death penalty is rapidly developing into a new human right which ought to be exercised in favor of all individuals, even if the sentence is to be imposed outside the Council of Europe." GEOFF GILBERT, ASPECTS OF EXTRADITION LAW 100 (1991).

149. See International Covenant, supra note 147, at 51 (declaring that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of life.")

150. See Hillel, supra note 89, at 508 (1989) (citing Aloni v. Minister of Justice, H.C. 852/86, 41(2) P.D. 42 (1987)) (explaining how an Israeli decision not to extradite is only limited to certain circumstances, one of which is when the suspect could be subject to inhumane treatment or death).

151. See infra notes 152-59 and accompanying text (explaining that humanitar-
penalty on Sheinbein because he did not meet the minimum age requirement. Consequently, the maximum sentence that Sheinbein could have received under Maryland law would have been life imprisonment. Israel, however, may have been concerned about the possible imposition of a life sentence. The Canadian government recently asserted this argument to justify their refusal to comply with a United States extradition request. Like Sheinbein, the fugitive in the Canadian case did not face capital punishment, but Canada vehemently asserted that the mandatory minimum sentence would be unjust. Although Israel did not articulate this position, it could have argued that a life sentence, in and of itself, is an extreme form of punishment. Whereas most jurisdictions in the United States impose a sentence of life in prison for first-degree murder, Israel typi-

152. See MD ANN. CODE art. 27, sec. 412(g) (Michie 1996 & Supp. 1999) (establishing that a person will not receive a death sentence in Maryland if he or she was less than eighteen years old at the time the murder was committed).

153. See id. (explaining how Israel cannot refuse to extradite Sheinbein in order to avoid capital punishment); see also Kuttler et al., supra note 34, at 1 (stating that, although Maryland has the death penalty, the suspect's age prevents him from being subjected to it).

154. See infra notes 156-64 and accompanying text (discussing Israel's concerns with the possibility of Sheinbein facing a life sentence in an American prison).


156. See id. (discussing United States v. Jamieson, in which Canada based its refusal to extradite a United States citizen on fears of harsh United States sentencing). See generally United States v. Jamieson, [1992] 73 C.C.C.3d 460 (Can.). Although the fugitive in that case did not face capital punishment, Canada considered the mandatory minimum sentence to be cruel and unusual punishment. See McHam, supra note 155.

157. See Model Treaty on Extradition, supra note 144 (setting forth the condition that a nation does not have to surrender the fugitive if the receiving nation does not guarantee that a life or indeterminate sentence will not be imposed). But see Abramovsky & Edelstein, supra note 1, at 345-46 (asserting that Israel would not regard a life sentence as a violation of human rights).

158. See Kuttler et al., supra note 34, at 1 (indicating that Sheinbein would receive a life sentence).
cally administers a shorter sentence.\textsuperscript{159}

Israel may have also been concerned about potential threats of violence against Sheinbein in an American prison.\textsuperscript{160} The victim’s Hispanic ethnicity complicated these concerns.\textsuperscript{161} The Hispanic community reacted strongly to Tello’s murder, which, in turn, might portend retaliation against Sheinbein in a United States prison.\textsuperscript{162} The Sheinbein family also painted a negative picture of Tello, evoking further outrage in the Hispanic community.\textsuperscript{163} Furthermore, many members of the Hispanic community felt that Israel would have decided in favor of extradition if the victim had been Jewish or Caucasian.\textsuperscript{164}

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\item \textsuperscript{159} See Maryland State Prosecutor, supra note 3 (suggesting that Sheinbein would receive a substantially less severe sentence in the Israeli judicial system); cf. McHam, supra note 155 (discussing Canada’s creative interpretation of international extradition law as enabling a fugitive to remain within its borders).
\item \textsuperscript{160} See Hockstader, supra note 28, at A1 (stating that Sheinbein fought extradition because he feared abusive treatment while in a United States jail); see also Sheinbein Charged in Tel Aviv with First-Degree Murder, JERUSALEM POST, Mar. 23, 1999, at 5, available in 1999 WL 9000950 (stating that Sheinbein feared that someone would attempt to take revenge for Tello’s death and put his life in danger). Sheinbein thus argued that granting extradition would be the equivalent of sentencing him to death. See id.
\item \textsuperscript{161} See Dean, supra note 5 (noting that Tello, whose grandmother was Costa Rican, was Hispanic).
\item \textsuperscript{162} See Abramovsky & Edelstein, supra note 1, at 313-14 (opining that Hispanic gangs in United States prisons might threaten Sheinbein and endanger his life); see also Yosef Goell, ‘Galut’ Justice, JERUSALEM POST, Mar. 1, 1999, at 8, available in 1999 WL 9000109 (asserting that a failure to extradite Sheinbein would result in anti-Semitism within the Hispanic community); Kuttler et al., supra note 34, at 19 (noting the reaction in the Hispanic community over the brutal murder). Some commentators asserted that former State’s Attorney Robert Dean used this sentiment to his advantage by attempting to garner additional political support in the Hispanic community. See Abramovsky & Edelstein, supra note 1, at 316.
\item \textsuperscript{163} See Dean, supra note 5 (discussing how Sheinbein’s family and their lawyers delved into Tello’s past in order to cast him in a negative light and possibly create a defense for the two suspects). Hispanic leaders felt that this strategy was an attempt to exploit traditional Latino stereotypes. See id.
\item \textsuperscript{164} See Adrienne T. Washington, Sheinbein’s Sentence Hardly Fits the Crime, WASH. TIMES, Aug. 27, 1999, at C2, available in 1999 WL 3092971 (reporting on the Hispanic community’s suspicion that Israel’s decision would have been different if the victim had been of a different ethnicity); see also All Things Considered (NPR radio broadcast, Sept. 2, 1999), available in LEXIS, News Library, News
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C. THE ROLE OF FOREIGN POLICY IN INFLUENCING THE ISRAELI DECISION

