

Extradition within the CEMAC Sub Region: Prospects and Perspectives

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ABSTRACT

International co-operation in criminal matters amongst states in the Central African Economic and Monetary Community (CEMAC) is a reality. However, this co-operation is increasingly being threatened by weaknesses that fraught the existing extradition legal framework. Criminal offenders often misuse the lack of extradition treaties with other states to decide which state to flee to after committing crimes. The very nature of crime has been evolving, and the failure to bring fugitives to justice represents an acute problem to the party which has been wronged. However, there is no general rule of international law that requires a state to surrender fugitive offenders. This school of thought led to the development of the principle of non-extradition of nationals fully practices within CEMAC. It is the right of a state to refuse the extradition of its own nationals. This creates a major challenge to law enforcement officials, for it is an opportunity for transnational criminals to find safe havens. Such a practice in a sub region experiencing the emergence of new crimes like terrorism, endemic corruption, money laundering and the financing of terrorism, weakens law enforcement; given that it makes effective prosecution impossible. Also, an increase in the mobility of suspects has resulted in a greater enthusiasm of states to use cooperation to enforce their domestic criminal law. It is on this premise that this paper intends to examine how states within the CEMAC Sub region use extradition as a tool to combat transnational organised crime. The problems they encounter and probable solutions.

INTRODUCTION

At the dawn of globalization, criminality and more specifically common crime has lost its primarily territorial nature and we are increasingly being confronted with international or transnational crime. More than ever before criminals are acting and moving across borders. Thus, necessitating the practice of extra territorial criminal jurisdiction. As such extradition has become indispensable if an accused person must be brought to justice in a foreign jurisdiction.

Extradition is an instrument of International cooperation that aims at the delivery of a fugitive of justice,¹ who is in a requested jurisdiction and who is accused or has been convicted of a criminal offence against the laws of the requesting Jurisdiction². In International law there is no obligation on states to extradite fugitives of justice without being signatories to a treaty. The non-existence of such an

¹ M. Cherif Bassiouni, *The Penal Characteristics of Conventional International Criminal Law*, 15 Case W. Res. J. Int'l L. 27 (1983), <http://scholarlycommons.law.case.edu/jil/vol15/iss1/5>
2004 Report of the Informal Expert Working Group on Effective Extradition Casework Practice, para. 12., See also A.W. La Forest, Extradition to and from Canada, 1991, Article 57, CEMAC-UMAC Regulation, Section 149, Drug Law of Cameroon 1997, Recs. 36, 40 The Forty Recommendations.

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international obligation coupled with the right to demand domestic criminals from other countries has led to the development of a network of extradition treaties. When there is no extradition agreement, sovereign states can still implore the expulsion of a fugitive of justice pursuant to the domestic laws of a requested State. Although, there are multilateral conventions which cover extradition the most commonly used mode of implementation are bilateral agreements signed between two states³.

As illustrated by the Extradition case of Brian O'Rourke⁴, extradition in ancient times was directed almost exclusively to the return of fugitives sought for political or religious offences⁵. Extradition was seen as a means to protect the political order of states⁶. However, in the eighteenth century

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⁴ Extradition and Treason trial of a Gaelic Lord: the case of Brian O'Rourke; Irish Jurist Vol.22No.21987 pges 285-301

⁵Robert C. Reinders, "The John Anderson Case, 1860-1, a Study in Anglo-Canadian Imperial Relations" (1975), the Canadian Historical Review, Vol.56:4 P.407, University of Toronto Press, Toronto.

⁶S.D.GALEGA, "Extradition as a Mechanism to Combat Transactional Criminality: A Cameroonian Perspective." (2005), Juridis Periodiques N0 61, P. 93-104,

the scope of extradition was widened to include military offenders. The nineteenth and twentieth centuries saw a shift in the practice of extradition. During this time extradition agreements also included the exchange of "common criminals" charged with offences of violation of domestic laws of their countries.⁷ Meaning that, the focus of extradition changed completely from political offences to common serious crimes⁸. Thus Contemporary extradition laws, consider the political offence to be an exception to extradition and as such does not allow the extradition of fugitives entitled to be punished for political offences.⁹ This explains why, these offences that use to be the focus of extradition are now generally excluded from extradition regimes. Political crimes are rarely extraditable, because countries do not want to be accused of aiding a coup, or opposing a foreign regime. In 1934, an Italian court refused to extradite the assassins of Yugoslavia's King Alexander, on the grounds that the crime was political.¹⁰

Of late the practice of extradition has developed tremendously amongst member states of the Central African Economic and Monetary Community. Advancements in global travel and the rise of transnational crimes spanning borders, has increased the need for extradition within the sub region; thus making a further enhancement of extradition practices a priority.¹¹ The adoption within CEMAC of a regulation designed to prevent and punish money-laundering and the financing of terrorism; transnational crimes common within the sub region, is an encouraging development. This law makes provision for extradition which is intended to help countries of the sub region combat these crimes. However, this sub regional legal framework has some loopholes which have prevented it from living up to expectations. They include the very fact that most countries of the sub region do not extradite their nationals and the lack of a proper enforcement mechanism; This has made our extradition process very challenging.

THE LEGAL FRAMEWORK FOR EXTRADITION WITHIN CEMAC

The main problem that arises in a case where, the suspect is located in a foreign state is; the possibility to have that person extradited to face trial in the jurisdiction where the offence was committed; *Re Burley*¹². Given that most often, there is no duty upon states to extradite, in the absence of a specific

⁷ See The case of Sissoko Diawoye Arret N° 1101/COR du 23 Septembre 1994.

⁸ See the case of *Canada v. Schmidt* (1987) 1S.C.R. 500.61.O.R. where extradition was sought for child stealing. See also the Extradition case of Thomas Nseke Mbowa, National Archives, Buea. file No.25/1928,27-12-1928 where Mr Nseke was extradited for larceny, United Nations Office on Drug and Crime (UNODC), Vienna, Manual on Mutual Legal Assistance and Extradition, New York September 2012.P. 41.

⁹ Bassiouni, *supra* note 2.

¹⁰ **Tanushri M. Loopholes in Extradition** The World Journal On Juristic Polity (MARCH, 2017) ISSN: 2394- 5044

¹¹ Kimberley Prost, "Breaking down the barriers: International cooperation in combating transnational crime" p, 3. Available from www.Oas.org/juridico/mla/en/can/en_can_prost.en.html.

