CHAPTER 19

Global Trends towards the Simplification of Extradition Procedures

From the Substantive to the Procedural without a Universal Framework of Reference

Neil Boister

1 Introduction

I recall having a conversation with Professor John Dugard in the early 1990s in which I mentioned that I was doing some work on extradition for my PhD thesis. It was a subject that interested him; I discovered that he was an active member of the International Law Association's sub-committee on extradition and human rights, which led to his seminal article with Christine Van Den Wyngaert on reconciling human rights with extradition published in the *American Journal of International Law*.[1] At the time I confess I shared neither his knowledge of nor enthusiasm for the law of extradition; but I have since come to realise that extradition occupies a fragile position in relations between States, one entailing a fine balance between effective law enforcement and respect for fundamental values. As Dugard and van den Wyngaert highlighted in their discussion, the former easily trumps the latter.

Extradition describes the process of remitting or returning an individual from a State or country where they seek refuge to a State where they are wanted to either serve out an existing criminal sentence or to face criminal trial.[2] It is the most important component of what is generically known as "international cooperation against crime," which also entails other forms of legal assistance to States based on reciprocity. The goal of extradition is to suppress crime, and it is a shared goal among cooperating States. As La Forrest J put it in the Supreme Court of Canada in *United States v. Cotroni* the goal of extradition is to enable "peace and public order in all organized societies."[3] We cannot, however, ignore

1 C.J.R. Dugard and C. van den Wyngaert, "Reconciling Extradition with Human Rights," (1998) 92 *American Journal of International Law* 187.

2 See C.R. Blakesly, "The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History," (1981) 4 *Boston College International and Comparative Law Quarterly* 39, at 40.

3 193 SCC 215–216.

 | DOI 10.1163/9789004340077_020

the fact that it is principally one State's interests that are directly involved. If we think of these individuals as, as the French put it "hors-la-loi" (outside the law), they are outside the law of the country that wishes to bring them into it. As Lord Steyn put it in *Re Ismail*, extradition is "intended to serve the purpose of bringing to justice those accused of serious crime," emphasizing that "[t]here is a transnational interest in the achievement of this aim."[4]

The importance currently given to extradition is based on the perception that globalisation has increased the opportunity for cross-border criminal activity and flight. In 2000 Australian Justice Michael Kirby commented that "[i]n a world of increased mobility, interactive technology and new forms of criminality, extradition represents an essential response to the characteristics of contemporary crime."[5] The global carnival of crime has led to transnational pressure to simplify domestic extradition law. Introducing changes to Canada's extradition legislation in 1998, the Parliamentary Secretary to the Minister of Justice cited requests in the G-7 and Commonwealth to "modernize" extradition laws to respond to transnational crime.[6] The essential thesis behind these requests is that the expansion of transnational (cross border) crime necessitates a contraction, or more accurately simplification, of the conditions for extradition by States that wish to behave as good international citizens in order to maintain the international rule of law.[7] This simplification has not occurred evenly in every major jurisdiction. In some there has been little reform of the law. Bassiouni remarks, for example, that US extradition law remains much as it was in 1825, although there has been a "marked tilt" in favour of the Government in the interpretation of that law in US courts, which follow an "unarticulated presumption that if a person is sought by another government, extradition should be favoured."[8] But in other States, as we shall see below, there has been marked change in extradition law. Bassiouni speculates that if the period 1833 to 1948 was a period of collective concern for suppressing common criminality in the development of extradition, and post-1948 a period of increased concern for human rights and due process,[9] the current process of

4 [1999] 1 AC 320 (UKHL), pp. 326–327.

5 *Foster v Minister for Customs and Justice* (2000) 200 CLR 442, p. 474.

6 (Canadian) House of Commons Debates, 8 October 1998, 1st Session, 36th Parliament, Hansard v. 135, pp. 9003–9004 cited in Elaine. F. Krivel Q.C., Thomas Beveridge and John W. Hayward, *A Practical Guide to Canadian Extradition*, (Toronto: Carswell, 2002), p. 264.

7 A point clearly articulated in the UK Government's 1986 White Paper, *Criminal Justice: Plans for Legislation*, Cmnd 9658, which led to reform of its extradition law.

8 M. Cherif Bassiouni, *International Extradition: United States Law and Practice*, (New York: OUP, 5th ed., 2007), pp. xvi, xviii.

9 *Id.*, p. 6.