The complexion of the Sheinbein case changed when it began to attract the attention of national political figures.\textsuperscript{165} The affair entered the realm of foreign policy and took on distinct international significance.\textsuperscript{166} In particular, the United States placed Israel's refusal to grant its extradition request in the larger context of United States-Israeli relations.\textsuperscript{167}

The Sheinbein case created a United States-Israeli diplomatic quagmire for several reasons.\textsuperscript{168} First, because the two nations possess strong bilateral relations, the United States became quite disappointed in Israel's refusal to extradite Sheinbein.\textsuperscript{169} Second, Israel receives a tremendous amount of aid from the United States,\textsuperscript{170} a large

\textsuperscript{165} See Goldberg, supra note 27, at 14 (stating how the event extended beyond local attention when it attracted members of Congress through coverage by the \textit{Washington Post}). Goldberg reports that former Chairman of the House Appropriations Committee Bob Livingston threatened to cut $500 million in aid to Israel unless Israel sent Sheinbein home. See id.

\textsuperscript{166} See Dean, supra note 5 (providing a brief summary of how public outcry placed the case in the international spotlight); see also Hockstader, supra note 28, at A1 (mentioning that the Sheinbein case is part of the diplomatic and political realms because the United States provides massive amounts of aid to Israel).

\textsuperscript{167} See Nomi Bar-Yaacov, \textit{Israeli Supreme Court Bars Extradition of Teen Murder Suspect to U.S.}, \textit{AGENCE FRANCE PRESS}, Feb. 25, 1999, \textit{available in LEXIS, News Library, Curnws File} (stating how the United States might follow through on its threat to withhold massive annual aid should Israel decide not to return Sheinbein). \textit{But see} Goldberg, supra note 27, at 14 (asserting that the Sheinbein affair is actually an example of strong, well-grounded United States-Israeli relations).

\textsuperscript{168} See infra notes 169-73 and accompanying text (presenting several factors that enabled the Sheinbein case to create tension between the United States and Israel).

\textsuperscript{169} See Lush, supra note 29, at 3A, \textit{available in 1998 WL 5716318} (noting Montgomery County State's Attorney Robert Dean's reaction to Israel's position). Dean expressed feelings of surprise and disappointment due to the fact that Israel, unlike a nation like Vietnam, maintains close relations with the United States. See id.

\textsuperscript{170} See Hockstader, supra note 28, at A1 (noting that, although Israel is the world's top recipient of United States aid, United States lawyers, politicians, and diplomats balked at the notion of shielding an American citizen from domestic
portion of which is granted for military purposes. Third, the Sheinbein affair erupted simultaneously with other international dilemmas facing the Israeli government. Israel not only had to cope with slowly progressing Palestinian peace talks; but it also botched an assassination attempt on the leader of a militant Islamic group. Finally, the denial of Sheinbein’s extradition received the vehement reaction of several powerful political minorities in the United States.

As a result of the political climate surrounding the Sheinbein case, the United States decided to exert political leverage in order to obtain its extradition request. Secretary of State, Madeleine Albright, immediately sent a letter to then Prime Minister Binyamin Netanyahu, in which she formally requested cooperation from the Israeli government. Additionally, former Representative Robert Livingston, then-Chairman of the House Appropriations Committee, threatened

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171. See ADC, supra note 170 (noting that, of the aid Israel receives from the United States, a large portion of it is for military purposes).

172. See Lippman & Gellman, supra note 23, at B1 (describing the failed assassination attempt on a Hamas leader by an Israeli agent).

173. See supra notes 162-64 and accompanying text (discussing outrage in the Hispanic community at the Sheinbein decision); see also ADC, supra note 170 (expressing the strong reaction of Arab-Americans to Israel’s refusal to grant extradition). Many Arab-Americans considered Israel’s decision to be especially egregious in light of the large number of Arabs imprisoned by Israeli authorities and treated in an inhumane manner. See id.

174. See Bar-Yaacov, supra note 167 (explaining how the United States tried to obtain extradition by threatening to withhold aid).

175. See Lippman & Gellman, supra note 23, at B1 (quoting Secretary of State Albright’s call for “maximum cooperation” from the Israeli government); see also Vogel & Lippman, supra note 13 (reporting on the correspondence between the Secretary of State and the Israeli Prime Minister Binyamin Netanyahu). Albright directly appealed to Netanyahu to extradite Sheinbein. See id. Netanyahu responded that the crime appalled both the Israeli government and public, and that he would return Sheinbein if possible under Israeli law. See id.

to withhold a substantial portion of foreign aid to Israel. Some Congressmen supported Livingston’s position in proposing a concurrent resolution calling for the extradition of the Maryland youth.

The United States ultimately failed to achieve the desired result of extraditing Sheinbein. Although the Prime Minister of Israel favored extradition, he was not willing to overstep his boundaries and interfere with an autonomous judiciary. Other Israeli officials remained firm in their belief that, due to similarities between the two judicial systems, a trial held in Israel would be equally fair and just.

