CONTENTS

Acknowledgments page xi
Acronyms and Abbreviations xiii
Table of Cases xix
Table of Treaties xxxix
Table of Municipal Authorities xlix

Introduction 1
a. Nature and Purpose 2
b. Scope 7
c. Significance 19
d. Methodology and Challenges 23

PART I Background Context 27
1 Core Terminology: A Fresh Look 29
a. “International Fugitive from Justice” 30
b. “Pursuing State” and “Host State” 34
c. “Transferor State” and “Transferee State” 37
d. “Rendition,” “Rendering State,” and “Rendered State” 38
e. “Extradition” and “Summary Extradition” 43
f. “De Facto Extradition” and “Disguised Extradition” 50
g. “Surrender” 52
h. “Lure and Capture Operation” 54
i. “Seizure and Delivery Operation” 55
2 Subject Matter Jurisdiction 59
   a. Concept of Jurisdiction 59
   b. Requirements for State Criminal Jurisdiction 67
   c. Subject Matter Jurisdiction: Scope and Dynamics 68
      i. Territorial Jurisdiction 70
      ii. Extraterritorial Jurisdiction 78
      iii. Establishing, De-conflicting, and Extending Jurisdiction 95
      iv. Contrast with Concurrent Jurisdiction of the ICTY/ICTR 99

3 “Silver Platter” Scenarios 110
   a. Action by the Fugitive 112
   b. Action by Private Actor(s) 116
   c. Action by the Host State or an International Criminal Tribunal 123

PART II Extradition and Its Impediments 127

4 Extradition 129
   a. Aims 130
   b. Status 133
   c. Vehicles 138
   d. Mechanics 153
   e. Adaptability 166
   f. Developments 174

5 Impediments I: Legal Standards and Governmental Factors 184
   a. Inherent Nature and Scope of Offense 186
      i. Extraditable Offense 186
      ii. Dual Criminality 189
      iii. Specified Offense Exclusions (Political, Military, Fiscal) 198
   b. Prescription 212
CONTENTS

6 Impediments II: Individual Status and Circumstances 233
   a. Nationality or Residency Bars 233
   b. Immunities 243
   c. Special Relationships 258
   d. Personal Circumstances 266

7 Impediments III: Inter-State Relations and Sensitivities 269
   a. Lack of an Operative Extradition Treaty 269
   b. Political Tensions, Agendas, and Motives 275
   c. Justice System Interplay Restrictions 279
      i. Double Jeopardy 280
      ii. Specialty 283
      iii. Concurrent Proceedings 287
   d. Competing Jurisdictional Claims 288
   e. International Human Rights Concerns 291
      i. Substantive Issues 292
      ii. Procedural Matters 313
   f. Conflict Resolution and National Security Considerations 319

PART III Remedial or Collateral Means to Secure Extradition 325

8 Initiatives, Inducements, and Interventions 327
   a. Options Based on Unilateral Activity 327
   b. Options Involving Bilateral Diplomacy 329
   c. Options Entailing a Third-Party Role 335
CONTENTS

PART IV  Fallback Alternatives to Extradition  345

9 Partial or Redirected Alternatives  347
   a. Independent Measures to Facilitate a Fugitive’s Capture or Return  348
   b. Reliance on Others to Locate or Arrest a Fugitive Abroad  353
      i. Assistance From or Coordination with the Host State  353
      ii. Third-Party Support  362
   c. Avenues of Recourse Under Another’s Judicial System  371

PART V  Full-Scale Alternatives to Extradition  389

10 Alternative I: Reliance on Immigration Laws  391
   a. Immigration Law  393
   b. Removal v. Extradition  402
   c. Application  406
      i. How Removal Operates  407
      ii. Factors Militating for and against Removal  410
   d. Human Rights Law Protections  413
      i. Law Relevant to Removing State Conduct  414
      ii. Law Relevant to Receiving State Conduct  426
      iii. Law Relevant to the Removal Method  439
   e. “Disguised Extradition”  441

11 Alternative II: Informal Law Enforcement Cooperation  454
   a. Definition, Nature, and Scope  454
   b. Application  456
      i. Host State Participation  457
      ii. Host State Acquiescence  463
CONTENTS

ix

c. Lawfulness Analysis  467
   i. General Principles  468
   ii. Specific Grounds  473
   iii. Case Study: Öcalan v. Turkey  477

12 Alternative III: Unilateral Measures  481

a. Nature, Scope, and Impetus  481

b. Application  485
   i. Negotiations for the Fugitive's Return  485
   ii. Unilateral Lure and Capture Operations  488
   iii. Unilateral Seizure and Delivery Operations  493
   iv. Interception Operations  498

c. Lawfulness Analysis  501
   i. Lure and Capture Operations (All Kinds)  501
   ii. Unilateral Seizure and Delivery Operations  508
      1. Territorial Sovereignty Analysis  510
      2. Treaty Compliance Analysis  519
      3. Human Rights Analysis  528
   iii. Interception Operations  535
      1. Territorial Sovereignty Analysis  535
      2. Treaty Compliance Analysis  535
   iv. Cross-Cutting Justifications  541
      1. Consent or Silence  541
      2. The Rendered State Is Unable or Unwilling to Address a Recognized Threat or Is in Complicit with a Criminal Enterprise  544
      3. No Viable Law Enforcement Alternative Exists  547
      4. Heinousness of the Underlying Crime  548

PART VI Post-Delivery Review, Recourse, and Impact  551

13 Judicial, Diplomatic, and Policy Dimensions  553

a. Judicial Considerations  553
   i. Personal Jurisdiction  554
   ii. Individual Standing  575