



Overcoming Legal Challenges in Extradition

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Extradition, the formal process by which an individual is restored to the competent judicial authority seeking to exercise *in personam* jurisdiction over the subject, is a process generally based upon treaty relations, comity or reciprocity.¹ While at first blush, this process would seem to apply solely to a relationship between States, modern practice, the evolving concept of individuals as subjects of international law and the social and legal significance of the emergence of human rights considerations has complicated extradition as a tool of international cooperation.² As a general statement it is accurate to say that most extradition is governed by treaty relations between engaged States and that, as of yet, extradition is not regarded as an international duty according to customary international law.³ Nonetheless, much of the legal regimen that now surrounds extradition is the result of the significance given to various recurring legal themes by the individual national judiciaries. Thus in discussing overcoming legal challenges in extradition, as with all things left to the disparate national judiciaries, we find differences as well as similarities between jurisdictions.

It is the purpose of this brief paper to: 1) identify and analyze various concepts, defenses and substantive requirements commonly implicated in extradition practice; 2) discuss the interpretation of these issues in the jurisprudence of the US and other jurisdictions; 3) recognize alternative methods of rendition and 4) suggest possible solutions to the difficulties caused by the employment of some of these mechanisms.

¹ Where there is a treaty in effect a broader definition would include: “A process by which, in accordance to treaty provisions and subject to its limitations, one state requests another to surrender a person charged with a criminal violation of the law of the requesting state who is within the jurisdiction of the requested state for the purpose of answering criminal charges, standing trial or executing a sentence arising out of the stated criminal violation.” 6 Marjorie Whiteman, *Digest of International Law* 727-28 (1968). See also *Terlinden v Ames*, 184 US 270 (1902)

² M. Cherif Bassiouni, *International Extradition: United States Law and Practice* 29, 54 (4th ed, Oceana Publications Inc., 2001) [hereinafter, Bassiouni]

³ *Id.* at 37

Substantive Prerequisites to Extradition

Extraditable Offense & Dual Criminality: The process of extradition, either by treaty or reciprocity, requires that the offense for which the relator⁴ is to be returned is an act, or series of acts, which each of the national parties recognizes as extraditable either on the basis of reciprocity or by specific reference to the applicable treaty. It therefore follows that the first prerequisite to extradition is the recognition by both the Requesting and Requested parties that the offense is in fact one for which extradition is available. Thus it is traditionally the case that extradition treaties either 1) list the offenses to which the treaty applies (thus the designation ‘list treaty’) or 2) create a formula by which the States indicate those offenses that are extraditable, i.e, all offenses which implicate a term of incarceration of a specified period and/or a fine of a specified amount, etc.⁵

Additionally, in establishing extraditable offenses, the content of the offensive conduct must satisfy the requirement of dual criminality⁶, i.e., the imperative that “an accused be extradited only if the alleged criminal conduct is considered criminal under the laws of both the surrendering and requesting nations.”⁷ While the concept of dual criminality has been defined in various ways, it is generally accepted that “When the laws of both the requesting and the requested party appear to be directed to the same basic evil, the statutes are *substantially analogous*, and can form the basis of dual criminality.”⁸ (emphasis added). Thus an extraditable offense is generally defined as “not requiring that the offense charged be identical to an offense listed in the treaty, but requiring that the acts performed which support the charge could sustain a charge under the laws of the requested state ...”⁹ The controlling law governing whether an offense is extraditable or not is the law of the Requested State.¹⁰

⁴ This is the term commonly used in the jurisprudence of the US and other common law systems to make reference to the person whose return is sought by the Requesting State.

⁵ Bassiouni note 1, at 473

⁶ Satya D. Bedi, *Extradition in International Law and Practice* 69 (1966)

⁷ *US v Saccoccia*, 18 F3rd 795, 800 n.6 (9th Cir. 1994)

⁸ *Shapiro v Ferrandina*, 478 F2nd 894, 908 (2nd Cir.), *cert. dismissed*, 414 US 884(1973)

⁹ Bassiouni note 1, at 475

¹⁰ *Id.* at 483; see also United Nations Convention against Corruption, Article 44(8) [hereinafter UNCAC] found at http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf as of 15 March 2006.