177. See Goldberg, supra note 27, at 14 (relaying the sentiments of former Rep. Livingston, who declared that he felt “violated” as a United States citizen by the Sheinbein affair).

178. See id. (threatening that the United States could cut as much as $500 million from Israeli aid); see also Kuttler et al., supra note 34, at 19 (noting that there could be increased support among members of Congress if the Israeli government does not provide a satisfactory response). But see id. at 19 (criticizing former Rep. Livingston’s assertions). Although Maryland Representative Constance Morella pushed for the youth’s return to the United States, she disagreed with Livingston’s desire to withhold aid because she felt the Israeli people had nothing to do with the Sheinbein affair. See Andes, supra note 120.

179. See H.R. Con. Res. 165, 105th Cong. (1997) (clamoring for Israel to grant extradition for Samuel Sheinbein and to have the murder trial take place in Montgomery County, Maryland).

180. See Internight: Analysis: Israeli Supreme Court Rules American Teen Accused of Murder in U.S. Will Not Be Tried in Israel (NBC television broadcast, Feb. 26, 1999) (quoting Israeli Ambassador Zilman Shoval). Shoval stated: “I feel for the [Tello] family. But the family can rest assured that if Sheinbein is found guilty, he will be punished severely.” Id.

181. See Kuttler et al., supra note 34, at 1 (disclosing Netanyahu’s desire to see the suspect extradited).

182. See id. (providing the Prime Minister’s position on the independence and autonomy of the Israeli judiciary and how, in a country of law, this autonomy must be preserved). The Foreign Ministry stated:

The decisions of the Supreme Court are, of course, completely autonomous in the framework of complete respect for the principle of the separation of powers. Israel believes that the American public and its Leaders, in recognition of, and out of respect for our common values, will understand that the decision is proper.

Id. The Israeli government emphasized that the decision was not political, but rather a legal one. See Bar-Yaacov, supra note 167.

183. See All Things Considered, supra note 164 (asserting that, while an Israeli
Even though many Israelis feared that their nation would become a haven for fugitives, they also expressed outrage at the official United States position that encouraged extradition. Many Israeli leaders considered American threats inappropriate and unnecessary. Furthermore, they felt that the United States' position ran contrary to its own interests. In addition to Israeli disapproval of the United States' reactionary measures, both Jewish and non-Jewish observers pointed out the hypocritical nature of the United States' position. In spite of this backlash, it appears that United States pressure on Israel influenced the Israeli Parliament. Accordingly, on April 19, 1999, the Knesset amended its extradition law to avoid

punishment may differ from a United States punishment, the Israeli justice system ensures fairness through the use of fundamental rules such as cross-examination).

184. See Goell, supra note 162, at 8 (arguing that the Israeli Supreme Court decision is detrimental to Israel because of the way in which it serves as a protection for criminals).

185. See Andes, supra note 120, at A9 (highlighting the reaction of some Jewish leaders to American threats to withhold aid).

186. See id. (commenting on the United States' "hasty threats" and how its views seem narrowly-focused); see also Lippman & Gellman, supra note 23, at B1 (remarking that only people with other agendas would use the Sheinbein affair against Israel).

187. See Andes, supra note 120, at A9 (arguing that United States' aid to Israel displays a commitment to supporting the Jewish State).

188. See Steve Lubet, The Accused v. International Law, CHI. TRIB., Mar. 18, 1999, available in 1999 WL 2847540 (asserting that Israel's extradition ruling is understandable when considered in light of United States refusals to give up their own citizens for trial in foreign tribunals); see also Nitsana Darshan-Leitner. Double Standard, JERUSALEM POST, Mar. 2, 1999, available in LEXIS, News Library, Curnws File (commenting on how the United States placed pressure on Israeli authorities, but chose not to do the same with Palestinian leaders, who have continuously protected terrorists suspected of taking part in the murders of American citizens).

189. See Goldberg, supra note 27, at 14 (explaining former Rep. Livingston's attempts to financially pressure Israel); see also Vogel & Lippman, supra note 175 and accompanying text (relating Secretary of State Albright's diplomatic efforts to favorably resolve the Sheinbein matter in line with the best interests of the United States).

190. See Kraft, supra note 3 (discussing the Knesset's recent enactment of an extradition law, which stipulates that non-resident Israeli citizens will be extradited, tried, and sentenced abroad, and returned to Israel to serve their sentences).
future Sheinbein-like situations.\textsuperscript{191}

**IV. THE DETRIMENTAL IMPACT ON AMERICAN JUSTICE**

One of the most problematic issues surrounding the Sheinbein case is the potential undermining of the United States' interest in ensuring that Sheinbein's sentence matches the severity of his crime.\textsuperscript{192} While other evidentiary and procedural problems would have existed in the event of a trial,\textsuperscript{193} Sheinbein's plea-bargain and subsequent conviction rendered these concerns moot. It is still important, however, to address the foregoing concerns and to illustrate some of the problems other nations could encounter in seeking international cooperation in the foreign prosecution of fugitives.