¹² 1.U.C.L.J. 34. (1865)

binding agreement to that effect,¹³ many states in particular those of a common law tradition will not extradite in the absence of a treaty.¹⁴ Civil law countries are not generally limited in principle to treaty based extradition. All the same, they also enter into such arrangements particularly, with states whose domestic law mandates such a relationship. Extradition treaties and legislation not only supply the broad principles and the detailed rules of extradition but also dictate the very existence of the obligation to surrender fugitives. It is clear that some states do not extradite criminals in the absence of a treaty or a municipal law which empowers them to do so¹⁵. In some other countries, extradition may take place in the absence of a treaty. In this context it is an act of grace and not an obligation. This is usually, in accordance with the provisions of municipal statutes operating in the absence of a treaty. In many countries extradition by statute is dependent upon an ad hoc guarantee of reciprocity which is tantamount to a treaty. In addition to bilateral extradition arrangements, whether by way of treaty or through the reciprocal application of laws, there is a growing number of multilateral extradition arrangements among groups of states having some geographical or political links¹⁶. This explains why within the CEMAC sub region extradition agreements have remained the predominant basis for extradition. These agreements take different forms; they include multilateral conventions, sub regional agreements and bilateral treaties. This approach risks losing its grounds because the number of extradition agreements amongst CEMAC member states as well as with third states are insufficient to address the growing need for extradition. It is this reality, that has led to a shift towards an alternative bases for extradition. That is extradition based on local legislation and comity or reciprocity. The following is a brief overview of the network of instruments that govern modern extradition within the sub region¹⁷.

¹³ Shearer, I.A., Extradition in International Law, Manchester University Press, 1971, at p. 24. United Nations Office on Drug and Crime (UNODC), Vienna, Manual on Mutual Legal Assistance and Extradition, New York September 2012.P. 41.

¹⁴ Kimberley Prost, "Breaking down the barriers.P.3
¹⁴ Some of the earliest cases of extradition were recorded in Britain and America. Britain's first extradition treaty dates back to 1591 when Brian O'Rourke, who was an Irish nobleman, fled to Scotland. Queen Elizabeth, had demanded for O'Rourke's delivery from Scotland to England. The Treaty of Berwick, ratified in 1586 was a tool for Queen Elizabeth to secure O'Rourke's custody. The first Anglo-American extradition agreement was in the form of a clause within the Jay Treaty signed in 1794. The Treaty was signed between Britain and America to end war and restore peace. Although it was a short lived agreement, it contained some of the most important principles which continue to govern the Extradition laws in American Treaties till date. It ensured that the practice of extradition was dictated by law and not by any foreign policies. The Jay Treaty emancipated Extradition laws in America from political offences

¹⁵ Bassiouni, Cherif. 2008. "International Criminal law". Koninklijke Brill NV, Leiden;

¹⁶ Shearer, Ivan Anthony. 1971. "Extradition in international law". University of Manchester at the University Press P 18;

¹⁷ **Tanushri M. Loopholes in Extradition** The World Journal On Juristic Polity (MARCH, 2017) ISSN: 2394- 5044

A. Multilateral conventions

In the face of crimes with international ramifications, a new approach to extradition has been developed in the form of multilateral conventions, directed at particular crimes. Generally, in order to determine if there is a legal basis for seeking extradition, the appropriate approach will be looking at the applicable instruments¹⁸. The earliest of such instruments was, the *Geneva Conventions*,¹⁹ which imposed the *aut dedere aut judicare* principle²⁰ on signatory states. The 1971 *Hague Convention for the Suppression of the Unlawful Seizure of Aircrafts* also contained detailed articles on extradition. The coming into force of the 1988 *United Nations Convention against Illicit Traffic in Narcotic Drugs and psychotropic Substances*²¹ contained an article²² dedicated to extradition which also imposed the prosecute or extradite obligation. After a series of enactments the United Nations Convention Against Transnational Organised Crime²³ was put in place in the year 2000. It was meant to promote co-operation and combat transnational crime more effectively. All CEMAC member states are signatories to this convention; under which an extradition request is granted, subject to the dual criminality requirement, with respect to offences referred to in the convention²⁴. The person who is the subject of a request for extradition must be located in the territory of a requested state which is Party to the convention as well. The extradition obligation applies initially to offences covered by the Convention. These are generally serious crimes punishable by a maximum deprivation of liberty of at least four years or by a more severe penalty. It also refers to those offences covered under its Protocols²⁵, provided that they are transnational in nature and involve an organized crime group²⁶. A peculiarity of this convention stems from the very fact that the scope of application of its article 16 is very broad; this provision applies to cases of domestic trafficking where the offender is simply apprehended in the territory of another State party. The Article²⁷ also addresses the issue of pre-existing treaties and how they interact with the Convention. It permits states of the sub region to use this international convention domestically. These provisions have a bearing on how actual requests for extradition are conducted under the

Convention²⁸. Offences articulated in the Convention are deemed to be extraditable offences in any pre-existing or future extradition treaty between States parties²⁹. Within the CEMAC sub region if a requested State that requires a treaty to effect extradition receives a request from a requesting State with which it has no extradition treaty, the requested State may consider the Convention as the legal basis for extradition³⁰. A State that requires an extradition treaty must indicate if it will consider the Convention as the legal basis for extradition. Where it is not the case the requested state must seek to conclude extradition treaties with other States; parties to the Convention³¹. States parties that do not require a treaty for extradition are expected to consider the offences listed in the Convention as being extraditable offences between them³². The advent of these multilateral conventions has meant an expansion of the basis for extradition as between states, at least with respect to certain offences.

Still at the international level The United Nations Convention against Corruption of 10 October 2003 herein after referred to as "The Convention" is designed to play an important supporting role to the afore mentioned complex extradition legal framework, by complementing or reinforcing it.³³ First of all, the main obligation under article 44, paragraph 4 of the convention is that each of the offences to which this article applies is deemed to be included as an extraditable offence in any extradition treaty existing between States. States in the CEMAC sub region in principle use the Convention as the basis for extradition. Most countries in the sub region have fulfilled this obligation, at least in as much as the offences have been included in the domestic law of the requested country and the penalties provided for are within the specifications stated in the existing treaties.³⁴ Equally, in the more unusual case of list-based bilateral treaties, even if the relevant corruption offence does not appear in the treaty, a country may nonetheless consider a request for extradition made by the bilateral treaty partner, in the exercise of its discretion under a treaty. although the Convention may not be the legal basis for extradition, it can still be used to expand the scope of a bilateral treaty in terms of extraditable offences.³⁵ Thus raising awareness, amongst states of the sub region, of the obligation on them to ensure that corruption offences are included as extraditable offences in all treaties that they conclude.

