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INTRODUCTION

Extradition is a formal process of surrendering fugitive criminals by one state to another either based on extradition treaty or reciprocal arrangement.

Essentially, pre-extradition conditions, the extraditable person and the extraditable crime, should be complied with prior to the commencement of the formal process of extradition. It is evident from the following discussion that countries who have been practising civil law such as the Federal Republic of Germany, France and most of the Latin American countries as well as Australia and Ireland from among the Common Law countries do not extradite their own nationals. It simply means that if a citizen of a civil law country commits a crime in a foreign country and flees back to his homeland, he or she will not be extradited because he or she is not an extraditable person. The two Libyan nationals involved in the explosion of the Pan American plane can serve a good example in this context. Their extradition to the U.S.A was rejected by the Libyan authorities arguing that, inter alia, Libya following the civil law system does not extradite her own nationals, and therefore, they

are not extraditable persons.¹ In fact, this concept is in line with the Islamic theory where, based on ideology, the Islamic state is in no position to allow extradition of its own national to Darul-Harb.² On the other hand most of the Common Law countries such as the U.K., India, Malaysia and Pakistan usually allow extradition of their own nationals to foreign countries to stand trial. Recently, Islamabad's extradition of seven Pakistani nationals to the U.S.A who were allegedly involved in drug dealings can be cited a good example.³

It is similarly important that before a person can be extradited, it must be proven that the crime committed shall be an extraditable crime. Extraditable crimes are usually listed by the extradition treaty itself. Therefore, crimes such as political offences are not extraditable and the persons committed such offences should not be extradited.

The principle of double criminality and rule of specialty which are post-extradition conditions should

¹ Vera Gowlland - Debbas, The Relationship between the International court of justice and the security council in the light of Lockerbie case, A.J.I.L, 88, p. 643 (1994).

² Refer to Appendix of this work for further details, p. 223.

³ The News (Pakistan), Monday, Nov. 21, column: 4, p. 12 (1994).

also be realized. According to the principle of double criminality, it is necessary that the crime committed shall be an offence according to the law of both the requesting and requested states or at least it is included in the extradition treaty between the two states. The rule of specialty is also of a significant importance. It requires the requesting state to punish the offender only and only for the offence for which his extradition is demanded. The crime committed is usually cited in the extradition demand. The requested state has the right of protest if the offender is tried for totally different offence.

The extradition treaty or the reciprocal arrangement can be the basis for the extradition demand. An Extradition Treaty, possibly, may be concluded between two friendly states just before the extradition request in order to pave the way for formal process of extradition. Recently, in the middle of 1994, the Egyptian government concluded an extradition treaty with Pakistan. Soon after the treaty was signed eight extradition requests were made by the Egyptian authorities.⁴

Necessary amendments to the penal laws of both countries shall be made in order to pave the way for the

⁴ Ibid.

implementation of the extradition treaty. Non amendment to the laws may defeat the extradition request. In fact, it was one of the grounds for Pakistan in rejecting the Egyptian government's request for extradition of eight Egyptian nationals wanted on criminal charges.⁵ Surprisingly, some of the Arab states demand extradition of the Arab teachers teaching refugees from Afghanistan in Pakistan. However, since they have not committed any extraditable crimes, they have the right to seek asylum in any country under Art. 14 of the Universal Declaration of Human Rights.

Political, Military and Religious offences are general exceptions to the Law of Extradition. According to the Malaysian extradition law persons committed of offences of political nature should not be extradited.⁶ Recently, Thailand has decided not to extradite a Cambodian general, Sin Song, convicted of plotting to overthrow his government on the ground that he committed a political offence. Moreover, the two countries do not have bilateral extradition treaty.⁷

Military and Religious offences as exceptions to

⁵ Ibid.

⁶ Malaysian Extradition Act 1992, S.8.

⁷ The Star (Malaysia), Saturday, December: 31, column: 1, p. 23 (1994).

extradition are also recognized by Islamic law.⁸ However, Religious offences, for example, apostasy and blasphemy are in no way accepted as exceptions to extradition. The recent case of Taslima Nasrin, a Bagladeshi feminist writer, can be used as an example in this context. On the basis of the modern extradition law, she can argue that 'since she has committed a religious offence, insulting the Holy Book of Allah (s.w.t.), Al-Quran, and the Holy Prophet of Islam', she shall not be extradited,⁹ while under the Islamic extradition law, it is considered a notorious crime of serious nature for which she shall be definitely tried.