**A. MARYLAND OFFICIALS’ PREVIOUS PROSECUTORIAL CONCERNS**

The refusal to extradite raises problems in transporting witnesses and evidence to the host country to conduct a trial.\textsuperscript{194} If the Sheinbein case would have resulted in a trial, officials in Montgomery County could have faced many procedural inconveniences.\textsuperscript{195} Maryland prosecutors in the Sheinbein case would have had to send a tremendous amount of documentation and evidence to Israel, as the scene of the crime, the evidence, and the witnesses were all located on

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\footnote{191. See id. (noting that the Knesset amended Israel’s anti-extradition law, largely as a result of the United States’ anger and frustration with Israel’s handling of the Sheinbein case).}

\footnote{192. See infra notes 207-16 and accompanying text (discussing the various sentencing issues that accompanied the Sheinbein case, including his plea bargain, the pre-trial sentencing agreement between Israeli prosecutors and his attorneys, and the effects of the Israeli prison system on his sentence).}

\footnote{193. See infra notes 194-206 and accompanying text (addressing problems that would have plagued Maryland officials had the Sheinbein case gone to trial).}

\footnote{194. See Abramovsky, supra note 2, at 1915 (emphasizing that the transportation of witnesses and evidence to the place of trial are some of the most difficult problems arising in foreign prosecutions). Evidence located abroad and admitted at trial requires prior international certification. See id. In addition, there are far more stringent security and licensing procedures that accompany the transportation of physical evidence abroad. See id.}

\footnote{195. See id. (providing examples of joint United States-Israeli prosecutions where the gathering of evidence posed problems for prosecutors).}
\end{footnotes}
American soil. In addition, Maryland prosecutors would have had to contend with sending numerous witnesses to Israel. In spite of the importance of these witnesses to the prosecution, however, Israel could not have compelled these witnesses to fly there to testify. These logistical and procedural problems enabled Sheinbein’s attorney to successfully delay his arraignment hearing.

Equally problematic are the many obstacles preventing authorities in different countries from effectively working together to prosecute the accused. In the Sheinbein case, Maryland authorities asserted that Israeli prosecutors did not sufficiently comprehend the facts of the case, and that the Israeli prosecutors did not take the case seri-

196. See Shaver & Plushnick-Masti, supra note 38, at B1 (noting that Maryland prosecutors flew all paperwork and photographs to Israel in order to provide the defense with all of the necessary information).

197. See Sheinbein Charged in Tel Aviv with First-Degree Murder, JERUSALEM POST, Mar. 23, 1999, at 5, available in 1999 WL 9000950 (reporting that twenty-four of twenty-five potential witnesses are American and would therefore need to fly to Israel); see also Michael Janofsky, Not-Guilty Plea in Slaying a Surprise to Family and Lawyer, N.Y. TIMES, July 7, 1999, at A16 available in LEXIS, News Library, NYT File (highlighting a possible difference in the trial proceedings if the case took place in the United States). Maryland prosecutors contend that they would have called more than eighty witnesses had the trial taken place on American soil. See id.

198. See Abramovsky, supra note 2, at 1916 (discussing an Israeli Supreme Court ruling that an Israeli court can not subpoena a foreign witness); see also Howard Schneider & Katherine Shaver, Sheinbein Doesn’t Admit to Killing, WASH. POST, July 6, 1999, at A1 (noting that none of the potential witnesses have to fly to Israel). Coupled with this obstacle is that Israeli law does not require Sheinbein’s parents or siblings to testify against him. See id.

199. See Shaver & Plushnick-Masti, supra note 38, at B1 (stating that Sheinbein’s defense attorney, David Libai, sought a delay in Sheinbein’s arraignment because he did not receive all of the information that the Montgomery County, Maryland prosecutors had gathered in their investigation); see also Shaver & Plushnick-Masti, supra note 38, at B1 (discussing Libai’s successful request for a second delay in the arraignment).

200. See infra notes 201-06 and accompanying text (describing the ways in which prosecutors are limited in foreign prosecutions).

201. See Schneider & Shaver, supra note 198, at B1 (noting that the Israeli indictment contains various factual inconsistencies and other errors, signaling to Maryland prosecutors that the Israeli prosecutors do not have a full understanding of the case against Sheinbein); see also Janofsky, supra note 197 (reflecting the opinion of State’s Attorney Gansler, who stated that Israeli prosecutors only have “passing familiarity” with the details because all of the evidence and witnesses are
In spite of Israel's intentions to cooperate with United States officials, language difficulties also frustrated Maryland prosecutors, as many of the documents were written in Hebrew and the Israeli prosecutor spoke little English. Furthermore, although the trial was to be conducted in Hebrew, the defendant and the witnesses only spoke English. Finally, other characteristics of the Israeli judicial system could have altered the outcome of the trial. For example, under Israeli law, Sheinbein's confession to his brother and father would have been inadmissible at trial due to the existence of a parental privilege.

located in Maryland).


203. See Janofsky, supra note 197, at 16 (stating that Gansler's main objective was to help Israeli prosecutor Hadassah Naor build a case against Sheinbein, which was made more problematic by insufficient funds, language barriers, and geographical distance).

204. See Sheinbein: A Murder in Maryland Should Bring Trial in Maryland for a Defendant Who is a Marylander, BALTIMORE SUN, Mar. 2, 1999, at 12A, available in 1999 WL 5174463 (characterizing Sheinbein's case as a "strange proceeding," comprised of witnesses and a defendant who do not speak Hebrew, the language of the trial).

205. See Abramovsky, supra note 2, at 1912-13 (detailing some of the ways in which Israel's justice system differs from that of the United States). In the Israeli court system, there are no jury trials. See id. There are aspects of the Israeli legal system, however, that could potentially benefit United States officials. See Abramovsky, supra note 2, at 1912-13. In the Israeli legal system, for example, the prosecution may use a suspect's unwillingness to testify to strengthen its case against him. See id. at 1913-14. The State can also appeal an acquittal, a marked divergence from the United States' judicial system. See id.

