

Extradition Under International Law: Tool for Apprehension of Fugitives

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Abstract

Extradition is intended to bring an end of the era when criminals would have a sunny haven anywhere in the world. This paper examined its rationale, nature, principles and practices and conceptual framework. This paper also examined selected statistics, dynamics and politics of extradition and ends with concluding remarks. The aim of this paper is to emphasis on the importance of extradition as a potent weapon to reduced impunity by ensuring that there is no save haven for dictators, tyrants, cruel rulers and common criminals. This paper is a desk-based research which relies on both primary and secondary sources of data which were subjected to *contentual* and *contextual* analysis. It is the finding of the author herein that extradition can only be effective of states demonstrate genuine will-power and down-play politics in extradition matters. Crime will be reduced if criminals know that they will be fished out.

Keywords: Extradition, fugitive, double criminality, specialty, federation, conceptual framework, repatriation, statistics.

1.0 Introduction

Extradition is the surrender of criminal by one sovereign authority to another.¹ It is the process of returning somebody accused of a crime by a different legal authority for a trial or punishment.² There is a little acceptance of the notion of ‘sanctuary’ in International Law. Hence, if an alleged offender is in a territory other than the state seeking to exercise jurisdiction, the lawful method of securing his return to stand trial is to request for his extradition.³ Extradition is the surrender of a fugitive from justice. Extradition is also the handing over of an alleged offender (or convicted criminal who has escaped before completing his term) by one state to another.⁴ With the increasing rapidity and facility of international transportation and communication, extradition began to assume prominence in the 19th century, although actually, extradition arrangements date back to the 18th century.⁵ Because of the negative or neutral attitude⁶ of customary international law on the subject, extradition was first dealt with by bilateral treaties. These treaties in turn need to comply with the laws and statutes of the States parties so as not to affect the rights of private citizens.

The general principle became established that without some formal authority either by treaty or statute, fugitive criminals would not be surrendered nor would their surrender by requested. Hence, extradition was called by some writers a matter of ‘imperfect obligation’. In the absence of treaty or statute, the grant of extradition depends purely on reciprocity or courtesy.⁷ On the 13th December, 1957 the European Convention on Extradition, a multilateral extradition was signed by Council of Europe while the Extradition Treaty of 2004 between USA and UK is an example of bilateral extradition treaty. This paper discussed the rationale for extradition, the nature, law and practice as to extradition, extradition between states in a federation, extradition to ad-hoc bodies and international institutions, and other related concepts. Other issues discussed are, the statistics and politics of extradition, and concludes with useful suggestions and recommendations.

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¹ “Extradition” Microsoft © 2009 [DVD]. Redmond, W.A.: Microsoft Corporation. 2008.

² Ibid

³ Ibid.

⁴ Ibid. See Apriadi Gunawan, “ The House of Representatives in Jakarta Indonesia pushes for Extradition Treaty with Singapore” The Jarkarta Post Medan, Thursday October, 24, 2013. According to the House Speaker, Marzuki Alli, an extradition treaty is very important for Indonesia because there were many corruption suspects who fled to Singapore and stashed their ill-gotten wealth there.

⁵ Shearer I. (1994) Starks International Law. 11th ed Pp. 317-328

⁶ On the one hand, customary international law imposed no duty upon states to surrender alleged or convicted offenders to another state, while in the other hand, it did not forbid the state of refuge to deliver over the alleged delinquent to the state requesting his surrender .

⁷ Shearer, op, cit. p. 318.

2.0. Rationale for Extradition

The following rational considerations have conditioned the law and practice as to extradition:

2.03. The general desire of all states to ensure that serious crimes do not go unpunished. Frequently, a state in whose territory criminals have taken refuge cannot prosecute or punish them purely because of some technical rule of criminal law or for lack of jurisdiction. Therefore, to close the net round such fugitive offenders, international law applies the maxim *aut punire aut dedere* i.e. offenders must be punished by the state of refuge or surrendered to the state which can and will punish them.

2.04. The state on whose territory¹ the crime has been committed is best able to try the offender because the evidence is more freely available there, and that state has the greatest interest in the punishment of the offender, and the greatest facilities for ascertaining the truth. It follows that it is only right and proper that such criminals who have taken refuge abroad, be surrendered to the territorial State.

Note that application for extradition is usually made through diplomatic channel

3.0. Law and Practice as to Extradition

The practice of extradition enables one state to hand over to another, suspects or convicted criminals who have fled abroad. The practice of extradition is treaty-based (both bilateral and/or multilateral) and does not exist as an obligation upon states in customary international law². There is no duty to extradite in the absence of a treaty³. Between nations, the right of one power to demand of another the extradition of a fugitive accused of crime and the duty of the country in which the fugitive has found asylum to surrender this person exist only when created by treaty. Because the political systems and penal codes of various nations differ considerably, most nations have given definite expression in treaties to their mutual obligations regarding extradition⁴.

Before an application for extradition is made through diplomatic channel, the following conditions are required to be satisfied:

3.2 Fugitive must be an Extraditable Person.

A country's own nationals may be protected from extradition⁵, as may be persons who have committed offences of a "political" or "religious"⁶ or "military" character. There is a uniformity of states practice to the effect that the requesting state may obtain the surrender of its own nationals or nationals of a third state. But many states usually refuse extradition of its own nationals who have taken refuge in their territory⁷, although as between states who observe absolute reciprocity of treatment, in this regard, requests for surrender are sometimes acceded to. This does not necessarily mean that a fugitive from justice escapes prosecution by being in the country of his/ her nationality, for that country may assert jurisdiction on the basis of nationality over all crimes committed by their citizens abroad⁸. Problem however arises where more than one state claim jurisdiction over a person using different justifications. It is an almost universal rule, however, that a state will not surrender its own citizens to a foreign power.