Furthermore, where there is no extradition treaty between CEMAC countries, the Convention itself may serve as the legal basis for the extradition of persons guilty of corruption³⁶. This is the case within the sub region especially with respect to those countries, that make extradition

¹⁸ Source: Kimberley Post, "Practical solutions to legal obstacles in Mutual Legal Assistance", in Denying Safe Haven, p. 32.

¹⁹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, 12 August 1949, 6 U S T 3114. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 6 U S T 3217. Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 6 U S T 3316. Geneva Convention Relation to the Protection of Civilian Persons in Time of War, 12 August 1949, 6 U S T 351

²⁰ The principle places an obligation on states to either prosecute or extradite alleged offenders.

²¹ Also referred to as the *1988 Drug Convention*

²² Article 6

²³ The Parlemo Convention

²⁴ article 3, paragraph 1 (a) or (b) of the Parlemo Convention

²⁵ United Nations Treaty Series ,Vol. 2225, 2237, 2241 and 2326, No. 39574

²⁶ Article 16, paragraph 1, of the Parlemo Convention

²⁷ Article 16

²⁸ Article 16, paragraphs 3-6, of the Parlemo Convention

²⁹ Article 16, paragraph 3,

³⁰ Article 16, paragraph 4.

³¹ Article 16, paragraph 5,

³² Article 16, paragraph 6,

³³ Legislative Guide for the Implementation of the United Nations Convention Against Corruption Para 541, and Technical Guide to the United Nations Convention Against Corruption, Chap. IV Art.44, subsection II(3)

³⁴ extradition treaties in general provide for a range of penalties and do not contain a list of specific offences.

³⁵ Article 44, paragraph 4 of the Convention

³⁶ article 44, paragraph 5, of the Convention

conditional on the existence of a treaty. This reduces the need for any additional extradition treaties.

A state party can receive extradition requests even in the absence of a bilateral extradition treaty, provided that the requesting country is declared an extradition country according to its domestic regulations. Following the signing of the Convention, if a State puts in place regulation meant to implement the extradition-related provisions of the convention and specifies, that any country that is a party to the Convention at any given time is considered to be an extradition country; this provision will ensure that the State in question will be able, to meet its international obligations under the Convention without the need, to amend its regulations each time a new State becomes party to the Convention.

States in the CEMAC sub region in principle, use the Convention as the basis for extradition, although from a more critical point of view, it can be argued that bilateral treaties often regulate extradition matters, amongst these countries in a more comprehensive and detailed manner than the Convention does. This however is because most practitioners are unaware of the possibility of using the Convention as a concrete legal tool for international cooperation.

B. Sub Regional agreements

As difficulties in negotiating multilateral treaties increased, the second half of the twentieth century saw an upsurge in the demand for other forms of instruments upon which to ground extradition arrangements. Consequently sub regional agreements have become a better alternative for most CEMAC countries. Generally the common bond for these instruments is the geographical location of the participating states. That notwithstanding, there are also others that depend upon a common legal tradition. Based on this premise, most countries in the sub region have negotiated agreements along these lines. For instance, all CEMAC countries are parties to the General Convention on Judicial Cooperation signed under the auspices of the former African and Malagasy Common Organization (the "Tanarive Convention") of 1961 which covers all the French-speaking countries of West and Central Africa. There is also the Extradition Agreement among the Member States of the Central African Economic and Monetary Union (CAEMU/CEMAC) of 2004. The Extradition Accord of the Economic and Monetary Community of Central Africa (CEMAC); and the London Scheme for extradition within the Commonwealth. A common provision in these agreements is that every Member State may refuse the extradition of its nationals³⁷ However, any Member State refusing the extradition of one of its nationals must upon demand from the requesting state; submit the matter to the competent authorities for prosecution.³⁸ Thus, enshrining the principle *aut dedere aut judicare*. Added to this is the fact that, any contrary provisions of bilateral agreements governing

³⁷Article 5(1) of the 2004 Extradition Agreement among the Member States of the Central African Economic and Monetary Union (CAEMU/CEMAC)

³⁸ Article 5(4) of the 2004 Extradition Agreement among the Member States of the Central African Economic and Monetary Union (CAEMU/CEMAC)

extradition between Member States shall be deemed to be without effect³⁹.

C. Bilateral extradition treaties

Research has revealed that most states base their extradition agreements on bilateral treaties. There are a good number of bilateral extradition instruments resulting from the commitment of France⁴⁰ and United Kingdom⁴¹ with their former colonies. For many years, even as those colonies attained independence, they continued to rely on the old Imperial treaties for extradition.⁴² This explains why Apart from these arrangements with their former colonial masters CEMAC states are very much into extradition arrangements amongst them as well as with other countries which border the sub region. Cameroon established bilateral judicial cooperation agreements, with Gabon, Guinea, Madagascar, and Mali on the 6 of May 1964; Benin, Burkina Faso, the Central African Republic, Chad, Côte d'Ivoire and France followed suit on the 21 of February 1974; while in March of 1977 it was the turn of The Democratic Republic of Congo, Mauritania, Niger, and Senegal. Following the Convention on Mutual legal Assistance and Extradition of 1963, Gabon concluded bilateral agreements on extradition with France and Morocco⁴³. This is proof that bilateral treaties still dominate extradition practice within the sub region. This notwithstanding there is an increasing tendency for states to consider alternatives to treaty based extradition because of the practical and political problems that sub regional actors face in their attempts at negotiating these instruments to govern extradition⁴⁴.