206. See Schneider & Shaver, supra note 198, at A1 (stating that Israeli law would protect a confession given by Sheinbein to family members); see also CNN Burden of Proof: Samuel Sheinbein to Plead Guilty: Will Israeli Justice Suit the Crime? (CNN television broadcast, Aug. 25, 1999), available in LEXIS, News Library [hereinafter Burden] (discussing Israel's parental privilege that would prevent Israeli prosecutors from forcing Sol Sheinbein to testify against his son).
B. SENTENCING PROBLEMS: WILL THE ISRAELI PUNISHMENT FIT AN AMERICAN CRIME?

The difficulty of conducting a trial ceased to be a concern for Maryland prosecutors when, as a result of a plea bargain, an Israeli court convicted Sheinbein of premeditated murder. Although satisfied with this conviction, the issue of sentencing still troubled Maryland officials. First, although Sheinbein was sentenced to serve twenty-four years in an Israeli prison, United States prosecutors asserted that an American court would have likely sentenced him to life in prison without parole. Second, officials were concerned that he would only serve sixteen years of his sentence and that he would be released from prison when he turned thirty-three years old.

207. See Guilty Plea, supra note 41 (noting that Sheinbein’s plea bargain permitted Maryland officials to avoid the “logistical nightmare” that would have arisen if they had to transport witnesses and evidence to Israel).


209. See Orme, supra note 208 (noting that, after Sheinbein admitted to the murder of Tello, the Israeli court convicted him of premeditated murder).

210. See CBS, infra note 212 (explaining Gansler’s incredulity at the leniency of the Israeli penal system in comparison to the tougher sentencing guidelines of its American counterpart).

211. See Hockstader & Whitlock, supra note 13, at B1 (commenting that an Israeli court sentenced Sheinbein to 24 years in prison, which, according to Israeli prosecutors, is a severe punishment under Israeli law); see also Heidi J. Gleit, Sheinbein Convicted of Murder, JERUSALEM POST, Sept. 3, 1999, at 4A, available in LEXIS, News Library, JPost File (stating that Sheinbein’s attorneys and the Israeli prosecutors recommended to the Israeli court that Sheinbein serve a 24 year prison term). Although the court, in fact, sentenced Sheinbein to 24 years in prison, he only had 22 years left to serve because his sentence ran from the day of his arrest in 1997. See Hockstader & Whitlock, supra note 13, at B1.

212. See CBS, supra note 16 (opining that Sheinbein would have been convicted in the United States and sentenced to life imprisonment without the possibility of parole); see also Hockstader & Whitlock, supra note 13, at B1 (providing Gansler’s opinion that Sheinbein’s sentence paled in comparison to what he would have received in the United States).
old. Third, after only a few years in prison, Sheinbein could receive the benefit of weekend furloughs, a common Israeli sentencing provision allowing an inmate to take a temporary, supervised leave of absence from prison. Finally, Israeli prison conditions differ from those in the United States and provide for more liberal treatment of prisoners. For instance, while United States prisons have small cells with minimal time permitted outdoors, Israeli prisons provide a more open, campus-like setting.

While Maryland officials were less than pleased with the possibility that Sheinbein could serve a significantly lesser sentence in Israel, the plea agreement was not a complete miscarriage of justice. From an Israeli perspective, Sheinbein's sentence actually

213. See Guilty Plea, supra note 207 (expressing concerns over the fact that Sheinbein could be out of prison in the year 2013 at the age of 33, after serving only 16 years of his sentence). In Israel, it is common for prisoners to serve only two-thirds of their sentences. See Ethan Bronner, Israelis Defend Plea Bargain With American, N.Y. TIMES, Aug. 26, 1999, at A13, available in LEXIS, News Library, NYT File. It is also common for murderers who are sentenced to life to serve substantially lesser sentences. See No Leniency For Murderers, JERUSALEM POST, Aug. 27, 1999, at 8A, available in LEXIS, News Library, Curnws File (commenting that murderers who receive a life sentence can go free after serving only 15 years in prison). But see Hockstader & Whitlock, supra note 13, at B1 (quoting Georgetown Law Professor Jonathan Strum, who asserted that the sensitivity of the Israeli parole board to this case makes it unlikely that they will approve parole or furloughs for Sheinbein upon eligibility).

214. See Guilty Plea, supra note 41 (noting that prisoners in Israel may obtain weekend and holiday furloughs). Because Israeli law allows furloughs after a prisoner serves one quarter of his sentence, Sheinbein will be eligible in four years. See Twomey & Gray, supra note 208, at A1; see also Hockstader & Whitlock, supra note 13, at B1 (noting that Sheinbein will be eligible to apply for 24 to 96 hour furloughs in 2003). Before considering Sheinbein for furloughs or parole, however, Israeli officials will take into account several factors, including the severity of the crime, the potential danger he poses to others, and his behavior in prison. See id.

215. See Flight to Israel, supra note 15 (comparing the prison conditions in the United States and Israel).

216. See id. (describing the campus-like setting of Israeli prisons, where prisoners may roam the grounds, sunbathe, and play sports). One prisoner commented that the prison was a "beautiful place," in which one had "everything." See id.

217. See supra notes 207-16 (setting forth the reasons why Maryland officials were concerned with the sentencing possibilities arising from Sheinbein's plea bargain agreement).