3.4. Fugitive must have committed an Extraditable Crime

It is usually the practice to itemize the extraditable crimes in treaty. The Conventions between the United States and Britain in 1842, 1889, and 1900 enumerate what offences the two nations consider extraditable. Generally, states extradite only for serious crimes. The general rule is that extraditable crimes must be those commonly recognized by civilized nations as *malum in se* (acts criminal by their very nature) and not merely *malum prohibitum* (acts made crimes by statute), and must be included in the extradition treaty⁹.

As a general rule, the following offences are not subject to extradition proceedings (non-extraditable crimes).

3.2.4 Political Crimes.

In modern times the tendency has been to deal leniently with political offenders, other than those guilty of

¹ "Territory" can cover for this purpose ships and aircraft registered with the requesting state. See Article 16 of Tokyo Convention on offences committed on Board Aircraft 1963.

² Shaw, M.A., (1997) International Law, 4th ed. PP 482-483

³ Rebecca, M.M.W., (2006), International Law 5th ed PP. 128 - 129

⁴ Microsoft ® Encarta ® 2009 [DVD]

⁵ See e.g. Article 3 (1) of the French Extradition Law 1927, and Article 16 of the Basic Law of the Federal Republic of Germany.

⁶ See for example the European Convention on the Suppression of Terrorism 1997, Article 1 thereof listed those offences which may not be regarded as either political or inspired by political motives.

⁷ After more than ten years of diplomatic wrangling, two Libyan suspected in the December 1988. Lockerbie bombing of Pan American Flight 103 were surrendered by Libyan government to the United Nations on April 15 1999. The suspects surrender came under a complicated agreement that will see them tried in the Netherlands under Scottish Law. See Microsoft ® Encarta R (Supra). See also the PUNCH Newspaper August 17, 2009, P.77.

⁸ Shearer, op. cit. P. 319. See also Babatunde I.O., (2010) "Extradition in International Law: The Ibori's Conundrum" *UNAD Law Journal*, Vol. 4, Pp. 266-285.

⁹ Microsoft ® Encarta ® 2009 [DVD]

treason with the exception of such totalitarian governments¹ where counter-revolutionary activities, terrorism and espionage were political crimes punishable with death. In the UK and US, persons charged with a political offence are not extraditable. Persons who leave a country because of fear of punishment for the commission of political offences are generally received as refugees and protected by the country receiving them².

Other offences closely related to political offence are espionage, treason, sedition, bribery and corruption of officials etc and their extraditability depends on the circumstances of each individual case.

3.2.5 Military Offences

Military Offences are also not extraditable offences e.g. desertion³. Other military offences include, insubordination, neglect of duty, unbecoming conduct.

3.2.6 Religious offences

Religious for example sin, gossip, homosexuality, heresy, hypocrisy, misogyny, adultery, alcoholism etc⁴. International Law concedes that the grant of and procedure as to extradition are most properly left to municipal law, and does not for instance preclude states from legislating so as to refuse the surrender by them of fugitives if it appears that the request for extradition had been made in order to prosecute the fugitive on account of race, religion, or political opinions or inclinations, or if the fugitive may be prejudiced thereby upon eventual trial by the courts of the requesting state⁵.

A number of decisions by municipal courts show that extradition will not be denied for actual offences including crimes of violence, terrorist activities. The recent practice shows a general disposition of states to treat alleged “war crimes” as extraditable crimes. However, there are a number of municipal courts treating war crimes as political offences for the purpose of extradition⁶, so that extradition was refused. In the case of *Re-Wilson, ex parte the Witness T*⁷, the High Court of Australia declined to treat war crimes as being offences of political character. Hence, extradition was allowed.

3.5. Rule of Double Criminality

Here, the extradition crime must be a crime punishable according to the law both of the state of asylum and of the requesting state. This rule was tested in *Factor v Laubensheimer*⁸ where British authorities instituted extradition proceedings against Jacob Factor on a charge of receiving in London money which he knew was fraudulently obtained. At the time extradition was applied for, Factor was residing in the State of Illinois in USA and the offence charged was not an offence under Illinois Law. The United States Supreme Court held that this did not prevent extradition, since according to the Criminal Law generally (i.e. Federal Law) of the US, the offence was punishable. In a latter case *R v Governor of Pentonville Prison, ex parte Budlong*⁹ the USA court held held that ‘substantial similarity’ of the legal system of the state of refuge and requesting state is sufficient to bring into effect the double criminality rule so as to justify a grant of extradition.

3.5 Principle of Specialty

A further condition of extradition is that a person surrendered must be tried and punished only for the offence for which extradition had been sought and granted. This is called the principle of specialty.

It is generally regarded as an abuse of the principle of extradition for a state to secure the surrender of a fugitive criminal for an extraditable and to punish this person for an offence not included in the extradition treaty, without the consent of the state of refuge. It is noteworthy that the practice of extradition is founded on trust and reciprocity. Hence, the requesting state is under a duty not without the consent of the state of refuge to try or punish the offender for any other offence than that for which he was extradited¹⁰.

While this principle is frequently embodied in treaties of extradition and approved by the US Supreme Court, its application is uncertain in Britain, where domestic legislation (Extradition Act) was held¹¹ to prevail over a Treaty of Extradition with France embodying the specialty principle and it was consequently ruled that the accused therein could be tried for an offence other than that for which he was extradited but which was referable

¹ As those of Germany from 1933-1945, Italy from 1922 – 1945 and other communist – controlled nations. By 1991 most Communists governments had been over-thrown resulting in greater freedom for political dissidents.

² Microsoft ® Encarta ®

³ Shearer, op cit P. 319

⁴ Microsoft ® Encarta ® 2009 BVD

⁵ In *R V Governor of Brixton Prison, ex parte Kolezynski (1955) 1 OB 540* court favour an extended meaning of political offence

⁶ *Karadzole V Arlukovi 247 247 F 26 (1957)*

⁷ (1933) 290 US 276

⁸ (1933) 290 US 276

⁹ (1980) 1 AH ER 701. The Budlong case has been overruled in part by House of Lord in *Re-Nelson (1984) AC 606. US Govt. V McCaffery (1984) 2 AHER 570*

¹⁰ See e.g. *Oppenheim's International Law P. 961*

¹¹ *RV Corrigan (1931) 1 KB 527*

to the same facts as alleged in the extradition proceedings¹.