In some jurisdictions the majority of serious challenges to the completeness of an extradition request is focused upon either: 1) the identity of the subject or 2) the question of whether or not the offense is extraditable. In the latter instance the issue of dual criminality is one to be settled in the courts on a case-by-case basis.¹¹ While this issue can be troublesome, there are several arguments to be made in support of an act being properly characterized as extraditable.

Suggestion: It may be correctly argued that: 1) the laws of the involved states need be substantially analogous only as to the inherent harm they strive to prevent and the activity they intend to punish; 2) that while one statute may be broader in scope than another, if the **conduct** for which extradition is sought would be included under both laws, an extraditable offense is noted and 3) the primary focus of dual criminality is on the conduct charged, not the technical elements of an offense as they are found in the respective statutes.¹²

It should also be noted that purely jurisdictional elements of elaborated statutes need not be replicated under both systems in order for the charged conduct to be included as an extraditable offense. For example, under US statutes often utilized in the prosecution of corruption offenses, it is necessary to prove the use of the mail or telephone in the commission of the underlying offense.¹³ This proof, although essential to the assertion of federal jurisdiction under US law, has little if anything to do with the conduct being proscribed. The usually prevailing position in such cases is that this element is purely jurisdictional and should not hinder the dual criminality analysis, nor concomitantly, should it undermine the conclusion that the offense is extraditable.¹⁴

¹¹ “Representing Foreign Governments in Extradition Proceedings before United States Courts: A Manual for United States Attorneys”, The Office of International Affairs, Criminal Division, US Department of Justice at 19 (2003)

¹² *Theron v United States Marshall*, 832 F2nd 492, 496 (9th Cir. 1987); *Cleary v Gregg*, 138 F3rd 764 (9th Cir. 1998)

¹³ T. 18 U.S.C. Secs. 1341 & 1343

¹⁴ Snow, Thomas G., THE INVESTIGATION AND PROSECUTION OF WHITE COLLAR CRIME: INTERNATIONAL CHALLENGES AND THE LEGAL TOOLS AVAILABLE TO ADDRESS THEM, 11 Wm. & Mary Bill Rts. J. 209, 236 (December, 2002)[hereinafter Snow]



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The Doctrine of Specialty: This principle of law has been defined as representing the proposition that the Requesting State must specify the offense or offenses for which it seeks the relator's return and that upon his return, it may only try him for the offenses covered in the request and the treaty authorizing that request.¹⁵ Obviously, one of the purposes of this doctrine is that it supports the Doctrine of Dual Criminality and prevents the relator from being prosecuted for an act that would not be a crime in the Requested State. "Accordingly, the principle of specialty is designed to ensure against a requesting state's breach of trust to a requested state and to avoid prosecutorial abuse against the relator after the requested [or for that matter, the Requesting] state obtained *in personam* jurisdiction over the relator."¹⁶ [comment added]

Suggestion: Whether or not the relator has the right to raise a violation of this principle as a defense to extradition in the absence of an objection made by the Requested State may be in question in some jurisdictions.¹⁷

Nonetheless, in practice this problem, at least in part, is dealt with by the current trend in the drafting of extradition treaties. In some instances the treaty itself clearly provides the remedy by stating that a relator may be tried for "an offense for which the executive authority of the Requested State consents to the person's detention..." following his extradition.¹⁸ Although it does not speak directly to the Doctrine of Specialty, the UNCAC provides for extradition in cases of otherwise non-extraditable offenses under particular circumstances.¹⁹

The Doctrine of Non-Inquiry: Operating precisely as described by its title, the Doctrine of Non-Inquiry is generally designed to prevent the courts of one state from reviewing the internal governmental processes of another state. This principle is the means by which one sovereign respects the laws, beliefs, and indeed, the culture of an equal sovereign. Thus, the principle implements the belief that no state may judge another state's legal system or