D. Alternatives to treaty based extradition

Traditional international law gives each state liberty to exercise absolute and exclusive legislative, administrative, and jurisdictional power irrespective of the will of other states. This territorial supremacy in the absence of any supranational authority makes a state the most powerful organism in international law invested with a supreme and overriding authority over all things and persons falling within its territorial limitations. It is generally held that principles of international law recognize no right to extradition apart from treaty based. The legal right to demand for extradition and the correlative duty to surrender the fugitive to the demanding country exists only when created by treaty. The law of nations does not prohibit a

³⁹ Article 24 of the 2004 Extradition Agreement among the Member States of the Central African Economic and Monetary Union (CAEMU/CEMAC)

⁴⁰In 1961, twelve of France's fourteen former Equatorial and West African colonies formed the Union Africaine et Malagache. On September 12 of that year these states signed a convention on judicial cooperation at Tananarive

⁴¹ In the 1800's, the United Kingdom negotiated several extradition treaties which were applicable to many of its territories

⁴² M Cherif Bassioun, International Extradition, United States Law and Practice at p.15

⁴³ United Nations Office on Drugs and Crime, Vienna; A Review of the Legal Regime against Terrorism in West and Central Africa: Working Document Terrorism Prevention Branch October 2008 .Pp.2-11

⁴⁴ Kimberley Prost, "Breaking down the barriers: International cooperation in combating transnational crime" p.4.

state from surrendering a person accused of a crime to another state under the pretext of sovereignty since the reception and expulsion of aliens is a fundamental act of sovereignty⁴⁵. Evidence of extradition in the absence of a treaty existed as early as 1880, in a resolution taken by the Institute of International Law. As such, certain legal scholars recognize an obligation to extradite fugitive criminals regardless whether there is a treaty or not. This is thanks to the principle of comity, reciprocity or under local legislation.

I. Extradition based on the Principle of Comity

Today, most civil law states recognize final surrender without a treaty as a valid form of extradition. Common law countries such as the United States and Great Britain show greater reluctance in granting extradition in the absence of a treaty. According to their view, no absolute duty to extradite exists absent a specific treaty obligation⁴⁶. Extradition in the absence of treaties in the nineteenth century was long approved by the practice of most civil law countries. In the absence of an agreement creating the obligation to surrender the fugitive criminal, no such obligation exists under international law. Under international law, the right of a requesting state to demand the surrender of a claimed person accused of a crime, and the correlative duty to surrender such a person, exists only when created by an extradition treaty.

Accordingly in the absence of such a treaty, there is no obligation to surrender criminals to another country. Where, however, in the absence of an extradition treaty imposing such a right and duty, the surrender of a claimed person is requested, it is on the bases of the principle of comity, founded on the principle that it is not in the interest of the international community that serious crimes of international significance should go unpunished. Under such circumstances the Government of the requested state may exercise its discretion and investigate the charge on which the surrender is demanded⁴⁷.

For example the United States belongs to a group of states which do not surrender fugitive criminals in the absence of an extradition treaty. Its practice is to decline to request extradition from the requested state with which there is no treaty providing for surrender, although there are isolated cases in which the Government of United States has requested of foreign Governments the surrender of fugitive criminals as an act of comity: in these cases, however, the request has always been accompanied by the statement that under the law of this country reciprocity cannot be granted⁴⁸. The practice of the civil law countries has demonstrated a greater willingness to grant extradition in the absence of

⁴⁵ Bedi, Satyadeva. 2002. "Extradition: a treatise on the laws relevant to the fugitive offenders within and with the Commonwealth countries ". William S.Hein & Co, Inc; page, 19;

⁴⁶ Woods Jr, Robert Herbert. 1993. "Extradition: Evaluating the development, uses and overall effectiveness of the system ". Regent University Law Review, Volume 2; Page 46;

⁴⁷ Shearer, Ivan Anthony. 1971. "Extradition in international law". University of Manchester at the University Press;

⁴⁸ Przetcznik, Franciszek. 1983. "Protection of officials of foreign states according to international law ". Martinus Nijhoff Publishers;

treaties, but in few instances the view has been adopted that extradition in such circumstances was based on nothing more than comity and an act of grace.

A request for the arrest and surrender of a fugitive criminal could not be made in the absence of an extradition treaty. But taking into consideration the gravity and seriousness of the crime and its detrimental effect upon a society, a state, in conformity with the public law of nations or in accordance with the general principles of international law, in the absence of an extradition treaty invoking the principles of comity or morality between the states concerned, can make an extradition request for the surrender of the fugitive offender who has crossed its borders, escaping from trial or punishment. This is because all states are interested in the preservation of peace, order and tranquility within their borders and they promote justice in cooperation with other states⁴⁹. Accordingly, the only obligation existing in the absence of a treaty is imperfect, and as such creating a moral, but not legal duty to extradite. The only method to create an absolute duty to extradite is through the signing of a treaty. The dominance of this latter view has provided the necessary impetus for the increase in the formation of modern-day mutual extradition treaties. Extradition in the absence of a treaty always hinges on the principles of "courtesy, good will, and mutual convenience."⁵⁰ Since the prevailing view fails to recognize an absolute duty or obligation in the absence of formal treaty relations, comity and common courtesy must serve as the sole basis for surrender where no treaty exists.

There are therefore several reasons for choosing to extradite in the absence of a treaty. First, some states simply prefer as a matter of principle or convenience to enter into treaties only with those countries that require such agreements before extradition can take place. Second, it seems unnecessary to enter into treaties with countries where extradition is a rarity. Third, states do not want to become a resting place for criminals and will often enact legislation permitting extradition in the absence of a treaty as a combatant to unsuspected entry⁵¹.

II. Extradition based on the National legislation of Member States

The negotiation of multilateral sub-regional and bilateral treaties is a time consuming and resource intensive exercise. As well, it is simply unrealistic for any state to have a complete set of extradition instruments applicable to every nation in the world. This explains why of late, CEMAC countries are adopting an alternative approach to extradition; which moves away from the treaty-based model. Most countries in the sub region have adopted a blended system under which despite the existence of a treaty, as a pre-requisite for extradition, it could also be granted on the basis of specific local legislation, without a treaty. This is very much practiced in Chad where local legislation also

⁴⁹ Bedi, Satyadeva. 2002. "Extradition: a treatise on the laws relevant to the fugitive offenders within and with the Commonwealth countries ". William S.Hein & Co, Inc;

⁵⁰ Woods Jr, Robert Herbert. 1993. "Extradition: Evaluating the development, uses and overall effectiveness of the system ". Regent University Law Review, Volume 2;