3.6. Preservation of Human rights.

Human rights as enshrined in national legislations and in international instruments may constitute further restrictions on extradition.

This was exemplified in the *Soering Case*² where the United Kingdom intended to extradite a person to the United States for a crime carrying a possible penalty of death. The European Court of Human Rights held that such circumstances, where a fugitive might spend years on “Death Row” awaiting the result of appeals, would constitute inhuman and degrading treatment and was thus inadmissible.

4.0. Extradition between Two States in a Federation

Extradition can be inter-state in a federation in which case, a fugitive can be surrendered by the state of refuge to the requesting state in a federation. This is common in a federation like the USA. The right of extradition between the states of the U.S. is laid down in the constitution and in a federal law of February 12, 1793³. The right of interstate extradition can be exercised only by the executive authorities of one state at the request of the executive authorities of another⁴. To extradite, the Governor of the State from which the fugitive has fled must make a request to the Governor of the asylum state. This requisition must be accompanied by an indictment or an affidavit made before a magistrate, charging the person sought with a crime⁵. The power and duty of determining whether the requisition shows sufficient cause to warrant extradition of the person demanded rests on the Governor of the asylum state⁶. The Governor may grant a hearing, although as a matter of law the accused is not entitled to such hearing⁷. Because the purpose of extradition is to prevent the successful escape from a state of any person who has been accused of a crime, the only extraditable offences are those that are punishable by law in the state which they are committed⁸.

In the case of *Manuel Ortiz v Reed*⁹ the State of New Mexico refused to surrender a fugitive to the State of Ohio. The Supreme Court of New Mexico held that any court determining an extradition case must consider these four issues among others:

- v. Whether the extradition documents on their face are in order.
- vi. Whether the petitioner has been charged with a crime in the demanding/requesting state.
- vii. Whether the petitioner is the person named in the request for the extradition and
- viii. Whether the petitioner is a fugitive

The New Mexico Supreme court determined that the person subject to the extradition – Manuel Ortiz – was not a fugitive, and therefore refused to honour the extradition order from the State of Ohio.

Another American case which borders on interstate extradition in a federal state is the celebrated *Scottsboro case*¹⁰. This is the legal case that borders on the arrest on March 9, 1931 of nine young blacks, in Scottsboro, Alabama, for the alleged rape of two white girls¹¹. All of them were tried by Alabama court, convicted and eight of them were sentenced to death and the ninth, a 13 year old sentenced to life imprisonment¹².

After six years of appeals and retrials, during which U.S. Supreme Court twice declared mistrials, five of the original indictments were dropped. The remaining four received long prison terms. Heywood Patterson, regarded by the prosecution as the leader of the group, drew 75 years jail term. By 1946, all were paroled except Patterson, who two years later escaped to Michigan where the state government refused to extradite him to Alabama¹³.

5.0. Extradition to Ad-hoc Bodies and International Institutions.

Extradition could also be made to non-state entities. In March 2001, the Serbian government arrested Slobodan Milosevic on charges of embezzlement and abuse of power¹⁴. In June 2001, the Serbian government

¹ *RV Awbery – Fletcher ex parte Ross-Munro (1968) 1 OB 620, see also RV Davidson (1976 64 Cr App.Rep.209 where the court did not pay regard to treaty in question as compelling the application of the specialty principle.*

² (1989) EHRR 430

³ *Microsoft ® Encarta ® [DVD]*

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

⁹ *524 US 151 Supreme Court (1998) see also Collins v Loisel 25 US 309 42 S.ct 469, 66L, ED. 956 (1922)*

¹⁰ *Scottsboro case (1931 – 1937). <http://www.law.umke.edu/fa>: <http://www.pbs.org/wgbh/a>*

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*

¹⁴ Rusino, Dennison, “Slobodan Milosevic”. *Microsoft ® Encarta ®*

responding to international pressure extradited Milosevic to International Criminal Tribunal for Yugoslavia (ICTY) in The Hague, Netherlands, to face trial for war crimes¹. Western leaders praised the transfer and pledged more than \$ 1 billion in economic assistance to the Federal Republic of Yugoslavia. Milosevic's trial began in 2002 but was delayed a number of times because of his poor health. Milosevic died in his prison cell in March 2006 before the trial could be completed².

Also, in 2002 the United Nations and Sierra-Leone government jointly established a war crime tribunal the called Special Court for Sierra-Leone [SCSL], to try individuals who had committed atrocities during Sierra-Leone's Civil war, which lasted from 1991 - 2000³. In 2003 the Special Court issued its first indictments. The court charged seven people including rebel leader Foday Sankoh and Internal Affairs Minister Sam Hinga Norman with murder, rape, extermination, sexual slavery, conscription of children into armed force, and other crimes. Sankoh died in July 2003 while in UN custody. The same year Taylor lost power in Liberia and went into exile in Nigeria. In 2006 Nigeria extradited Taylor to The Hague to face charges before the Special Court. Taylor's trial began in June 2007 and he was convicted and sentenced in 2012 to 50 year jail term⁴.

6.0. Conceptual Framework

The term 'extradition' in the Thesaurus has been used loosely and synonymously with repatriation, deportation, expulsion, reconduction, rendition, refusal of asylum, abduction or kidnapping etc. Technically speaking extradition is not synonymous with the terminologies enumerated above. They shall now be examined one by one.

6.2. Repatriation

Repatriation means to send somebody back to his or her country of birth, the country to which he or she is a citizen, or the country in which he or she lives or resides. Repatriation usually applies to Prisoners of War. (POW). In the course of truce negotiation during Korean War, a new problem arose regarding repatriation of prisoners⁵.