¹⁵ *United States v Rauscher*, 119 U.S. 407, 424 (1886)

¹⁶ Bassiouni, note 1, at 515 [added by the author]; Compare with *United States v Tse*, 135 F3rd 200 (1st Cir. 1998)

¹⁷ *Id.* at 511-17

¹⁸ Extradition Treaty, June 25, 1997, U.S.-India, art. 17(1), S. TREATY DOC. 105-30 (1997); See also *United States v. Riviere*, 924 F.2d 1289 (3d Cir. 1991).

¹⁹ UNCAC note 10, Article 44(3).



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process.²⁰ Following this doctrine, the court of the Requested State is presumably precluded from judging or “supervise[ing] the integrity of the judicial system of another sovereign.”²¹

While formerly this rule was breeched infrequently by various means and for various reasons²², it can now be reasonably asserted that the Doctrine of Non-Inquiry is beginning to be seriously challenged in some areas, amongst which is found extradition practice. Perhaps the major impetus for this shift is the place that international human rights concerns are presently engendering in the law as a whole.²³

While this doctrine has no freestanding effect on extradition practice, its effects and the evolution it is undergoing are having rather dramatic repercussions in several areas that directly relate to extradition. Thus the Doctrine and its erosion may be considerations in the following areas.²⁴

Denial of Extradition:

The Political Offense Exception: The political offense exception is in large measure meant to assure that the legal processes of the Requested State are not used to assist in the prosecution of an individual for either his political beliefs or for purposes of fostering a politically motivated prosecution by the Requesting State.²⁵ To say that the political offense exception has had a complicated genesis and an even more complicated growth is to put it mildly. However, a detailed history of this evolution will not be explored here.

The political offense exception has three basic purposes; i.e., the recognition of political dissent, the guaranteeing of the rights of the accused and the

²⁰ Bassiouni note 1, at 569

²¹ *Flynn v Schultz*, 748 F.2d 1186 (7th Cir. 1984)

²² See *Ex parte Fudera*, 162 F. 591 (S.D.N.Y. 1908); *Ex parte La Mantia*, 206 F. 330 (S.D.N.Y. 1913)

²³ Bassiouni note 1, at 569; See also Schabas, William A., INDIRECT ABOLITION: CAPITAL PUNISHMENT'S ROLE IN EXTRADITION LAW AND PRACTICE, 25 *Loy. L.A. Int'l & Comp. L. Rev.* 581 (Summer, 2003)[hereinafter Schabas]

²⁴ Kathryn F. King, THE DEATH PENALTY, EXTRADITION, AND THE WAR AGAINST TERRORISM: U.S. RESPONSES TO EUROPEAN OPINION ABOUT CAPITAL PUNISHMENT, 9 *Buff. Hum. Rts. L. Rev.* 161, 188 (2003)[hereinafter King]

²⁵ Bassiouni note 1, at 609



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protection of both the Requesting and Requested States. The political offense exception is further subdivided into those offenses known as *pure* political offenses and *relative* political offenses; the former being those directly related to the structure of national matters while the latter combine political goals with common illegal activities. Briefly stated, while pure political offenses are easily identifiable and traditionally non-extraditable, the claimed relative political offense is more difficult to categorize and has caused considerable consternation in extradition practice.²⁶ It is unnecessary here to distinguish these differences further other than to point out that in recent practice the political offense exception has become more limited in scope; i.e., its application has become less acceptable and confined to a more narrow range of circumstances.²⁷

Suggestion: As pointed out above, there is a growing trend in extradition law to limit the scope of the political offense exception. This is obvious by the construction of treaties specifically excluding the use of the exception in the case of treaty-delineated crimes.²⁸ Of more interest presently, the UNCAC contains a proviso whereby if a country “uses [the UNCAC] as the basis for extradition, [it] shall not consider any of the offences established in accordance with this Convention to be a political offence”²⁹