218. See infra notes 219-21 (providing two reasons why Sheinbein's sentence, although problematic, is not wholly unjust).
appears to be quite harsh. Both sentences and plea-bargain arrangements for minors are typically shorter in Israel than in the United States. Further, if Sheinbein were ever to decide to leave Israel, he would expose himself to the possibility of a trial in the United States.

V. RECOMMENDATIONS: THE NEW ISRAELI LEGISLATION AND CURRENT ALTERNATIVES

Following Israel's refusal to extradite Sheinbein, the Knesset passed a new extradition law that enables Israel to extradite its citizens under certain circumstances. The law provides for the extra-

219. See Guilty Plea, supra note 41 (arguing that a 24 year sentence for a minor such as Sheinbein is severe under Israeli standards); see also Hockstader & Witlock, supra note 13, at B1 (quoting the Israeli court's opinion, which stated that Sheinbein deserved a "severe and deterring punishment" taking into consideration his age and the severity of his crime); Twomey & Gray, supra note 208, at A1 (asserting that Sheinbein's sentence, if served, would be the harshest sentence ever imposed on a minor by the Israeli Supreme Court). Harvard University Law Professor Alan Dershowitz commented that Sheinbein should have returned for trial in the United States where the potential for a lighter sentence would have been greater. See Dan Izenberg & Yitzhak Ben-Horin, Rubinstein Defends Sheinbein Plea Bargain Agreement, JERUSALEM POST, Aug. 26, 1999, at 1, available in LEXIS, News Library, JPost File (paraphrasing Israeli Attorney General Elyakim Rubinstein, who commented that, while some jurisdictions have relatively strict penalties, several jurisdictions in the United States sentence convicted murderers to similar terms).

220. See Izenberg & Ben-Horin, supra note 219, at A1 (pointing out that both plea-bargain arrangements and verdicts for minors are typically lighter sentences).

221. See Guilty Plea, supra note 41 (stating that Sheinbein could be tried and sentenced in the United States because Sheinbein's indictment in Maryland is still in effect).

222. See Kraft, supra note 3, at 2 (commenting on the Knesset's decision to change its law). Kraft also described the Knesset's concern over the Sheinbein controversy and how the new law could prevent similar situations from arising in the future. See id. Many Knesset members did not envision that someone like Sheinbein would hide behind its anti-extradition laws. See id. Yosef Harish, a former Attorney General, felt that there was "no reason someone with no connection to Israel could flee justice in their country and find a haven there." Id. Hans Porat, head of the Knesset Constitution and Law Committee, argued that Israel's extradition policy impaired any effort to seek criminal cooperation from other countries. See Matthew Kalman, Israel Amends Law: Let's Non-residents be Extradited, Won't Apply to U.S. Teenager Who Fled to Avoid Murder Prosecution in Maryland, USA TODAY, Apr. 19, 1999, at 11A, available in 1999 WL 6840218.
dition of Israeli citizens who are not residents, whereas those who are residents of Israel will face a trial abroad and serve their sentences at home. In cases where a suspect is not an Israeli resident at the time of the crime and has since become a resident, the law provides that extradition is conditioned on allowing the accused to return to Israel for sentencing and punishment. In response to this change in Israeli law, some members of Congress lauded Israel as a leader within the international community. Although this amendment to Israel’s extradition law may be the most viable alternative, other recent and controversial alternatives nonetheless warrant discussion.

A. AN INTERNATIONAL CRIMINAL TRIBUNAL

When attempting to mitigate some of the problems associated with the non-extradition of nationals, countries could consider several alternatives. Matters relating to extradition could be placed in the hands of an international criminal tribunal. Such a tribunal, how-

223. See Kraft, supra note 3, at 2 (discussing the way in which the new law will apply to Israeli citizens); see also Kalman, supra note 222, at 11A (describing the way that the new Israeli law would distinguish between citizens who are residents and those who are not).

224. See Laurie Copans, Extradition Request Tests Israeli Law, PORTLAND OREGONIAN, July 30, 1999, at A12, available in 1999 WL 5362369 (discussing the provisions behind the new Israeli law and how these provisions treat Israeli citizens who are not residents differently from citizens who are residents).

225. See Kevin Brady, Rep. Brady Praises Israel’s Knesset Regarding New Extradition Law, FED. DOC. CLEARING HOUSE, Apr. 22, 1999, available in 1999 WL 2223489 (remarking that Israel’s decision to change its law was a positive step towards eliminating safe havens for criminals and updating out of date extradition laws). Not surprisingly, the change in extradition law arose out of concern for damaged United States-Israeli relations. See Collins, supra note 22, at 6 (explaining Israeli concerns that the Sheinbein case had damaged relations with the United States and disrupted a formula for seeking justice); see also Kraft, supra note 3, at 2 (discussing Israeli sentiment about the importance of preserving United States-Israeli relations).

226. See infra notes 244-47 and accompanying text (setting forth recommendations explaining why the amended legislation provides the most feasible means of remedying future extradition disputes).

227. See infra notes 228-43 (providing alternative measures which nations can use to resolve the struggle that occurs over extraditing nationals who are fugitives from justice).