⁵¹ Wise, Edward. 1969. "Some Problems of Extradition ". Wayne Law Review;

governs extradition⁵². Local legislation clearly states that, notwithstanding contrary provisions stemming from treaties the conditions, procedure and effects of extradition are determined by conditions laid down by existing texts. Where this is not the case the general provisions governing extradition will do.⁵³ On the basis of this extradition regime, *the government thanks to an extradition request may surrender any non-citizen found within its national territory to a foreign government, where criminal proceedings have been initiated against that individual by the requesting State, or a conviction has been pronounced against him by the State's courts. However, extradition shall only be granted if the offence giving rise to the request was committed on the territory of the requested State, either by one of its nationals or a foreigner, or; Outside of its territory by one of its nationals, or; outside of its territory by a non-national of that State provided the offence is one for which the laws of Chad authorize the exercise of jurisdiction by Chad, even where the offence was committed abroad by a non-national.*

III. The principle of reciprocity

This is an established principle in the cooperation of States with respect to matters of international law and diplomacy. It is basically a promise that the requesting State will provide the requested State the same type of assistance in the future, should the requested State be asked to do so. This principle is usually incorporated into treaties, memorandums of understanding and domestic law. It is particularly prevalent in States with a civil law tradition, where it is viewed as a binding covenant. In common law countries, it is not an obligatory principle. Cameroon does not make extradition conditional on the existence of a treaty, thus applying the principle of reciprocity as a general rule and allowing the use of the Convention as a legal basis⁵⁴. Some countries use their domestic legislation as a basis for extradition and apply the principle of reciprocity as a precondition to considering extradition to another State. The principle can also be a useful tool in a situation in which there is no treaty, as it can be viewed as a stand-alone promise that one State will do the same for another State in future should the need arise. As with any promise, the most important thing is to ensure that it can be kept. One of the central advantages of this approach to extradition is that it provides for a broader base for extradition, placing countries in a better position to respond to particular situations that may arise, especially where

⁵² Act No. 25/82 of 7 July 1982³⁰ (enacted on 19 October 1983) and Title VI of the Chadian Criminal Procedure Code

⁵³ Article 445

⁵⁴ Conditions of extradition are regulated in sections 642-645 CPC. Grounds for refusal are given in section 649 CPC. Even though the procedure under these provisions is cumbersome, a simplified procedure can be applied if the person to be extradited gives his consent according to section 659 (1) CPC. The public prosecutor's office has jurisdiction to order the detention of a person sought by foreign authorities. Cameroon applies the principle of international law to extradite or prosecute (*aut dedere aut judicare*). No Cameroonian citizen may be extradited. However, jurisdiction to prosecute citizens in lieu of extradition is based on the active personality principle. Moreover, section 2 PC provides for the primacy of international treaties. Therefore, given that Cameroon does not have mandatory prosecution, this obligation would stem directly from the Convention.

extradition is a necessity. While approaches vary, the concept is essentially the same in the entire sub region. Overall, the CEMAC sub region has a satisfactory framework for international cooperation in criminal matters. Thus having established the basis for extradition we now determine the fundamental requirements for extradition.

FUNDAMENTAL REQUIREMENTS FOR EXTRADITION IN THE CEMAC SUB REGION.

Generally, the concept of extraction is regulated by some fundamental principles. The first has to do with the offence which constitutes the subject of extradition. Most often to determine if an offence is extraditable various approaches are called into play amongst which are the enumerative and the penalty approaches. The second principle is that of dual criminality.

A. Extraditable Offences

It is not always easy to determine what an extraditable offence is. This is because it is not for every offence that a fugitive may be surrendered by the requested state to the requesting state⁵⁵. This explains why this area of extradition has seen considerable progress through the extension of the application of extradition treaties, the expansion of the definition of extraditable offences as well as the extension of procedures for determining extraditable offences⁵⁶. The first precondition that must be looked at by both the requested and requesting State is whether the offence alleged in the extradition request is an offence for which the law allows for extradition. The issue of what is an extraditable offence can be determined in two ways under a treaty: either by the enumerative or penalty methods⁵⁷.

1. The Enumerative Approach

A common way of avoiding any polemics as to what will constitute an extraditable offence is to list these offenses and append them to an extradition instrument⁵⁸. This method found in ancient treaties poses a number of problems, as it requires a degree of accuracy that is difficult for the requesting State to attain. Most extradition treaties that were developed in the nineteenth century, defined extraditable crimes by reference to a list of offences. The conduct involved had to be a crime in both states. This approach had a major weakness in that it was hardly comprehensive since in most cases the lists did not take into account new forms of emerging international crimes. New crimes develop on a daily basis but since treaties are stagnant they do not cover them. Jargon also changes with the times making it difficult to bring new crimes within the treaty list. Because of these difficulties there has been a consistent shift from the enumerative approach towards defining an extraditable offense on the basis of the applicable penalty.

⁵⁵S.D.GALEGA, "Extradition as a Mechanism to Combat Transactional Criminality: A Cameroonian Perspective."(2005), *Juridis Periodiques* N0 61, P. 95

⁵⁶ Kimberley Prost, "Breaking down the barriers: International cooperation in combating transnational crime" p.8.

⁵⁷ Article 16, paragraph 1,Parlemo Convention.

⁵⁸ See the Tanzanian Extradition Act 1965 and the list of Extradition crimes in the schedule ; see also the Ghanian Extradition Act 1960 (as amended) first schedule .

2. The Penalty Approach

This approach, based on the interpretation of extradition instruments, sets aside the list approach and substitutes it with a conduct and penalty test. It is widely accepted by the international community. The conduct involved must constitute an offence punishable in both states, by some prescribed period of incarceration. The position within CEMAC states is clear; an extraditable offence is an offence in both the requesting and the requested states; and one punishable by deprivation of liberty for a period of at least one year or a more severe penalty, unless otherwise provided for by a special arrangement, and whose prosecution must not have been rendered impossible by prescription, amnesty or any other ground⁵⁹. In the penalty method, the extraditable offence is determined by the seriousness of the penalty that may be imposed. In this case, the definition is general because the potential length of punishment will be the determining factor.