Because of the apparent unwillingness of Communist soldiers (made prisoners of war) to return to their homelands, the United

Nation Command posited the principle of "Voluntary Repatriation", stating that prisoners of war should not be returned against their will⁶. On October 1946, it was announced that nearly three million Japanese war prisoners and civilians and 60,000 Koreans had been repatriated from China, Manchuria and Taiwan in the previous twelve months. Arrangement for Russian repatriation of Japanese war prisoners was announced on September 26, 1946⁷.

Edward Wilmot Blyden (1831) was an early proponent of Pan-Africanism and a leading black intellectual and scholar of African culture. Born in the Virgin Island, Blyden moved to the West African nation Liberia in 1851 and promoted the repatriation of free American blacks to Liberia⁸.

Repatriation also applies to freed slaves. The British established a colony at Freetown in 1787 for slaves repatriated from Britain and United States, and also for slaves rescued from shipwrecks⁹.

In essence, unlike extradition, repatriation is not aimed at making repatriated person(s) to face trial or criminal justice.

6.6 Expulsion Deportation and Re-Conduction of Alien

States are generally recognized as possessing the power to expel, deport, and re-conduct aliens. Like the power to refuse admission, this is regarded as an incident of a state's territorial sovereignty¹⁰. As distinct from expulsion, re-conduction amounts to a police measure whereby the alien is returned to the frontier under escort. The power to expel and the manner of expulsion are, however, two distinct matters. Expulsion (or re-conduction) must be effected in a reasonable manner and without unnecessary injury to the alien affected. Detention prior to expulsion should be avoided, unless the alien concerned refuses to leave the state or is likely to evade the authorities. Also, aliens may not be deported to a country or territory where their person or freedom would be threatened on account of their race, religion, nationality or political views. Nor should they be exposed to unnecessary indignity.

¹ Ibid 2009 (DVD)

² Ibid

³ <http://www.sc-sl.org/>

⁴ Ibid

⁵ <http://ieweb2-10c.gov/pow/powhome.html>: <http://www.dtic.mil/dpmol/>: <http://www.pbs.org/wgbh/amex/bom>

⁶ Ibid

⁷ Ibid

⁸ ENCART Encyclopedia, Library of Congress/Corbis

⁹ <http://www.oneworld.net/themes/country/country>

¹⁰ Shearer op. cit. p. 316

Article 13 of the International Covenant on the Civil and Political Rights 1966¹ provides that alien lawfully in the territory of a state party to the Covenant may be expelled only pursuant to a decision reached by law, and except where compelling reasons of national security otherwise required, are to be allowed to appeal their expulsion and submit reasons why their expulsion should be reviewed by the competent authority.

Mass expulsion/deportation of aliens would almost inevitably be unlawful as breaching norms of human rights².

Uganda's expulsion of its Indian population in 1972 was roundly condemnable, since many of those expelled possessed Ugandan citizenship and have no right to reside in any other country³.

As was pointed out by Barwick C.J. in a decision of the High Court of Australia⁴, there are obvious objections to the use of immigration or expulsive powers as substitute for extradition⁵. However, an Australia Court has in the case of *Schleske V Minister for Immigration*⁶ allowed deportation to the state of the person's nationality, after failed extradition proceedings instigated by that state, but only on condition that no collaboration occurred between the two national authorities. It may be questioned how effective such a condition might prove to be in reality.

6.7 Rendition.

This is a more generic term. It covers instances where an offender may be returned to a state to be tried there, under an ad-hoc special arrangement, or on the basis of reciprocity⁷ in the absence of an extradition treaty, or even if there be such a treaty between the states concerned, irrespective of whether or not the alleged offence is an extraditable crime.

6.8 Asylum.

Asylum is shelter, a protection or refuge from danger granted to those fleeing their country for political reasons⁸. The liberty of a state to accord asylum to a person overlaps to a certain extent with its liberty to refuse extradition or rendition of that person at the request of some other state, an overlapping best seen in the grant, commonly, of asylum to political offenders, who correspondingly are not as a rule extraditable. The asylum stops, as it were, where extradition or rendition begins, and this interdependence makes it convenient to consider the two subjects together in this paper. Asylum may be territorial (or internal) i.e. granted by a state on its territory, or it may be extra-territorial, i.e. granted for and in respect of legations, embassies, consular premises, international headquarters, premises of international institutions, warships and merchant vessels⁹.

Territorial asylum may be sub-divided into political asylum, refugee asylum and general asylum. Colonel Odumegun Ojukwu was granted asylum in Ivory Coast (modern day Cote D'Ivoire) after the capitulation of Biafran Forces during Nigerian Civil War¹⁰. It is estimated that there are some 26 million internally displaced persons in the world today¹¹. There is a duty to grant asylum to persons who are escaping from persecution rather than from legitimate prosecution¹².

In 2009, an African albino – Moszy sought asylum in Spain. Moszy claimed that he might be killed in a witchcraft ritual as some African nations have reported a growing trade in albino body parts, which some witch doctors believe can bring wealth and good fortune. The Spanish Commission for Refugees Aid described Moszy's fears as reasonable^{63(a)}.

6.9 Abduction.

This is in criminal law an offence involving the taking or conveying away of a person against his or her will, either by force, fraud or intimidation. Formerly in common law, the offence was confined to the taking of persons from their own country to another country, but such a restriction does not exist in the Common Law today¹³. Penalty for kidnapping is generally severe in the U.S. where the Lindbergh Act 1932 makes it a federal law punishable by life imprisonment. Nations also use the instrumentality of kidnap or abduction in violation of

¹ Article 13, International Covenant on Civil and Political Rights 1966

² Including Article 13 of International Covenant on Civil and Political Rights 1966.

