THE UNILATERAL APPLICATION OF THE UNIVERSAL PRINCIPLE OF JURISDICTION TO DRUG TRAFFICKING CASES BY THE UNITED STATES

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INTRODUCTION

Statement of Purpose

After two decades of concerted efforts to suppress production and encourage crop substitution, narcotic production, particularly in Latin America, is at an all time high. The financial costs of drug enforcement and eradication programs have skyrocketed and nations are even more dependent on U.S. aid and equipment to maintain the on-going battle. Drug enforcement measures overseas have rarely met U.S. expectations and interdiction efforts in the United States have been overwhelmed. To develop more international cooperation in fighting narcotics trafficking, the United States has supplemented its drug control strategy by initiating multilateral and bilateral agreements and establishing basic guidelines for drug enforcement. The proliferation of the narcotics trade and the failure of drug enforcement to cope with the influx has renewed American interest in using extradition to prosecute the major ringleaders of the smuggling networks. By targeting the major "kingpins" of the drug operations the United States has had to overcome two main problems, both of which have led to significant developments in international law. First, in the past, the major traffickers have been immune to prosecution in the United States because they were rarely involved in the physical commission of the crime in U.S. territory and second, many traffickers reside in countries where national legislation frequently prohibits the extradition of nationals.

The acknowledgment that drug trafficking conspiracies should be within the jurisdictional boundaries of those nations most affected by the drug trade has gained more acceptance in the last decade as a viable method of dealing with international criminal organizations,

by disrupting supply lines and deterring future traffickers. While there now exists more international consensus on the need to prosecute the drug traffickers, some nations in Latin America have been reluctant to succumb to American pressure to extradite their nationals to face trial in the United States. While these countries are party to international conventions which require them to either extradite or prosecute the offenders, the United States has been disappointed with the failure of national law enforcement agencies to apprehend suspects, and the unwillingness of the judiciaries to impose swift and severe punishment on those they attempt to prosecute.

Governments have side-stepped the issue by refusing to include standardized penalties in multilateral treaties for drug offenses. They have also been reluctant to apply universal jurisdiction to drug trafficking crimes and thus have failed to ensure apprehension and conviction of drug traffickers. Bilateral treaties between the United States and the drug producing countries have also been unable to overcome this problem, as they usually include arrangements allowing states to retain the right to refuse extradition of their nationals. Colombia was one of the few countries willing to accept extradition as a suitable method of negating the power and influence of the drug traffickers within their country but the threat of prosecution in the United States has created a backlash against American intervention, and instead of discouraging traffickers, it has forced them to exert pressure at even higher levels of government. After six years of violence and political turmoil, the Colombian government invalidated its extradition agreement with the United States, creating once again a safe haven for Colombian traffickers and lessening the chance that they will be brought before any courts, much less those in the United States.

Intent on prosecuting the major drug traffickers, the United States has continued to test methods of circumventing this question of jurisdictional rights by adopting the view that drug traffickers should be subject to universal (general) jurisdiction and by indicating its willingness to employ means other than extradition to bring traffickers to the United States to face charges. To prevent

major traffickers from escaping prosecution, the United States has proposed including drug trafficking with other crimes which merit universal jurisdiction, such as piracy, slave trading, terrorism and genocide. The United Nations has recognized this as an obvious trend but there still exists considerable opposition to this concept among member states. Some countries object because universal jurisdiction may conflict with their beliefs on the extradition of nationals. But there is also disagreement on how significant a problem drug trafficking poses to the international community, not just to the United States.

Without multilateral or bilateral treaties to support the notion of universal jurisdiction, the United States is left with several options if it intends to continue its policy of targeting major drug traffickers. First, it may be forced into more frequently applying the all encompassing protective principle of jurisdiction to seize and prosecute traffickers, or it might attempt to justify such cases by unilaterally claiming the universal principle in the hopes that the world community will also adopt this view in future agreements once it is viewed as a successful tool in the dismantling of drug networks. Both options could potentially set new precedents in international law, not just for drug enforcement policy but also in the conduct of foreign relations by implying that a country may take necessary action to secure a criminal if he constitutes a threat of any sort to the regime in power, in spite of jurisdictional limits imposed by treaties or unwillingness on the part of other nations to surrender the individual. A third option might involve pressuring the executives of various governments to take unilateral emergency measures to overcome laws barring the extradition of nationals. But because Latin American countries are extremely sensitive to U.S. intervention this type of policy is more likely to backfire and discourage cooperation.