Most national laws and extradition treaties within the sub region, especially the more recent ones, appear to identify extraditable offences on the basis of a minimum penalty requirement as opposed to a list of offences⁶⁰. In Gabon for instance, extraditable offences for the purposes of a criminal prosecution are those punishable by deprivation of liberty for a period of at least one year or a more severe penalty⁶¹, unless otherwise provided for by a special arrangement. In some rare cases, national laws or bilateral treaties set a threshold of at least two years of imprisonment in order for an offence to be extraditable. This is the case of Cameroon where a minimum sentence of not less than two years of imprisonment must be imposed for extradition to be allowed⁶². The enumerative approach is losing grounds within the sub region since the approach is likely to cause problems of implementation. For example, the listed offences may not be the same under local legislation as found under the extradition treaty. It is not unusual to find lists that contain offences which are different from those listed under the extradition treaty. Where this is the case the appropriate solution is usually that the list of extraditable offences be amended to include, acts that have been criminalized in accordance with treaty provisions. Also, with regard to extradition for the purposes of enforcement of a foreign sentence, the surrender of the offender is permitted if he has been sentenced to imprisonment of between two and eight months or a more severe punishment. The shift away from rigid list-based treaties and the increasing reliance on a minimum penalty requirement in the negotiation of new international treaties adds a degree of flexibility to the extradition process. The possibility of providing for minimum penalty requirements is also explicitly acknowledged in article 44, paragraph 8, of the United Nations Convention against Corruption (herein after referred to as the Convention), which is proof that extradition is subject to the limitations of domestic law. Nevertheless, as a result of such thresholds, extradition for

⁵⁹ Article 43 of the 1961 Antananarivo Convention on Mutual Legal Assistance

⁶⁰ General Assembly Resolution 45/116, annex and Resolution 52/88, annex.

⁶¹ Arts. 2 and 3 of the CEMAC Extradition Agreement, Art. 46 of the France-Gabon Agreement and Art. 41 of the Antananarivo Convention;

⁶² section 642 (1) (a) of Cameroon's Criminal Procedure Code.

the purposes of prosecution may not be possible in cases where offences established in accordance with the Convention are punishable by a lesser penalty. The way to address this situation would be either to revisit the minimum threshold under the applicable national laws and treaties and consider harmonizing it with international standards, or to increase the applicable penalties to ensure that all forms of conduct criminalized in accordance with the Convention become extraditable⁶³.

Countries within the sub region are expected to make accessory offences extraditable if the main offence satisfies the minimum penalty requirement. This however is not what obtains given that slight variations to this rule do exist in some countries, the persons sought have to express their consent in order to be extradited for accessory offences that are not extraditable offences themselves (i.e. offences punishable by a period of less than 12 months); in others, accessory offences are considered to be extraditable only if the maximum penalty incurred for all such offences reaches the threshold of two years' imprisonment. For instance Cameroon strictly applies the threshold requirement and as such does not allow extradition for related offences.

B. Dual Criminality

Dual criminality appears to be a standard condition for granting the extradition of a person present in the territory of a requested state. CEMAC member states explicitly set out the dual criminality principle, along the lines of article 44, paragraph 1, of the United Nations Convention against Corruption⁶⁴. That notwithstanding states may not consider the absence of dual criminality to be a ground for rejecting an extradition request, since it is more or less an optional ground⁶⁵. Based on the principle of reciprocity a state can decide to grant extradition even if an act does not amount to an offence in its criminal legislation.

This concept of double criminality is one of the fundamental requirements found in the extradition agreements that govern most CEMAC member states⁶⁶. It entails the employment of a relaxed test whereby extradition is only possible if the act in question is a crime in both the requesting and requested states. Although seemingly simple, establishing dual criminality in practice can prove to be one of the most challenging issues in an extradition case⁶⁷. The problem flows from the technical differences in how states define, name and prove criminal offences. For example, what may be called theft in one state may be larceny in another. In

⁶³ Technical Guide to the United Nations Convention Against corruption Chap,III, art.30, Subsection, II 1

⁶⁴Article 3(1) of *the Extradition Accord of the Economic and Monetary Community of Central Africa (CEMAC)*;

⁶⁵As provided by article 44, paragraph 2, of the United Nations Convention against Corruption.

⁶⁶Gabon applies the principle of dual criminality based on Articles 4 of The Extradition Agreement between the States members of CEMAC of 28 January 2004, (the CEMAC Extradition Agreement), art. 46 of the Agreement on Mutual Legal Assistance, Sentence Enforcement and Extradition between France and Gabon of 23 July 1963 (the France-Gabon Agreement) and art. 42 of the General Convention on Judicial Cooperation of 1961 (the Antananarivo Convention)

⁶⁷ Kimberley Prost, "Breaking down the barriers: International cooperation in combating transnational crime"

the same light the conduct of the alleged offender may include all the elements of fraud, as defined in both states, but their definition of the offences might differ. It is logical that a state should not hand over a person for trial for a conduct which is not criminal in the requested state. At sub regional level those to be extradited are persons being sought for felonies or misdemeanours punishable by the laws of the requesting state with a penalty of at least two years imprisonment.⁶⁸ Thus in *the case of Sissoko Diawoye*⁶⁹ on the 22 of December 1992, Meridien BIAO bank in Libreville Gabon, received an order for the transfer of funds amounting to over four million CFA francs in favour of one Cisse Ibrahim, a client of Meridien BIAO bank Cameroon, in Douala. The transfer order was supposed to have been made by one Cisse Soumayilla who actually held an account with the bank in Gabon; the defendant, Sissoko Diawoye, was also known by the sobriquet of Cisse Ibrahim. The owner of the Libreville account (i.e. Cisse Soumayilla), refused having ordered the transfer of funds into the defendants account in Douala, Cameroon. Gabonese authorities thus contacted the bank officials in Cameroon and the defendant was arrested as he tried to withdraw the said amount. A request for extradition of the defendant was accordingly made to the Cameroonian authorities for forgery and other forgery related offences⁷⁰, punishable under sections 119,120,301 of the Gabonese penal code which corresponds to offences punishable under the Cameroonian penal code under sections 318(1)c⁷¹ on false pretences and section 314 on forgery; each with an imprisonment term of at least five years. After hearing, the Cameroonian court decided that the extradition request be granted.⁷² The court laid much emphasis on the fact that the conduct which formed the basis of the request for the defendants surrender was punishable with imprisonment of at least two years under Gabonese as well as Cameroonian law and then proceeded to cite the offence of forgery as complying with the requirement of minimum of two years term of imprisonment. In the past most extradition cases failed because of a technical flaw in the dual criminality approach. However, the modern test for dual criminality, incorporated in many extradition treaties and instruments, focuses not on these technical terms or definitions but rather on the substantive underlying conduct. Thus, the test is whether the conduct alleged against the fugitive would constitute a criminal offence in the requested state, regardless of whether the offences in the two states carry a different name or have different elements to them⁷³. This development has greatly simplified and improved extradition practice.