The Extradition of Nationals: One of the most sensitive problems confronted in extradition practice is the request that one country surrender one of its nationals for prosecution or service of sentence to another. Many nations, particularly those of the civil law tradition, refuse to extradite their nationals. The basis for this refusal is in many instances of constitutional origin³⁰, and in others grows out of a jurisdictional philosophy that suggests that the criminal justice system of one’s native land has the authority to punish the illegal behavior of one of its citizens despite where that behavior may occur.³¹ However, as an adjunct of this jurisdictional position, many

²⁶ Rebane, Kai I, EXTRADITION AND INDIVIDUAL RIGHTS: THE NEED FOR AN INTERNATIONAL CRIMINAL COURT TO SAFEGUARD IDIVIDUAL RIGHTS, 19 Fordam Int’l L.J. 1636, 1653-54 (April, 1996)[hereinafter Kai]

²⁷ Bassiouni note 1, at 655; Kai note 25, at 1657

²⁸ Snow note 14, at note 25

²⁹ UNCAC note 10, Article 3

³⁰ See CONSTITUCAO FEDERAL [Constitution] art. 5(LI) (Braz. 1988); GRUNDGESETZ [Constitution] art. 16(2) (F.R.G. 1949) (amended 1993, 2000) (“No German may be extradited to a foreign country.”).

³¹ 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, 847 (1993)



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countries following this philosophy adopt the policy of '*aut dedere, aut judicare*' – prosecution in the offenders native jurisdiction for crimes committed in other jurisdictions – commonly, 'prosecute or extradite'.³² As might well be anticipated however, this policy is often criticized as one which is more often ignored than not, given to sham prosecutions, inefficient in that the evidence and witnesses are located elsewhere or as fostering sentences in the case of conviction that don't meet the expectations of the offended state.³³ For better or for worse, little can be done about the constitutional regimen of a Requested State relative to its position regarding the extradition of nationals. However there are several remedies available to ameliorate the situation where one state refuses extradition on the basis of nationality.

Suggestion:

Aut Dedere Aut Judicare³⁴ & Conditional Extradition: Many modern extradition treaties, particularly those between states with contiguous borders, feature an option much like that envisioned by the UNCAC. Thus 1) where the domestic law of a state permits a national to be extradited only upon the condition that he be returned for purposes of sentencing and 2) both parties agree, such an arrangement will satisfy the 'extradite or prosecute' responsibilities of the Requested State³⁵, conditional extradition may be a viable alternative to traditional measures. Along similar lines, where extradition is sought for the purpose of execution of sentence and is refused on the basis of nationality, where the state law of the Requested State so permits, both parties may agree to the service of sentence under the domestic law of the Requesting State party.³⁶ In both cases, the obligation to extradite will be deemed to be satisfied.³⁷

Capital Punishment: Perhaps contrary to popular belief, the prohibition on the extradition of individuals based on the possibility of their being subjected to capital punishment is not a new concept.³⁸ In general treaties were formulated, and still are to a large extent, with the provision that if the

³² Kai note 25, at 1668

³³ Id.; See also Snow note 14, at note 22

³⁴ UNCAC note 10, at Article 44(11)

³⁵ Id. at Article 44(12)

³⁶ Id. at Article 44(13)

³⁷ Id.