War crimes are generally extraditable for which extradition can be sought. On the 20th April, 1995, Germany announced that it would extradite a Bosnian Serb accused of crimes against humanity to stand trial at the Yugoslav War Crimes Tribunal in the Netherlands. Dusan Tadic is one of the 21 Serbs indicted by the war crimes tribunal for atrocities against Muslims in the war-torn former Yugoslav Republic. His is the first international war crimes trial since the Nuremberg and Tokyo trials that followed World War II.¹⁰

⁸ Infra at page: 233.

⁹ The News (Pakistan), Thursday, Nov. 24, Col. 2, p. 8 (1994).

¹⁰ The Star (Malaysia), April:22, Col.1, p. 28, (1995).

Another limitation to the political offence exception is crimes pertaining to terrorist activities such as explosion of bombs and the hijacking of planes. The main function of the 'European convention on suppression of terrorism, 1977, is to abolish the application of the political offence exception to certain acts of terrorism. However, the convention is already being branded as a failure. It does not seem to have been possible to convince all states that the suspected terrorist criminals might not be put in unjustifiable jeopardy if they were extradited.

Alternative means to extradition such as deportation, expulsion and exclusion can be applied for bringing fugitive criminal into jurisdiction of the requesting state. They are informal methods of rendition which are relatively cheaper, easier; and faster. Such methods are usually practised between the neighbouring countries for example Thailand and Malaysia. The deportation of Ashaari Muhammad leader of the al-Arqam movement, who had lived in self imposed exile in several Asean countries since 1988, by the Thai police to Malaysian authorities on September 2, 1994 is a recent example.¹¹

In the absence of extradition treaty, Islam does not

¹¹ Ibid.

permit an Islamic state to extradite a Muslim to Darul-Harb.¹² According to the clear injunction of the Holy Quran, a Muslim woman shall not be extradited to Darul-Harb irrespective of the fact whether extradition treaty exists or not.

The Thesis is a critical analysis of the concept of extradition law, while its objective is to compare and contrast various legal systems such as the Islamic legal system, the common law system and the civil law system on the point.

¹² Infra at p. 225.

CHAPTER I

EXTRADITION IN GENERAL

In this chapter, we will discuss the historical background of extradition, meaning of the word "Extradition", the presence of the criminal fugitive on the land of requesting state, whether extradition is a rule of customary International Law or not, what is the rationale behind the law of extradition, the basis of extradition. We will also examine the Municipal Laws which Warrant Extradition, Extradition of Nationals, Reasons for Exemption of Nationals from Extradition, the arguments for the Extradition of Nationals. Then, we come to the pre-Extradition conditions and post-Extradition conditions, exceptions to the rule of specialty. At the end we will touch on the differences of different terminologies such as Extradition, Deportation, Expulsion, Exclusion and Rendition.

A. HISTORICAL BACKGROUND OF EXTRADITION

In fact, the concept of extradition begins in its primary sense since 18th century. The concept was

developed, to some extent, in the 19th century.

Until the 19th century surrendering of fugitive criminals was a matter of exception rather than a rule. Then term of "extradition" for the first time was used in the French Decree of 1791.¹

Previously because of primitive means of communication, criminals could not frequently go beyond the jurisdiction. While with the advent of modern means of communication the situation changed and led to bilateral and multilateral treaties for the purpose of extradition.²

The first multilateral extradition treaties were signed among the American States in 1889 and 1902. This led to Inter-American convention on Extradition 1981. Then, European and Arab States followed the same pattern. Treaties and conventions on extradition were also signed and concluded among the African countries, in this context convention on 'Judicial co-operation signed at Tananarike in 1961 can be cited as an example.

¹ Dp O' Connel, International Law, vol. 2, pp. 720-21 (1970).

² Id. at p. 721. You can also refer to Oppenheim's International Law, Vol. 1, p. 950 (1992).