³ See *R V Secretary of State for the Home Office ex-parte Thakrant* (1974) *QB* 684, *CA*: and the *East African Asian Cases* (1984) 3 *EHRR* 76. After nearly 20 years the expelled have been allowed to return to Uganda

⁴ *Barton V The Commonwealth of Australia* (1974) 48 *ALJR* 161 at 162

⁵ *O. Hoggins. "Disguised Extradition" (1964) 27 MLR 521, 539. See also RV Horseferry Road Magistrate ex-parte Barnett* (1994) *AC* 42 (House of Lords).

⁶ (1988) 84 *ALR* 719 (full federal court). See also *R v Governor of Briston Ex-parte Soblem* (1963) where the court held that deportation was allowable under alien law, even though alleged offence is non-extraditable, and en if there is a request for rendition.

⁷ *Barton V The Common Wealth of Australia (Supra)*

⁸ Oxford Advanced Learners Dictionary, 6th impression

⁹ Babalola Abegunde op.cit. p. 114

¹⁰ Ibid p. 114

¹¹ Ibid

¹² Article 43 of Universal Declaration of Human Rights 1946; UN Declaration on Territorial Asylum of 1967.

^{63a} The NATION, Friday April 10, 2009, P. 56

¹³ <http://dasfan.lib.vic.edu/ERC/travel/securitykidnapping.html>. See also ENCARTA. <http://www.ei.chi.i/us/abduction.html/>

extradition treaty or rendition. Under international law, the illegality of the seizure (i.e. illegal arrest/apprehension) and abduction of an offender does not affect the legality of his subsequent trial¹.

Long after World War II, Adolf Eichmann a Nazi official and a member of the German SS was captured in 1960 as a war criminal in Argentina by Israeli agents². Eichmann was abducted to Israel for trial and was convicted of crimes against humanity by an Israeli. Court and sentenced to death, Eichmann was executed by hanging in Israel two year later in 1962³.

Also, during the administration of President George Bush United States troop invaded Panama City, Panama⁴. In December 1989, Bush sent 24,000 troops to Panama to assist military forces in a coup against Panamanian President Manuel Antonio Noriega⁵. The invasion of Panama in the last week of December 1989 lasted less than a week, leaving 23 U.S soldiers and between 500 to 600 Panamanian soldiers and civilians dead⁶. In January 1990 Noriega was captured (forcefully abducted) and flown to the U.S. where he was convicted in Miami, Florida, on drugs trafficking, money laundering and racketeering charges in April 1992. Noriega was sentenced to 40 years imprisonment⁷. It is pertinent to mention that at the time of his abduction, Noriega was a serving president of Panama.

Also, the Nigerian case of Umaru Diko is instructive here, following the sacking of the government of Alhaji Shehu Shagari in 1983 by a military coup, hundreds of politicians and public servants were arrested and detained including the former president and vice-president and former ministers, governors and legislative leaders⁸. Several leading figures of Shagari's party and government, including Umaru Dikko former minister of Aviation and Transport and Presidential Campaign Chairman fled the country into exile in Britain⁹. In July 1984, Mr. Umaru Dikko was kidnapped in London, drugged and unconscious in a crate to be placed in a Lagos – bound plane as diplomatic baggage at Stansted Airport¹⁰. This singular incident plunged Nigeria's relation with Britain into crisis^{74(a)}. The immediate arrest of three Israelis and a Nigerian by British authorities led to press speculation about a plot between intelligence¹¹ and certain elements of the Nigerian government. Nigerian government denied allegation of involvement in the kidnapping plot. In February 1985, the Dikko's abductors (three Israelis and a Nigerian) were convicted in Britain and each of them got ten years jail term. By 1985, prospects for normalization of relations improved when Britain denied Dikko's request for political asylum. Nigeria requested his extradition¹².

In some parts of the world today, kidnapping has now become a terrorist activity. In the October of 1970 crisis, the terrorist group FLQ kidnapped a Quebec politician-Pierra Laporte and a British diplomat James Cross, and demanded the release of FLQ members who were in jail. Laporte was later found dead in a car in Montreal while Cross was released on December 3, 1970¹³. In Nigeria, kidnapping is a booming business, especially in the Niger-Delta and the whole nation at large.

7.0 Selected Statistics of Extradition and the Dynamics Politics Thereof

Under this heading, a couple of extradition requests are examined. When *Edmond Charles Edward Genet*, a French diplomatic representative to United States attempted to involve the United States in the French Revolution, President George Washington requested that The French should recall him¹⁴. In 1774, France sent a replacement and demanded Genet's extradition. Washington, fearing that French would execute Genet allowed the Frenchman to remain in the United States and to become a U.S. citizen. Genet was later appointed Minister to the United States during George Washington's presidency¹⁵.

Slobodan Milosevic was president of the Republic of Serbia from 1989 – 1997. Milosevic pursued policies based on Serbian nationalism. Many observers blamed Milosevic for the break-up of the former

¹ Abegunde, B. op.cit. p.III. <http://www.pbs.org/eichmann/>:

² <http://wiessenthal.org/pages/1020/0203S.html>

³ Ibid

⁴ St. Louis Pos-Dispatch December 20, 1989; Encarta Encyclopedia Don-Goode Photo Researchers, inc

⁵ <http://US.imdb.com/Title/01>

⁶ Ibid

⁷ Ibid

⁸ Collier's yearbook (for events of 1997 and earlier)

⁹ www.wikipedia.org

^{74a.} Akin Oyebo (2003) International Law and Politics: An African Perspective p. 287

¹⁰ Abegunde B. op.cit. p. 235

¹¹ www.wikipeida.com

¹² Ibid

¹³ Toronto Telegram of October 19, 1970. www.google.com see also Watson Bradley C.S. "Front de Liberation du Quebec". Microsoft ® Encarta ® [2009]

¹⁴ "Edmond Genet" Microsoft ® Encarta ® 2009

¹⁵ Ibid

Yugoslavia in the early 1990s¹. Milosevic was elected president of the Federal Republic of Yugoslavia (FRY) in July 1997. Milosevic maintained his fiery nationalism, launching brutal attacks on ethnic Albanians in the Serbian province of Kosovo in 1998-1999. These attacks resulted in NATO military action against FRY in 1999. Milosevic was arrested in March 2001 by the Serbian government and surrendered/extradited to ICTY in Hague. He died of ill-health while standing trial in 2006².