³⁸ J.S. Reeves, Extradition Treaties and the Death Penalty, 18 Am. J. Int'l L. 298 (1924)



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Requesting State did not guarantee that the subject would not be subjected to the death penalty, the Requested State was free to deny extradition.³⁹ In today's practice, the typical extradition treaty between states with differing views on capital punishment often conditions extradition as follows:

“Extradition may be refused in any of the following circumstances . . . [i]f the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives **such assurance as the requested State considers sufficient** that the death penalty will not be imposed or, if imposed, will not be carried out.”⁴⁰ (emphasis added) Even in those instances where both states have and use the death penalty, extradition treaties feature limits on the use of capital punishment and the ability of one party to deny extradition based upon those issues.⁴¹

Suggestion: Thus it seems that to overcome opposition to extradition based upon the fact that the crime for which extradition is sought carries the death penalty, ‘sufficient assurances’ must be given that if extradition is granted the death penalty will not be imposed. On occasion, assurances that should the death penalty be imposed commutation will be recommended by the Requesting State, are considered sufficient.⁴² Short of these assurances being made and accepted, this seems to be one of the areas in which the Doctrine of Non-Inquiry is losing ground.⁴³

Alternatives to Extradition: On occasion governments have found it convenient and/or necessary to avoid the process of extradition in order to achieve jurisdiction over the person of an individual wanted for prosecution in their country. There follows a review of some of these methods of rendition.

³⁹ Schabbas note 23, at 585

⁴⁰ Model Treaty on Extradition, U.N. GAOR 3d Comm., 45th Sess., Agenda Item 100, at 6, U.N. Doc. A/RES/45/116 (1991)

⁴¹ EXTRADITION TREATY WITH THAILAND, TREATY DOC. 98-16, 1983 U.S.T. LEXIS 418 December 14, 1983, Date-Signed ARTICLE 6

Capital Punishment --When the offense for which extradition is sought is punishable by death under the laws of the Requesting State and is not punishable by death under the laws of the Requested State, the competent authority of the Requested State may refuse extradition unless:

(a) the offense is murder as defined under the laws of the Requested State; or

(b) the competent authority of the Requesting State provides assurances that it will recommend to the pardoning authority of the Requesting State that the death penalty be commuted if it is imposed.

⁴² See however *Venezia v. Ministero di Grazia e Giustizia*, Corte cost., 27 June 1996, n.223, 79 Rivista di Diritto Internazionale 815 (1996)

⁴³ King note 24, at 181-93

Irregular Rendition: The return of an individual carried out through the ‘informal surrender’ of that individual by one nation to another 1) without formal or legal process; 2) through the use of immigration laws to expel an accused or convicted criminal from a country; 3) by luring a fugitive to the territory of the country seeking his return; 4) international waters 5) or to other countries where their renditions can be more readily obtained has been termed ‘irregular rendition’. Simply put, this term describes processes for returning fugitives without resort to the recognized extradition regimens of the respective countries.⁴⁴

Luring: This is a practice that has been used successfully in instances where extradition is unavailable (no treaty) or barred by other circumstances. In simple terms it involves the country seeking the rendition of the otherwise unavailable fugitive taking measures to entice the wanted individual to a place from which extradition is possible or unnecessary. Lures usually involve a subterfuge, trick, or other deception, often by undercover law enforcement agents or informants in communication with the fugitive, which attempt to trick the wanted person to voluntarily leave the country of refuge.⁴⁵ For example, prosecutors have used the guises of collecting a prize, attending a social event, further engagement in a criminal activity or the delivery of funds in order to entice a fugitive to a particular location. This was the case, in 2000, when unknown persons believed to be in Kazakhstan were attempting to extort Michael Bloomberg, founder and owner of Bloomberg L.P. The subjects demanded via the Internet that Bloomberg pay them money in exchange for information on how they had managed to infiltrate Bloomberg L.P.'s computer system. Undercover agents, with the assistance of Mr. Bloomberg, engaged in e-mail communications with the subjects while they were in Kazakhstan -- an area where extradition was not possible -- and convinced them to travel to London for a meeting. On August 10, 2000, they were identified as the authors of the communications to Bloomberg and arrested for extradition to the U.S. by the London Metropolitan Police and New Scotland Yard.⁴⁶

⁴⁴ Melanie M. Laflin, KIDNAPPED TERRORISTS: BRINGING INTERNATIONAL CRIMINALS TO JUSTICE THROUGH IRREGULAR RENDITION AND OTHER QUASI-LEGAL OPTIONS, 26 J. Legis 315, 320 (2000)[hereinafter Laflin]

