

**RESPONSE OF THE ISRAELI DELEGATION**

**TO THE THIRD STUDY COMMISSION QUESTIONNAIRE 2023**

**MUTUAL COOPERATION IN THE INVESTIGATION OF CRIMINAL CASES AND  
IN THE PRESENTATION OF EVIDENCE IN A CRIMINAL PROCEEDING AT  
COURT**

**65<sup>th</sup> Annual Meeting of IAJ – Taiwan**

**Written by Judge Dr. Zaid Falah**

**Answer to question 1:**

In Israel, mutual cooperation in the investigation of criminal cases and in the presentation of evidence in a criminal proceeding at court is primarily regulated through two pieces of legislation: the Legal Aid Act between Countries (1998), and the Legal Aid Regulations between Countries (1999). Further, Section 14 of the Evidence Ordinance [new version] (1971) specifically regulates the matter of testifying from outside of Israel in criminal proceedings.

Legal assistance between Israel and another country can entail a variety of activities including: production of documents, collection of evidence, execution of search and seizure operations, transfer of evidence and other documents, enabling a person to testify in a criminal proceeding or participate in an investigative action, performance of an investigative action, transfer of information, confiscation of property, provision of legal relief, verification and approval of a document, or the performance of another legal action.

The provision of legal aid between Israel and a foreign country is contingent upon signed treaties between Israel and the other country, outlining the specifics of mutual legal aid. This prerequisite exists due to the potential for violating the rights of the investigated and accused, including the risk of using obtained materials for unauthorized purposes. If a country has not agreed to sign a treaty, it could be interpreted as a rejection of the treaty's terms, raising concerns of potential human rights violations.

However, it is still possible to submit a request for legal aid to a country that has not signed a treaty with Israel, or to allow the provision of legal aid from a country, that has not signed such

a treaty. This can be achieved once both countries agree to respect all the rules and conditions requested by the other party. This demonstrates the potential flexibility in international cooperation, even in the absence of formal treaties.

**Answer to question 2:**

In Israel, courts play an important role not just in the adjudication of cases post-indictment but also during the investigation phase of criminal conduct. Courts have the authority to accompany investigative procedures, extend the detention of suspects for investigation purposes, order the seizure of objects, authorize searches, trace phones, seize cameras, access the content of these cameras and phones, among many other actions. The same actions that an Israeli court can perform in relation to a domestic criminal case, it can also perform in relation to a request for assistance from a foreign country pertaining to ongoing criminal proceedings.

A foreign country seeking legal aid from Israel must direct their request to the Israeli Minister of Justice, who makes the decision on the request. The Minister has several options at their disposal: they may refuse the request, approve it in whole or in part, postpone its execution, or request additional information or materials before making a decision. The foreign request should be submitted by an authorized body in the requesting country.

An action in Israel for the legal aid of another country will be conducted in the manner that a similar action would be conducted in Israel, and the legal provisions applicable in Israel to such an action will apply to it. No action will be taken unless it is permitted according to Israeli law.

Another country may ask Israel to collect evidence by an Israeli court pertaining to a criminal proceeding taking place abroad, and it can also request the seizure of an object and its transfer abroad. The Israeli judicial system is thus designed to both protect the rights of the individuals involved and to collaborate effectively with foreign jurisdictions under its laws and procedures.

**Answer to question 3:**

According to the Israeli Evidence Ordinance, protocols of testimonies collected outside the jurisdiction of Israeli courts, under any treaty, agreement, or law, intended for criminal proceedings in Israel, can be admitted as evidence in the trial. However, the court must find there was a sufficient reason for the witness's absence and ensure that the defendant or their attorney had an opportunity to cross-examine the opposing witness during the testimony.

When it comes to providing information to a foreign state, the court authorized to undertake this legal action is the Magistrate's Court. The procedure is performed as if the offense in question was committed in Israel. Israel will not transfer any information or evidence in criminal matters to a foreign state unless it has received an assurance from the requesting state that the evidence

and information will only be used for the specific criminal matter for which they were requested, and that they will not be used for any other purpose without prior approval from Israel.

Decisions made by a judge concerning both aiding and receiving aid from a foreign country are subject to review by the Israeli appeals court. This ensures a layer of oversight and accountability in international cooperation in criminal matters.

**Answer to question 4:**

An Israeli district court has established the validity of collecting testimonies via video conference from international witnesses, who decline to travel to Israel for in order to do so. This setup occurs with all involved parties situated within an Israeli courtroom, while the witnesses testify from a foreign court that has made them aware of their rights. The process enables Israeli lawyers to query the witnesses over the video link.

According to **Rule 15 of the Legal Aid Regulations** between countries, a court can approve a request from a competent authority, foreign or domestic, or a party, for testimony to be taken through an international closed-circuit television system. This is contingent upon provisions that enable:

- a. The court and litigants to see and hear the witness throughout the testimony and pose questions.
- b. The defendant to maintain communication with their defense attorney and submit queries to the witness through them.