228. See Gilbert, supra note 148, at 156-57 (discussing the use of an interna-
ever, might not achieve the desired goal of extraditing fugitives because States often unilaterally interpret their international obligations to a tribunal. 229 Thus, a nation that refuses to extradite under the cur-

229. See Plachta, supra note 228, at 154 (claiming that States sometimes unilaterally determine the extent of their cooperative obligations to the Yugoslavia Tribunal, in turn producing inconsistent results with respect to surrendering or transferring their nationals to the Tribunal). This situation arises when a nation’s constitution contains an anti-extradition provision. See id. The constitutions of Croatia, Germany, and Poland, for example, all contain such a provision. See id. at 155.
rent system might not be any more likely to do so under order from an international court. Further, many nations could consider an international tribunal to be in violation of their national sovereignty, thereby lessening the chances that they disregard their own internal responsibilities and defer to international standards.

An international criminal tribunal could prove successful, however, by fostering neutrality in extradition and possibly defusing politically charged cases like Sheinbein’s. A tribunal could also create fairness and consistency in the proceedings, leaving minimal room for legal interpretation between the receiving and sending nations. For the more controversial issues, such as where the individ-

230. See Kai I. Rebane, Note, Extradition and Individual Rights: The Need for An International Criminal Court To Safeguard Individual Rights, 19 FORDHAM INT’L L.J. 1636, 1677-78 (1996) (presenting the argument that a tribunal would be ineffective because countries would still have numerous concerns regarding the partiality of judges, elements of politicization, and the exclusion of domestic interests). The problem of domestic interpretation of international law stands for the more general proposition that, in many instances, international standards are incapable of solving regional problems. See id.

231. See id. at 1676-77 (asserting that an international court would interfere with a nation’s right to prosecute crimes domestically). “Opponents of an ICC believe that domestic laws and decisions should be free from the interference of outside international bodies. Each nation must be able to control and protect its own citizens, allowing other nations to determine their own internal responsibilities.” Id. at 1677. Ironically, the United States put forth a similar position when it recently refused to sign the International Criminal Court Treaty due to concerns that the Court would be used as a political tool, bringing prosecutions against those who participated in controversial peacekeeping efforts internationally. See The International Criminal Court vs. The American People, Heritage Foundation Reports, Feb. 5, 1999, at 1 available in LEXIS, News Library. There was also the argument that United States participation would violate the Constitution “because it would subject individual Americans to trial and punishment in an extra-constitutional court without affording them all of the rights and protections the Constitution guarantees.” Id. As a result of these concerns, the United States tried to implement several strategies that would ensure the non-extradition of its nationals should the International Criminal Court come into effect. See Farhan Haq, Rights: U.S. Skirts Authority of International Criminal Court, Inter Press Serv., May 31, 1999 available in LEXIS, News Library.

232. See Rebane, supra note 230, at 1672-73 (discussing how governments refusing to extradite certain individuals to the United States could use an international criminal tribunal so as not to infuriate United States officials and avoid the appearance of choosing a side in an extradition dispute).

233. See id. at 1674 (asserting that a tribunal would provide a neutral forum in which nations could no longer fear the prospect of an unfair trial). A tribunal could
ual will serve his sentence, the tribunal could use a case-by-case analysis. In the present case, for example, a tribunal could have established that the United States try and sentence Sheinbein, but that the accused serves his sentence in Israel. Such a ruling could have stricken a compromise between the two nations and prevented any further political and international tension over the Sheinbein case.

In sum, however, the criminal tribunal is a weak alternative because reliance on an international agreement increases the chances that Israel could assert its own interpretation of the proper extradition standard. Furthermore, based on the strength of its historical and cultural roots, as well as the interests of individual life and national sovereignty that are at stake, there is strong reason to believe that countries such as Israel will continue to defend the non-extradition of nationals, regardless of international standards.

B. THE ABDUCTION OF FUGITIVES: A CONTROVERSIAL ALTERNATIVE

Another method of handling the non-extradition of nationals is the extremely controversial practice of abducting fugitives from other countries. The United States Supreme Court has ruled that abduction also provide a relatively uniform system of rules, thereby eliminating some of the questions that accompany extradition disputes. See id.

234. See Abramovsky & Edelstein, supra note 1, at 345 (discussing the disagreement between the United States and Israel over the location of Sheinbein’s sentencing because of the possibility of discrimination and unfairness in the United States prison system).

235. See Rebane, supra note 230 (discussing the likelihood that nations will interpret their international obligations in accordance with domestic needs).

236. See Plachta, supra note 228, at 155-56 (noting the possibility that concessions by other governments in the non-extradition of nationals will not necessarily reflect universal changes in this area). The author also expresses concerns that: “to the uncompromised protagonists of the existing system, an exception for the international court, if made at all, may become a powerful argument to claim that the opposite—that is, non-extradition of nationals—is still a rule, and, as such, has remained valid.” Id.