The former Chilean dictator *Augusto Ugarte Pinochet* was arrested in London in 1998 by British authority. At the time of the arrest, Pinochet was a serving president in Chile³. The arrest of Pinochet was premised on the warrant issued by a Spanish court alleging Pinochet of genocide, terrorism and torture against Spanish citizens in Chile. Spain requested his extradition.

Belgian court also indicted Pinochet of International crimes of torture, murder etc and requested for his extradition. British court ruled on October 8 1999 that Pinochet may be extradited to Spain. While standing various trials for international crimes, Pinochet died in 2006⁴.

Alberto Fujimori was president of Peru, while Fujimori was abroad for a trade summit of Pacific Rim nations, opposition parties took control of Congress and elected a centrist legislator, *Valentin Paniagua*, as the leader of Congress⁵. Fujimori announced from Japan that he would resign as president, and Paniagua was chosen to lead an interim government. Alejandro was elected president in June 2001. In September 2007 Chilean Supreme Court granted Peru's extradition request, and Fujimori was sent to Peru, where he was placed under arrest. He was tried and convicted in December 2007 on charges of ordering a police search without judicial approval. He was sentenced to six years in prison⁶. The same year, Fujimori went on a trial in a separate, more serious case in which he was accused of murder⁷, forced disappearance and other human rights violations⁸.

General Marcos Perez Jimenez former president of Venezuela fled to the United States in 1958 after being deposed by a military coup. In 1959⁹, the Venezuela government initiated extradition proceedings for his return, to stand trial for embezzlement of more than \$ 13 million of public funds, and on August 16, 1963, following an exhaustive legal review, Perez Jimenez was flown back to Venezuela upon order of the US Secretary of State¹⁰.

Manuel Antonio Moreno Noriega who was forcefully abducted to the United States and jailed was due to be released from a U.S. federal prison in September 2007, but in July of that year 2007 a Federal District Court judged approve his extradition to France upon the completion of his sentence in the United States¹¹. In 1999, Noriega was convicted in absentia by a French court on a charge of money laundering. France sought his extradition so that he could serve a possible ten year sentence in France¹².

Noriega was also convicted in absentia by Panamanian court for the murder of Spadafora and also that of an army officer. He was sentenced to 20 years in prison for each of those crimes. Panama also sought Noriega's extradition but that request was rejected by a U.S. court¹³.

On January 24, 1952, Nepal forces were called out to quell a serious but short-lived revolt staged by the followers of *Dr. K.I. Singh*, the insurgent leader of West Nepal, who had led similar uprisings the preceding year¹⁴. Dr. Singh escaped from prison in Katmandu. The insurgent had complained of marginalization in the cabinet appointment. Dr. Singh escaped to the Tibetan border with fifty armed followers and a large sum of cash seized from the Nepal treasury¹⁵. Dr. Singh was warmly welcomed by the Chinese communist government in Tibet and given sanctuary in that country. In April 1952, it was reported that the Tibetan government had refused Nepal's request for extradition of Dr. Singh and that Dr. Singh had taken military rank in the Chinese communist forces¹⁶.

In January 1959, the Yugoslavia government protested rejection of its plea for extradition of *Andrija Artukovich*, a Croatian Minister of the Interior during the Nazi occupation, living in the United States since the

¹ Rusinow Dennison "Slobodan Milosevic" Microsoft ® Encarta ® 2009

² Ibid

³ Abegunde B. op.cit. Pp. 331 - 332

⁴ Ibid

⁵ "Alberto fujimori" Microsoft ® Encarta ® 2009 [DVD]

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ <http://www.un.org/law> <http://www.asid.org/>

¹⁰ Ibid

¹¹ <http://us.imdb.com/Title> "Manuel Noriega". Microsoft (R) Encarta ® 2009 [DVD]: PUNCH Wednesday April 28, 2010. P. 71

¹² Ibid

¹³ Ibid

¹⁴ <http://www.dfait-macci.gc.ca/asia/country/nepal-enasp>

¹⁵ Ibid

¹⁶ Ibid

end of World War II under an assumed name. He was charged with responsibility for mass executions, chiefly of adherents of the Serbian church, by Ustashi Militia acting under his Ministry¹. A United States commissioner in Los Angeles ruled that insufficient evidence of war crimes had been offered².

Chief *Anthony Enahoro* of Nigeria was twice a fugitive. In people's opinion, he committed no offence. But in the jaundiced eyes of the authority, he committed an offence against the state for holding firm to his political, ideological and moral beliefs, even when they were in conflict with those of the powers that be³. Those beliefs centered on true Federalism, recognition of the rights of minorities, and equitable distribution of national resources. So he fled to exile in Britain in 1963 when the Tafawa Balewa government charged him with treason⁴. The British government returned him and he was subsequently sentenced to 15 years in prison, General Yakubu Gowon released him in 1966 to serve in his government⁵.

In Guatemala, the military government led by *Enrique Peralta Azurdia*, which took power in a bloodless coup d'état in 1963 continued its policies of repression in 1964⁶.

The Guatemalans continued to flee the country, many crossing illegally into Mexico. A request to the United States by the Peralta government for the extradition of former *President Miguel Ydigoras Fuentes*, who was charged with illegal removal of government funds, resulted in Ydigoras moving to Costa-Rica⁷.

In January 1964, Frenchman *Georges Wattin* condemned by a French court in absentia to death penalty for participation in the August 1962 attempt against president Charles-de-Gaulle, was arrested by Cantonal authorities⁸. His extradition to France was rejected, however, on the basis that he had sought political asylum in Switzerland⁹. By contrast, the known anti-Gaullist *Jacques Soustelle* who has been in various countries since his flight from France was expelled from Switzerland to a country of his choice¹⁰.