⁴⁵ Snow note 14, at 229

⁴⁶ Id. at note 76



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Suggestion: While this technique can be effective it can likewise produce undesirable collateral, and sometimes, direct consequences. In some jurisdictions, luring is illegal and those who put such a device in motion are themselves thus exposed to criminal sanctions.⁴⁷ Law enforcement agencies that use lures also run the risk of incurring the disfavor of the country in which the fugitive was located on the basis that such a technique is regarded, correctly or incorrectly, as an intrusion into national sovereignty. This being the case, the techniques involved in irregular rendition might best be cleared through an agency such as the central authority discussed earlier in an effort to determine what the overall effect of such an operation will be.

Expulsion and Deportation: On other occasions where extradition is either impossible or difficult, countries have resorted to other legal techniques demonstrating voluntary cooperation between governments. Thus for example, where a citizen of one country is located in another country and an arrest warrant is outstanding in the former jurisdiction, that jurisdiction may cancel the passport of the wanted individual and request that the country of refuge expel that person. This device proceeds on the theory that the fugitive is in the host country without a valid travel document and allows the host country to use its immigration law or other available legal means to return the wanted person to his country of origin. Whether and under what circumstances a foreign country is willing to execute such requests varies, and depends both on its domestic law, and its willingness to utilize immigration procedures to accomplish a purpose more often pursued via international extradition.⁴⁸

Suggestion: Despite their appeal to some based upon the fact that they may be easier to execute than the standard extradition procedures, these methods have their detractors⁴⁹ and have in some instances been found to be outside

⁴⁷ SCHWEIZERISCHES STRAFGESETZBUCH, CODE PENAL SUISSE, CODICE PENALE SVIZZERO [STGB, CP, CP] [SWISS PENAL CODE] art. 271(2) (Switz.) ("Whosoever, using violence, ruse or threat, lures a person abroad in order to deliver him to an authority, a party or another organization abroad, or to put his life or physical integrity in danger, will be punished by reclusion.")

⁴⁸ Snow note 14, at 229

⁴⁹ Stefano Manacorda, RESTRAINTS ON DEATH PENALTY IN EUROPE: A CIRCULAR PROCESS, 1 J. Int'l Crim. Just. 263, 283 (August, 2003) ("More subtle are the dangers arising from the increasing recourse to criminal and administrative procedures for the purpose of surrendering individuals to retentionist countries. Here, the development of European case law is not fully satisfactory, considering the dominant role played by political evaluations in the field of extradition and, even more so, expulsion where diplomatic considerations carry more weight than the standards of human rights law.")



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of the law.⁵⁰ Thus once again, it must be seriously suggested that a central authority as previously described would be strategically and tactically positioned to determine the efficacy, and more importantly, the legality of such measures prior to their employment.

Common Obstacles Encountered in Extradition Practice:

***Non bis in idem* Or Double Jeopardy Provisions:** Many modern extradition treaties contain provisions prohibiting extradition when the person sought has been convicted or acquitted for the same offense in the country from which extradition is sought⁵¹ or in a third country.⁵² The increased international mobility of many of today's criminals, combined with the inherently transnational nature of much contemporary organized crime, corruption and terrorism, creates a growing need for the interpretation of such double jeopardy or **non bis in idem** provisions.⁵³

Suggestion: As a practical matter, if there exists no clear, mutually accepted *travaux préparatoires* or negotiating history to the treaty which sheds light on this issue, the answer will likely turn upon the Requested State's interpretation of the clause and its applicable domestic law. This may become particularly difficult where the Requested and Requesting States rely upon fundamentally different legislation such as was reviewed earlier in this paper.⁵⁴

Severity of Punishment: In addition to those issues concerning capital punishment and its impact on extradition practice, analogous concerns have recently arisen relative to severity of punishment in non-capital cases. The variation on this theme arises in instances where the punishment for a

⁵⁰ *United States v. Usama Bin Laden*, 156 F. Supp. 2d 359 (S.D.N.Y. 2001) finding that the use of a similar technique violated South African law.