⁶⁸Article 43(1) of the 1961 Antananarivo Convention on Mutual Legal Assistance

⁶⁹ Arret N° 1101/COR du 23 Septembre 1994.

⁷⁰ Cameroon and Gabon are signatories to the 1961 Antananarivo Convention

⁷¹ This section punishes certain conducts including false pretences. The section provides that whoever causes loss to another by false pretences, that is by influencing him deceitfully by tricks or by representation or concealment of any fact, shall be punished with imprisonment of from five to ten years

⁷² S.D.GALEGA, "Extradition as a Mechanism to Combat Transactional Criminality: A Cameroonian Perspective." (2005), *Juridis Periodiques* N0 61, P. 97

⁷³ Article 43, paragraph 2, of the United Nations Convention against Corruption

Countries of the sub region do not encounter any obstacles in obtaining or extending cooperation to other CEMAC States on account of the dual criminality principle. This notwithstanding as far as corruption-related offences are concerned, there is a problem with countries that do not criminalize acts covered by non-mandatory provisions of the Convention, such as bribery of foreign officials, bribery in the private sector and illicit enrichment. There are instances where if a state does not include foreign public officials and officials of public international organizations in the definition of public officials used in domestic legislation, a strict interpretation of the dual criminality principle, may lead to the conclusion that extradition for bribery⁷⁴, is not possible. Based on this, countries of the sub region are urged to consider relaxing the dual criminality requirement and granting the extradition of a person for offences that are not punishable under its domestic law. Most importantly, the full criminalization of all offences established under the sub regional legal framework is recommended in order to ensure that the absence of the dual criminality requirement can no longer constitute an obstacle to the surrender of suspected offenders.

PRACTICAL ISSUES THAT MAY OBSTRUCT EXTRADITION BETWEEN STATES IN THE CEMAC SUB REGION

Generally extradition will be refused if the requesting state does not fulfil any of the relevant requirements necessary for granting extradition. These are dual criminality, whether or not the conduct constitutes an extraditable offence, whether the requirement of evidence is satisfied or whether the extradition request package is deficient on any other ground. It will be appropriate to point out that the court will also consider if there are any peculiar circumstances in a particular case which justify refusal of the request for surrender (such as, triviality, bad faith, time lapse, etc). There are also other important grounds for refusing to comply with an extradition request. All the same these grounds on which extradition may be refused do not have the same effect. Some are mandatory while others are discretionary to the requested state with the classification varying very much depending on the instrument used. Refusal on grounds of a political offence, discrimination or double jeopardy are regarded as mandatory, while others such as the prospect of facing a death penalty, nationality or extraterritoriality, may be refused or accepted by the requested state as it deems it fit. This practice is laden with problems, ranging from the simple question of channels of communication, to the complex issue of the proper role of the political offence in modern day extradition. It is not possible to review this myriad of issues here and now. Rather it is most useful to focus on a problem which most often affects the practice of extradition amongst states of the sub region. That of the non- extradition of nationals.

A. Non-extradition of nationals

Equity demands that once the criminal law safeguards at trial and other guarantees for the fair trial of the fugitive are equivalent in both states, the extradition of all offenders should be permitted⁷⁵. There is a big dilemma whether a state should allow the extradition of their own citizens, or

⁷⁴ as set forth in article 16 of the Convention,

⁷⁵ Shearer, Ivan Anthony. 1971. *Extradition in international law*. University of Manchester at the University Press, page 107.

should it be avoided? Most states of the sub region, by constitutional law as well as by practice, prohibit the extradition of their nationals⁷⁶. In most instances those countries that do not extradite their nationals, have domestic jurisdiction to prosecute their nationals for offences committed in the territory of a foreign state. In the case of a crime committed outside Cameroon by a Cameroonian national, Cameroonian criminal law applies. This is to the effect that nationals or residents will be prosecuted locally for acts committed abroad, provided they are punishable under the legislation of the place where they were committed and are defined as crimes or other offences under Cameroonian law⁷⁷. However, the only way a citizen or resident who is guilty of committing a crime abroad, may be tried by the Cameroonian courts in application of this provision. It is for the State Counsel's Office to initiate proceedings following a complaint or official charge addressed to the government of Cameroon by the government of the country in which the crime was committed.

With Regard to the extradition of nationals, the 2004 CEMAC Accord on Extradition between CEMAC Member States, in its Article 5 prescribes that:⁷⁸

1. The Contracting Party shall have the right to refuse extradition of its nationals.
2. Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.
3. Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognized as a national of the requested party during the period between the time of the decision and the time contemplated for the surrender, the requested party may avail itself of the provision contained in subparagraph 1 of this article.

Accordingly; if the requested Party does not extradite its national, it is expected at the request of the requesting Party, to submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate⁷⁹. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charges.⁸⁰ The requesting Party shall be informed of the result of its request.

There is generally no obligation to prosecute in such cases, although the possibility of refusing to extradite citizens may

⁷⁶ Article 10 of the Cameroonian Penal Code, cf. Articles 635 to 675 of the Cameroonian Criminal Procedure Code.

⁷⁷ The obligation to extradite or prosecute (*aut dedere aut judicare*) is applicable as a principle of Gabonese law and it is also provided for under the Antananarivo Convention (art. 51), the CEMAC Extradition Agreement (art. 16) and the France-Gabon Agreement (art. 51).

⁷⁸ See also the 1961 Antananarivo Convention

⁷⁹ Article 164 of regulation N0 01/CEMAC/UMAC/CM on the prevention and suppression of Money Laundering and the Financing of Terrorism and Proliferation in Central Africa 2016

⁸⁰ Article 13, paragraph 1. of the 2004 CEMAC Accord on Extradition between CEMAC Member States

be coupled with a duty to prosecute them in the courts of the requested state. For example, CEMAC countries have always applied the principle *aut dedere aut judicare* referring to the non-extradition of nationals. Thus the main extradition agreement in the sub region which is the 1961 Antananarivo Convention on Mutual Legal Assistance lays down the principle, based on which extradition is refused on grounds of nationality, and where this is the case, the matter is referred to competent authorities in the requested state with a view to prosecution. The relevant articles of this agreement are thus intended to ensure that no criminal escapes justice and find safe haven on the basis of nationality. This notwithstanding it is now obvious that the domestic prosecution of offences committed outside a country is a process replete with problems.