After the gruesome murder of *Reverend Martin Luther King Jnr* in Memphis Tennessee, on April 4, 1968 the police apprehended two suspects – James Earl Ray (aka Eric Starvo Galt) and Ramon George Sneyd in London while waiting for a flight to Brussels¹¹. Sneyd had escaped from Missouri State Prison at Jefferson on April 23, 1967. He appeared in Canada shortly after the assassination. Ray's British Lawyer fought the extradition on the grounds that the crime was political. Extradition was granted¹².

The Supreme Court refused to extradite to France, *Klaus Altmann* the former Nazi war criminal, because Bolivia and France have no extradition treaty¹³.

In Nigeria in 1976, the leader of a bloody coup attempt *Lieutenant Colonel B.S. Dimka*, confessed to a military tribunal that he acted on behalf of his brother-in-law, the exiled former head of state *General Yakubu Gowon*. Gowon denied complicity in the plot; Nigerian government demanded the extradition of Gowon from Britain. The British government's refusal was regarded in Lagos as an "unfriendly" act¹⁴.

Early in January 1977, French authorities arrested the Palestinian leader *Abu Daoud* in Paris. Daoud was widely regarded as the brain behind the planning of assault that resulted in death of eleven Israeli athletes in the 1972 Olympics in Munich, West Germany¹⁵. His arrest provoked an international incident. Both West-Germany and Israel immediately requested for his extradition. But it became clear that the French apparently fearing Arab reprisal did not want Daoud either in France or Israel, and the West Germans also seemed reluctant to risk terrorist retaliation by placing him on trial. While Israel tried to speed up the extradition procedure, the French rushed Daoud to court and declared that neither the Germans nor the Israelis had complied with the formalities of extradition, and freed him on technicalities¹⁶. Daoud was then placed on flight to Algiers, where he received a hero's welcome. Protesting France's handling of the affair, Israel withdrew its ambassador, and Jerusalem demonstrators stoned the French embassy¹⁷.

On August 15 1977, ailing former *SS Colonel Herbert Kappler* was apparently abducted by his wife from Rome military hospital and taken to West Germany. Kappler was serving a life sentence for the Massacre

¹ Encarta Microsoft ® Encarta ® 2009 [DVD]

² Ibid

³ PUNCH, Tuesday December 21, 2010 backpage.

⁴ Ibid

⁵ Ibid

⁶ Found in Guatemala Archive Article

⁷ Ibid

⁸ Found in Switzerland Archive Article

⁹ Ibid

¹⁰ Ibid

¹¹ <http://www.ope.ed.gov/s>

¹² Ibid

¹³ Microsoft ® Encarta ® 2007 [DVD]

¹⁴ Found in Nigeria Archive Article

¹⁵ Found in France Archive Article

¹⁶ Ibid

¹⁷ Ibid

in 1944 of 355 Italians. The Italian government demanded his immediate extradition but West Germany refused citing constitution provisions¹.

In March 1978, Moronvia (capital city of Liberia) was the venue of a meeting of heads of state of six West African countries, a result of the meeting was an agreement by the Ivory Coast, Guinea and Senegal to normalize relations and to promote free movement of goods and persons among the three former adversaries. President Tolbert of Liberia acted as mediator and apparently convinced Sekou Toure of Guinea that he must drop his demands for the extradition of Guinea political exiles from Senegal and the Ivory Coast to make the reconciliation possible².

A new campaign by Israel, West Germany and other nations, as well as by Nazi hunters, to persuade the government of Chile to extradite accused Nazi war criminal *Walter Rauff* one of the last Nazi fugitives to escape from being brought to justice for major war crimes met with failure when Chile, in February 1984 rejected all the extradition requests. Many previous attempts had been made since 1961, when Rauff was found to be hiding in Chile. In May 1984, Rauff died of natural causes at the age of 77 at his home Santiago³.

One day before the Pollard's sentencing in 1987 a federal grand jury indicted an Israeli Air force officer of espionage charges. The indictment charged that the officer, *Aviem Sella* had conspired with three other Israelis and Pollard to obtain top secret U.S. Military information for Israel. Sella could not however, be extradited to face trial because espionage is not covered by the US-Israeli extradition treaty⁴.

In January 1992 the UN-Security Council unanimously adopted Resolution 731, which in effect demanded that Libya extradite *Abd-al-Bassil al-Megrahi and al-Amin Khalifa Falima* – two men accused by British and US authorities of planting the bomb on Pan-AM Flight 103 over Lockerbie, Scotland in 1988 either to the United States or to Britain⁵. Libya leader Colonel Muamer al-Ghadaffi refused to surrender the two men arguing that his country was innocent of any wrongdoing and also that Libya had no extradition treaty with the US or Britain. In 1999 well over ten years after Colonel Ghadaffi release the two suspects to be tried in Netherlands by Scottish Law⁶.

A Federal High Court in Lagos Nigeria refused the extradition of an American born Nigerian by naturalization, *Mr. James Tillery*⁷. Justice Mohammed Idris had in his judgment on Tillery's application challenging the proprietor, of his attempted extradition, faulted the action of the operatives of the United States Federal Bureau of Investigation to extradite him without following due process⁸.