**Section 14 of the Evidence Ordinance** provides a "legal investigation" process designed to admit as evidence any testimony obtained outside Israel for Israeli criminal proceedings. Meanwhile, Section 47 of the Legal Aid Law facilitates the gathering of testimony in a foreign country for use in an Israeli criminal trial. This is conditional upon an intercountry agreement and the Israeli Supreme Court's validation of the evidence's relevance to the Israeli legal proceeding.

The collection and usage of testimonies from witnesses in another country, for an Israeli criminal proceeding, are permitted under a treaty or agreement between Israel and the other country. Although the witnesses remain abroad, their examination takes place in an Israeli court, conducted in a manner that permits the judge to assess the witnesses directly, thereby upholding the defendants' right to a fair trial.

**Answer to question 5:**

Undoubtedly, the principle of human rights is of utmost importance. However, human rights are not exclusively the purview of the accused or interrogated individuals; they equally pertain to the victim who seeks justice via the legal system. It's essential to find the correct balance

between protecting the rights of the accused and the necessity to discover the truth and bring those who harm society to justice.

Whenever I receive a request, whether it's for assistance in an investigation, evidence collection concerning a foreign proceeding, or actions needed abroad relating to proceedings in Israel, my response will adhere to the binding authorities and procedural rules in Israel. Throughout this process, my priority is to maintain fair and just legal proceedings while preserving human rights.

One prominent case that was reviewed by an Israeli court involved a request from the United States for the extradition of an Israeli crime syndicate leader who, while remaining in Israel, facilitated his organization members in committing drug-related and violent offenses on U.S. soil. The accused argued in the Israeli court that since he never left Israel, he couldn't be extradited to the United States. Despite his claims, the Israeli court approved the U.S. extradition request, ruling that even though the accused hadn't left Israel, his extradition wouldn't disproportionately infringe his rights or the values of the State of Israel. Quite the contrary. Israeli courts have affirmed that extradition effectively safeguards both Israeli citizens and national sovereignty. Moreover, it sets the precedent for Israel to expect that offenders residing in other countries who harm its citizens will also be extradited to Israel. The courts have decided that the physical location from which the crime syndicate leader operated is immaterial, and a connection can be established anywhere globally. Consequently, significant consideration must be given to the vulnerability of other nations to criminal activities originating from Israel.

The courts prioritized the distinct interest of the other nation in exercising its sovereignty, achievable by prosecuting those who orchestrated crimes within its territory.

In conclusion, the Israeli courts have established that extradition complies with legal requirements and is necessitated by the proper cooperation between nations. They have affirmed that the public interest in Israel demands the extradition of the offender abroad, achieving the appropriate balance between this need and the rights of the appellant.

**Answer to question 6:**

As I have no personal experience in presiding over such cases, I will discuss the proceedings that have occurred in Israel under other judges.

Extradition laws exist in Israel to govern the process of transferring defendants to and from other countries. These laws aim to penalize criminals, nurture international relations, safeguard the citizens' welfare, and contribute to the worldwide fight against crime.

According to these extradition laws, an intercountry agreement is a prerequisite for declaring an individual eligible for extradition.

Many countries have included in their extradition laws that reciprocity should manifest as a commitment from the requesting country to respond positively to extradition requests, under the same conditions it asks for extradition. However, other countries, including Israel, have not established such criteria. Based on this, Israeli courts have concluded that even if Israel extradites its wanted citizens while other countries choose to try their wanted citizens domestically, it doesn't breach the principle of reciprocity.

Israel has extradition agreements with the following countries: Austria, Australia, Italy, the United States, Belgium, Brazil, the United Kingdom, South Africa, Netherlands, Hong Kong, Luxembourg, Switzerland, Fiji, France, Canada, and Sweden. Multinational extradition treaties are also in place in regions like America, Africa, Europe, and Arab nations.

In Israel, the extradition of wanted individuals can only be made following the Extradition Law – 1954. This law states in its first section that "There is no extradition except according to this law".

The law further specifies that an individual who has committed an extraditable offense under this law and is an Israeli citizen and resident at the time of the offense will not be extradited unless both following conditions are met:

- a. The extradition request is for prosecution in the requesting country;
- b. The country requesting extradition has pledged in advance to transfer the person back to Israel to serve the sentence there if convicted and sentenced to prison.

Additionally, the law defines an extraditable offense as any offense punishable by one year in prison or more if committed in Israel. A person can be extradited from Israel to another country if:

- a. The person is accused or legally liable in the requesting country for the extraditable offense;
- b. There is an agreement regarding the extradition of criminals between Israel and the requesting state.

The law interprets "Agreement" to mean a bilateral or multilateral treaty, including any of the following:

- a. A non-specific agreement or convention that contain provisions on manners of extradition of criminals;
- b. A specific agreement reached between Israel and the requesting state on the extradition of a sought person, under the Extradition Law's provisions.

In conclusion, the extradition rules outlined in the law, combined with the interpretation by Israeli courts, ensure legal compliance, public safety, the preservation of Israel's foreign relations, and fulfilling international interests in crime, while simultaneously upholding human dignity and the freedom and fairness of ongoing legal proceedings.