Chapter 2

Mechanisms for International Extradition

1. Introduction

Extradition can be defined as a process whereby States provide to each other assistance in criminal matters. To achieve this international co-operation some form of arrangement, whether formal or informal, whether general or ad hoc, is necessary between the States involved. The arrangement may be based on a treaty, bilateral or multilateral, or on the application with respect to the requesting State of the requested State’s domestic extradition legislation. Regardless, some level of agreement must have been reached between the two States acknowledging that a fugitive might be surrendered given that certain prerequisites are met. Unless some

1 My gratitude is owed to the various diplomatic officers charged with providing information in the embassies and non-governmental organisations in London. Their assistance, and that of the Ministries of Justice in their sending States, was invaluable.

2 See the agreement reached between Switzerland and the U.A.E. in App. 9012/80, X v Switzerland, 24 D + R 205 at 213. In the light of an attempted coup in Equatorial Guinea in 2004 that was averted when those accused of plotting to carry out the overthrow were arrested in Zimbabwe, Equatorial Guinea and Zimbabwe entered into a bilateral extradition treaty arrangement, although it was not made retroactive, so it could not apply to those just arrested. For the difficulties where no or few extradition agreements exist, see van Zyl Smit, Re-entering the International Community: South Africa and Extradition, 6 CRIM.LF 369 (1995).
such agreement is reached, then any other form of rendition, deportation or abduction, for instance, will be lacking appropriate guarantees.

Where there is a treaty, then one issue that arises is priority between different types of treaty. ‘Ruritania’ may well have an extradition agreement with ‘Arcadia’, but it may simultaneously have entered into a multilateral human rights agreement. The issue then arises as to whether Ruritania’s human rights commitments should apply to its extradition dealings with Arcadia. These matters are considered below in Chapter 4, but there is an overlap with the matters for discussion here. Under Article 30 of the Vienna Convention on the Law of Treaties, where States have ratified “successive treaties relating to the same subject-matter”, then there is an elaborate set of rules dealing with priority. However, while extradition and human rights overlap, it is stretching a point to suggest that they are the same subject-matter. Thus, priority based on which is the most recent treaty under Article 30.3 is too simplistic. Given that the United Nations Charter provides that all members shall respect human rights and that in *Barcelona Traction* the ICJ held that obligations *erga omnes* derive in part from “principles and rules concerning the basic rights of the human person”, then it is suggested that the requested State should prima facie give priority to the human rights of the fugitive. However, this is not to suggest that all types of human rights are to take precedence over the interests of international criminal procedure. The right to life and freedom from torture and inhuman and degrading treatment, for instance, are in a completely different category to the right to family life, as is discussed in Chapter 4. Where the right to a fair trial as interpreted by the requested State might not be wholly satisfied by the procedures in the requesting State, then it ought to be a matter of degree as to whether there are sufficient grounds for not fulfilling the requested State’s obligations under the extradition treaty.

Inherent in any international extradition arrangement is the potential for reciprocity. It is explicit in a bilateral treaty where each party has agreed to surrender up fugitives to the other on the understanding that its requests will also be honoured. In ad hoc arrangements, designed to meet the situation where the fugitive is found in a State with which the requesting State does not possess general extradition relations, reciprocity is not a necessary element of the special agreement, but States usually extract an understanding that in similar circumstances their requests will be considered. The question is whether reciprocity is an essential requirement of extradition relations and, wherever it is so, to what degree it is to be applied.

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4 See Articles 1 and 55 in the light of Article 103: In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.
6 See *CDS v The Netherlands* 96 INT’L L REP.383 (Dutch S.Ct, 1990).