The judge further directed the police to release Tillery forthwith and awarded N10million damages to Tillery against the Police for unlawful detention⁹. Nigeria courts have recorded a large harvest of extradition cases in recent time. For instance, a court in Nigeria on 28th August, 2013 ordered the extradition to the United States of America of a man (Lawal Olaniyi Babafemi a.k.a Ayatolah Mustapha) accused of having links with *al-Qaeda*. Mr. Babafemi did not challenge his extradition when he appeared in court in Abuja.^{121a}

Also, in September, 2013 an extradited Nigerian was jailed in the U.S over \$ 11 Million fraud. The 42 year old Edo-State born Emmanuel Ehkator was extradited to United States of America in 2011 over allegation of mail and wire fraud, he was sentenced in September 2013 to 3 years jail term and also ordered to pay \$11,092,028 in restitution to his victim. Ehkator was arrested by the Economic and Financial Crimes Commission (EFCC) in Nigeria before his extradition.^{121(b)}

Despite this commendable stance of the Nigerian Government on extradition it is curious that the so much celebrated Deprieye Alamieyeseigha (impeached ex-governor of Bayelsa-State of Nigeria) who jumped bail from United Kingdom prison was not surrendered or extradited by the Federal Government of Nigeria.^{121(c)}

Fugitive former Governor of Delta State of Nigeria *Mr. James Ibori* is also a very celebrated extradition resistor. Ibori escaped from Nigeria to avoid arrest by the Metropolitan Police to face money laundering charges in the UK. In May 2010, Ibori was sighted in United Arab Emirates (UAE) where he was arrested. Upon his arrest the Nigerian anti-graft body Economic and Financial Crimes Commission (EFCC) wished him extradited to Nigeria while UK also requested for his extradition. Nigeria's wish was stalled by lack of extradition treaty

¹ Found in Italy Archive Article. See also ENCARTA Microsoft

² Found in Liberia Archive Article

³ Found in Religion Archive Article

⁴ Found in Crime and Crime Prevention Archive Article 1987

⁵ Found in Libyan Archive Article

⁶ Ibid

⁷ PUNCH, Thursday September 2, 2010. p. 9

⁸ Ibid

⁹ Ibid

121(a) BBC News 28 August, 2013, also available @ www.bbc.co.uk/1/world-africa-23868899.

121(b) This Day 12 September, 2013 by Rueben Buhari titled Extradited Nigerian Jailed in US over \$11m Fraud, available @ www.thisdaylive.com

121(c) www.punchng.com

between Nigeria and the UAE¹. The Dubai Court of first instance ruled in October 2010 that Ibori be extradited to UK but Ibori appeal against the ruling.

On Monday December 14, 2010 another Dubai Appellate Court of Cessation ruled that Ibori be extradited to UK². Consequently, Ibori was flown to UK to face trial where he was subsequently convicted and sentenced to jail term which he is presently serving in London prison.

The foregoing long list of extradition scenarios and cases are intentionally examined to drive home the fact that a lot of politics, poli-tricks, dynamics and intrigues go into extradition issue. Hence, some states adduce ‘flimsy’ excuses to refuse extradite even in deserving cases.

In this case of Ibori, he was initially arrested, quizzed and granted bail by a Dubai Court. The Federal Government of Nigeria reportedly threatened to revoke the operational licence of Emirates Airlines in Nigeria following the UAE authority’s alleged lack of interest in cooperating with Nigeria to extradite Ibori to UK³.

8.0. Concluding Remarks

The process of extradition both in theory and in reality operates as a facilitator of trial (and or imprisonment), as the case may be, where the suspect is physically outside the boundaries of the state asserting criminal jurisdiction over him and his trial. Against this background, I humbly recommend that the procedure for extradition ought to be made less cumbersome, less complicated, less technical, less expensive and less political. Cumbersome procedure constitutes a serious set back to the concept of extradition and its frequent failure to bring fugitives to justice. This also explain why some states, prefer abduction as a faster tool to bring fugitives to justice.

However, it is also desirable to respect the human rights of the suspect or candidate for extradition. According to Lord Griffiths in *R v Horseferry Road Magistrates Court ex-parte Burnett*⁴, extradition procedures are designed not only to ensure that criminals are returned from one country to another who are accused of crimes by the requesting states. Thus, sufficient evidence has to produced to show a prima-facie case against the accused.

Also, the rule of double criminality and principle of specialty should apply as reasonably as possible in view of the speed with which innovations enter into our world. Also, there is need to do a periodic review of the categories of offences termed non-extraditable with a view to down sizing the list.

Also, nations, governments and peoples in the diaspora must cooperate to condemn criminality in all its forms and ramifications and join hands to put an ends to the dark era of impunity by yielding up all criminals from their hide-outs around the world. The world is now aptly called a “global village”. The whole essence and rational for extradition is to ensure that no “sinner” escapes justice or runs for cover, otherwise battalions of persons suspected of involvement in serious crimes might never ever be brought to justice. Politics should be down-played in extradition matters.

The slogan “there is an obligation/duty to extradite or prosecute” should be holistically observed and complied with⁵. This obligation must be graduated to the status of a *Jus-Cogens*⁶. There should be no safe haven for dictators, tyrants, cruel rulers and common criminals anywhere in the world⁷. If criminals are sure of being caught and or surrendered (extradited), the tendency to commit crime would logically reduce and the world would be a better place. That is the whole essence of extradition.

In conclusion, the foregoing has sufficiently espoused the concept of extradition. It is thus hoped that the analysis has thrown or shed light on the grey areas hitherto bedeviling this area of the law.

¹ PUNCH, Saturday May 15, 2000 P. 2; Babatunde, I.O op. cit. p. 269

² PUNCH Tuesday December 14, 2010. P. 6

³ Ibid. In a related development, Sweden demanded for extradition of Wiki leaks founder – Julian Assange from London to face charges of sex-crimes – PUNCH. Wednesday, December 15, 2010 P.69. Assange is an Australian Journalist and publisher. In 2010 Assange over-saw the analysis and publication of over half a million documents from the Pentagon and US State Department, the largest such publication in history. The documents revealed thousands of issues that embarrassed the United States government. Assange is currently in asylum in Ecuador Embassy in London. See Extraditing Assange available @ justice4assange.com/extraditing-assangehtml.

⁴ IAC 42

⁵ The aim of which is “*aut-Punire-aut-dedere*” (punish or extradite)

⁶ A *Jus-Cogen* is a preptory norm of general international law recognized by all and accepted by the international community as such and from which no derogation is permitted.

⁷ Akin Oyeboode op. cit. p. 206