237. See Paul Hoffman et al., Kidnapping Foreign Criminal Suspects, 15 WHITTIER L. REV. 419, 420-30 (1994) (detailing the controversial aspects of international criminal abduction). Abduction is defined as an activity “carried out by agents of one state acting under color of law who unlawfully seize a person within the jurisdiction of another state and deliver that person to the state seeking him.” BASSIOUNI, supra note 3, at 219. Interwoven with international abduction, how-
tion is an acceptable means of obtaining fugitives who flee to other nations and that the practice is not in violation of international law.\textsuperscript{238} Many nations and experts, however, view the kidnapping of fugitives as a violation of national sovereignty.\textsuperscript{239} Furthermore, academics and leaders in the international community consider abduction to be a serious violation of human rights.\textsuperscript{240} As a result, the kidnapping of fugitives would make nations such as Israel even less likely to cooperate with United States officials in future extradition cases.\textsuperscript{241} Thus, although the practice of kidnapping would serve the punitive interests of the United States, it would fail to address Israel’s concerns of unjust prosecution on American soil\textsuperscript{242} and unfair treatment of its nationals by other countries.\textsuperscript{243}

C. ISRAEL’S NEW LEGISLATION

Despite the existence of these alternatives, the change in Israel’s
extradition law is likely the most effective means of serving both American and Israeli interests. First, the law does not rely on international agreement. Rather, the law derives its force from domestic political reform, thereby mitigating the chances that Israel will violate its own law. Second, Israel has an increased incentive to change its extradition law because many victims of crimes committed by Jews or Israelis are themselves Jews or Israelis. Finally, Israel recently displayed a willingness to follow its new extradition law, strengthening the efficacy of this legislative change.

Although Israel's new extradition law represents a positive step for international criminal extradition, the law contains several flaws. From the United States' perspective, the law is ineffective because it does not apply retroactively to Sheinbein. Second, the law would still allow Israeli nationals who are residents to serve their

244. See supra notes 194-216 and accompanying text (outlining potential United States' concerns with Sheinbein's trial and sentence taking place in Israel); supra notes 129-36, 154-64 and accompanying text (discussing the numerous concerns that Israel could have over the possibility of an Israeli citizen being tried and sentenced in the United States).

245. See Petkunas, supra note 22, at 228 (arguing that any agreements reached between the United States and Israel would carry little weight and that Israel can only fulfill international obligations through internal political reform); see also Abramovsky & Edelstein, supra note 1, at 346 (stating that extradition is as much about domestic politics as it is about international treaties).

246. See Abramovsky & Edelstein, supra note 1, at 343 (providing a way in which United States officials could convince Israeli authorities to change their extradition law in order to obtain cooperation). The United States argued this point to successfully convince the Dominican Republic to allow for the extradition of Dominican nationals. See id. The Dominican Republic had previously banned extradition and refused to cooperate with United States extradition requests. See id.

247. See Dan Izenberg, Justice Officials Ask Court Approval to Extradite Citizen to US, JERUSALEM POST, July 30, 1999, at 2A, available in 1999 WL 9006461 (discussing the Israeli government's use of a recently approved amendment to the extradition law to extradite an individual to the United States for cheating a dozen elderly people out of $185,000).

248. See infra notes 249-51 (discussing defects in the new extradition law).

249. See Kalman, supra note 222, at 11A (noting that the Israeli legislation would not apply to Sheinbein). It is important to note, however, that the United States itself does not allow laws to apply retroactively, making it problematic to expect these types of legislative changes from other nations. See U.S. CONST. art. I, sec. 9, cl. 3 (establishing that no ex post facto laws shall be passed in the United States).
sentences in Israel. In this regard, it is conceivable that an Israeli resident could leave the country, commit a violent crime abroad, and then return to his homeland in order to prevent punishment in a foreign land.

The new law could be equally problematic from an Israeli perspective. First, there is still some ambiguity as to how the law would apply to those who have lived in Israel for a long time, but are not citizens. Second, there is the concern that other countries could view this amendment to the extradition law as a sign of weakness and shame. Although these concerns are legitimate, Israel, as a nation, should be satisfied that the amendment constitutes a positive step towards compromise in international criminal matters. Further, Israel will be able to shed the image of being a safe-haven for fugitives while ensuring that those with the strongest national ties serve their sentences in their homeland. Finally, Israel significantly lessens the chances that it will further damage precious bilateral relations with countries like the United States.

CONCLUSION

It is noteworthy that even on American soil, a conviction and a life sentence in the Sheinbein case would not have been certain. This doubt, however, does not distract from the anger and frustration felt in the wake of the Israeli Supreme Court’s ruling. Officials in the United States are still troubled by the idea that American citizens can commit crimes on American soil and then use the extradition laws of

250. See supra notes 223-24 and accompanying text (explaining that the law would allow citizens who are residents to return to Israel to serve their sentence, while non-residents would be eligible for extradition).

251. See Schachar, supra note 49, at 266 (asserting that an individual can retain Israeli citizenship status even if he or she chooses to live outside of Israel for an extended period of time).

252. See Collins, supra note 22, at 6 (presenting concerns about whether or not the law would apply to non-citizens). Ruby Rivlin of the Likud political party expressed concern that the amendment would affect people who “come to live [in Israel] for a long time but are not citizens.” Id.

253. See id. (reporting that a Knesset member opposed the amendment because “[o]nly a shameful government could support deporting Jews.”). Moreover, Justice Minister Tzahi Hanegbi criticized the amendment as “staining the books of legislation with a law extraditing Jews.” Id.
another country as a safe-haven from prosecution in the United States. Further, despite Israel’s legislative changes to ameliorate concerns about extradition, members of Tello’s family will never forget this gross injustice. Consequently, the legacy of Samuel Sheinbein will continue to plague the United States, as well as the international community.

As the world grows increasingly interdependent, however, it is vital that nations such as Israel compromise and serve as an example for other nations still refusing to cooperate in the resolution of international criminal matters. It is also necessary that as trade, human rights, and other international laws and standards evolve, extradition laws follow suit. Otherwise, outdated extradition laws will be unable to adjust to the new and changing international environment, ultimately forcing countries like the United States to resort to alternative and more drastic means in resolving extradition disputes.