⁵¹ Extradition Treaty, June 25, 1997, U.S.-India, art. 6(1), S. TREATY DOC. 105-30 (1997)

⁵² Extradition Treaty, Nov. 13, 1994, U.S.-Phil., art. 2(4), S. TREATY DOC. NO. 104-16 (1995):

If the offense was committed outside of the territory of the Requesting State, extradition shall be granted in accordance with the provisions of this Treaty: (a) if the laws in the Requested State provide for punishment of an offense committed outside of its territory in similar circumstances; or (b) if the executive authority of the Requested State, in its discretion, decides to submit the case to its courts for the purpose of extradition.

⁵³ Snow note 14, at note 129

⁵⁴ See discussion concerning **Dual Criminality** above.



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particular crime is life imprisonment in the Requesting State or, in some instances, an indeterminate sentence. In all but a few instances, extradition treaties do not provide for sentencing with the exception of the previously mentioned ‘assurances’ in capital punishment cases.⁵⁵ However, based upon judicial decisions interpreting their own constitutions (wherein life and indeterminate sentences are found to be unconstitutional) and outside of the terms of extant extradition treaties, some countries have begun to deny extradition where such sentences could be imposed. To implement domestic policy and jurisprudence in this case, demands have been made that the traditional ‘assurances’ now be made in cases where life sentences could be imposed.⁵⁶

Suggestions: In instances of this nature, short of the implementation of UNCAC Article 44(13) arrangements, where appropriate, there is little in the way of standard prosecution that addresses can address this issue. This, as well as many issues in extradition, is a concern that must ultimately be resolved politically as well as legally.

Conclusion

As crime and criminals continue to have less respect for international boundaries, which modern society dictates they are both bound to do, the function of extradition becomes more vital. Concurrently, those involved in the practice will be required to become ever increasingly familiar with international legal practice, not solely on a theoretical level, but on a

⁵⁵ Compare “In view of the abolition of capital punishment and of imprisonment for life by Constitutional provision in Venezuela, the Contracting Parties reserve the right to decline to grant extradition for crimes punishable by death and life imprisonment. Nevertheless, the Executive Authority of each of the Contracting Parties shall have the power to grant extradition for such crimes upon the receipt of satisfactory assurances that in case of conviction the death penalty or imprisonment for life will not be inflicted. Extradition Treaty, Jan. 19-21, 1922, U.S.-Venez., art. 4, 43 Stat. 1698. See also POR.CONST.

(Constitutional Law No. 1/97, 1997) art. 33(5): Extradition in respect of offences punishable, under the law of the requesting State, by deprivation of liberty or detention order for life or an indeterminate term, shall only be permitted on condition of reciprocity based on an international agreement and provided that the requesting State gives an assurance that such sentence or detention order will not be imposed or enforced.

⁵⁶ Shaw note 14, at note 135 On October 2, 2001, the Mexican Supreme Court ruled that a sentence of life imprisonment constitutes inhumane punishment under the Mexican constitution, which permits only a sentence of finite years. Jurisprudencia de 2 de octubre de 2001, 14 SEMANARIO JUDICIAL DE LA FEDERACION [S.J.F.] 13 (Mex. 9a época 2001); Mexico Makes Extraditions to U.S. Harder, SAN DIEGO UNION-TRIB., Oct. 4, 2001, at A19, [2001 WL 27292686](#). Subsequently, lower courts in Mexico began demanding assurances from the United States that fugitives extradited to this country will not be imprisoned for life.



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practical basis as well. Functionally, modern criminal justice systems must discover, collate and absorb the rules, policies and practices of their partners in the international community. Thus if there is a central theme in this paper, it is that the themes lightly explored here will by necessity require further cooperative development in order to meet the changing demands of extradition practice.