This explains why the use of the principle *aut dedere aut judicare* is in theory an alternative to the extradition of nationals and has actually in practice proved effective. However there have been several practical problems in its application, including the low priority assigned to such prosecutions by overburdened requested States. The difficulty and costs of obtaining evidence from the requesting State, and the serious burdens imposed by such trials on the victims, witnesses and other persons, are some examples. These problems significantly impeded the effectiveness of this alternative to extradition⁸¹. Because of the litany, of practical problems, it is no longer possible for states to ignore the growing problems associated to the non-extradition of nationals. There is therefore a need for countries of the sub region to critically examine their extradition policies in relation to nationals. If they cannot abolish the prohibition, it will be advisable to adopt other alternatives. One of such being an extradition of a national following a treaty based agreement between states where the parties agree to extradite their nationals provided they are bound by a prisoner transfer treaty, which allows for the return of the person for service of whatever sentence imposed. This however does not mean that swift changes are expected within the sub region on the issue of non-extradition of nationals in domestic policies. This is especially as in many instances, the principles are deeply entrenched and in some countries, they are constitutionally enshrined. Thus, practitioners will continue to face situations where the extradition of nationals will not be possible. For such cases, there exist many challenges for prosecutors, who wish to see the alleged offender brought before a court, for an effective trial. Initially, the prosecutor in the requesting state will have to make a decision whether to press for prosecution in the foreign state or await an opportunity or circumstance where extradition might be possible (e.g. if the fugitive travels to another country). If prosecution is to be pursued in the foreign state, then prosecutors in both Jurisdictions will have to consider how best to ensure the transmission of evidence to the prosecuting state. And as long as the non-extradition of nationals remains a reality, it will be critical that prosecutors meet the challenges in this area of the law. For without solutions that bring the fugitives to justice in some forum, safe haven for such criminals will be the reality.

See also the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December, 1948 78 U N T S 277.

B. The Lack of an Austere Enforcement Mechanism

International law lacks rigid enforcement because of the absence of a sovereign sanction⁸². Noncompliance emanates from the lack of sanctions and this is a major weakness to the universal application of International laws. Extradition is a form of International law that aims at the delivery of a fugitive of justice by one nation state to another which requires coordination and compliance by these nations to the Extradition treaties ratified by them.⁸³ Generally, there is a consensus in International law that there is no obligation on states to extradite fugitives of justice without being signatories to these treaties. The principle of sovereignty is to the effect that every nation has jurisdiction over its people within its borders. However, the principles of reciprocity and comity are there to favour extradition even in the absence of extradition treaties.⁸⁴

The nonexistence of an international obligation and the prerogative to demand domestic criminals from other countries has caused the evolution of a web of extradition treaties. When there is no extradition agreement, sovereign states can still implore the expulsion of a fugitive of justice pursuant to the domestic laws of the State required to extradite the individual. This can also be done under the immigration or any other domestic laws which may be applicable under the jurisdiction of the State where the individual has fled.⁸⁵ There are a multiplicity of problems which arise in the implementation of extradition treaties, and these problems are endemic to the very nature of extradition law.

CONCLUSION

The obstacles resulting from the non extradition of nationals by most states of the sub region are made even worse by problems of ineffective enforcement of existing extradition laws. The treaties that constitute the legal basis for extradition are binding only on the signatory states. there is no obligation to extradite a fugitive if a country is not a signatory to such an agreement. even where they are signatories to the treaty for extradition, they cannot be forced to extradite criminals because there exist no system of sanctions imposed on countries not abiding by the law on extradition.⁸⁶ There is a lack of uniformity in the enforcement of extradition treaties and this lack of uniformity diminishes the legitimacy of the law itself. The law on extradition is completely based on the existence of a treaty and existing case law on extradition demonstrates that there is no obligation to extradite fugitives in the absence of a treaty.⁸⁷ In such instances, the fugitives tend to believe that they can flee justice by going to a country which

does not have an extradition treaty with the country in which the crime was committed. This loophole fuels evasion of justice on a massive scale, thus undermining the sole intention behind the formulation of extradition laws in the first place. Excessive reliance on extradition treaties by countries can also cause various other problems such as severing of diplomatic relations and a perennial dilemma of maintaining a network of treaties with over one hundred states.⁸⁸

One of the most serious problems with extradition treaties is that the treaty allowing extradition also sets grounds for a defense against that extradition. Thus the Political offence exception is an excellent paradigm which explains this problem of providing a defense to an offense in the treaty itself. This exception is included in most of the contemporary extradition agreements and none of these agreements objectively define political offense. As a result, a wide interpretation and discretion can be awarded to such an exception leading to most of the fugitives escaping justice. Therefore, it is essential to develop a firmer law for extradition so that criminals (whether political, corporate or international) cannot flee justice.

⁸² EDWIN W. PATTERSON, *Hans Kelsen and His Pure Theory of Law*, VOLUME 40, ISSUE 1, CALIFORNIA LAW REVIEW 4, (1952).

⁸³ M. CHERIF BASSIOUNI, *The Penal Characteristics of Conventional International Criminal Law*, 15 CASE W. RES. J. INT'L L. 27 (1983), [HTTP://SCHOLARLYCOMMONS.LAW.CASE.EDU/JIL/VOL15/ISS1/5](http://scholarlycommons.law.case.edu/jil/vol15/iss1/5)

⁸⁴ *IBID.*

⁸⁵ DAN E. STIGALL, *Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law*, 3 NOTRE DAME J. INT'L & COMP. L. 1 (2013),

⁸⁶ BASSIOUNI, *supra* NOTE 2.

⁸⁷ FACTOR V. LAUBENHEIMER, 290 U.S. 276, (1933), VALENTINE V. UNITED STATES, 299 U.S. 5, (1936).

⁸⁸ BARBARA M. YARNOLD, INTERNATIONAL FUGITIVES: A NEW ROLE FOR THE INTERNATIONAL COURT OF JUSTICE (GREENWOOD PUBLISHING GROUP, 1991), BASSIOUNI, *supra* NOTE 2.