Organization of the Thesis

Part One will examine the particular problems that the United States has encountered with the cocaine industry, and how its decision to adopt new tactics and aggressively exercise its right to extradition has resulted in the practical application of the universal principle of jurisdiction. While the United States may consider this an appropriate response to the threat posed by drug trafficking, the concept is not widely accepted and its unilateral use by the United States could easily be misinterpreted and misapplied with broader implications in international relations.

The second section will discuss the American historical involvement in the formulation of international drug policy and the progress the United States has achieved by encouraging the international community to adopt the basic guidelines of multilateral treaties and by gaining consensus on the need for global cooperation in the areas of interdiction and prosecution. While international drug conventions have resisted classifying drug offenses as universal crimes, there has been movement towards adopting enforcement measures that imply the gradual acceptance of more universal cooperation in efforts to dismantle drug trafficking networks. Analysis of the developments in international drug treaties will indicate why national interests and the impact of the drug trade on developing countries have undermined the effectiveness of multilateral treaties and precluded the endorsement of the necessity for universal jurisdiction

To supplement the international agreements, the United States has had to update and expand its bilateral treaties in order to apprehend drug traffickers and ensure their prosecution. The third part of this study will address the fundamental problems the United States has encountered in its relations with Colombia as it has attempted to use extradition as a tool in the drug war. The United States intended the implementation of the 1979 United States-Colombian Extradition treaty (and its supplement, a Mutual Legal Assistance treaty) to be the key to establishing a cohesive and mutually beneficial drug policy. Instead, it had a profound effect

on the Colombian judicial system until a controversial decision by the Colombian Supreme Court invalidated the treaty.

Justifying its aggressive use of extradition and bilateral treaties to deter drug traffic, the United States has also disrupted the political and economic stability of several other Latin American countries, contributing to local resentment of the United States, and complicating cooperation on drug policy. When countries become disinclined to adopt U.S. proposals, the United States often resorts to some form of sanctions, so that the drug control relationship becomes based on coercion to guarantee collaboration.[1] Bilateral treaties, by their nature, imply the joint agreement that specific crimes merit certain punishment, one of the steps towards implementing universal jurisdiction on international crime. The situation in Colombia, however, demonstrates the difficulties the United States will encounter if it continues to elevate the gravity attached to drug trafficking in attempts to convince the international community to adopt universal jurisdiction.

The fourth section will analyze the U.S. government's evaluation of the threat to national security posed by drug traffickers and its decision to condone irregular methods of gaining custody over fugitives if bilateral agreements fail to produce results or in cases where the United States perceives unwillingness on the part of national authorities to comply with U.S. requests. In resorting to the illegal abduction of drug traffickers the United States has effectively announced its recognition of the need for universal jurisdiction and expressed its willingness to enact such policy even if found to be in violation of international law. The recent invasion of Panama in pursuit of General Noriega raises questions about the unilateral use of abduction without the benefit of international or even bilateral agreement and the precedents it may set.

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[1]The US has introduced a process of certification that drug producing or transiting countries must pass in order to qualify for development and narcotics control funds. These countries must demonstrate that they are taking an active role in suppressing cultivation and trafficking, prosecuting drug offences and taking the necessary legal steps to eliminate money laundering.

The failure of international conventions and bilateral treaties to effectively remedy the problem of drug trafficking has forced the United States to assume an even greater role in pursuing viable methods of deterring the drug flow, focusing on the prosecution of major drug kingpins in Latin America. Attempting to apply general jurisdiction to drug offenses has, however, not received unanimous support and has demonstrated the potential for international abuse when short term national interests supersede the importance of international cooperation and consensus. Without multinational consensus and a commitment by all nations to abide by treaty obligations, universal jurisdiction, particularly in drug offenses, may create friction between otherwise friendly and cooperative nations, thus dealing a serious setback to U.S. drug policy. The conclusion considers whether the United States is justified in its decision to regard drug trafficking as subject to universal jurisdiction, and whether this distinction will aid the United States in its efforts to combat drug trafficking operations. It will also consider what other options might be available to the United States to ensure political and economic stability in Latin America while continuing drug enforcement programs.

PART ONE

EXTRATERRITORIAL JURISDICTION

IN DRUG TRAFFICKING OFFENSES

Section I

Latin American Involvement in the Cocaine Trade

New Tactics In An Old War

What set the cocaine cartels apart from other drug trafficking operations that the United States had previously dealt with was their ability to revolutionize the business of trafficking. Instead of the small shipments of one or two pounds, the drug traffickers were moving tons of cocaine into the United States, and could easily afford to lose several tons in raids without it having a serious effect on their business.[1] In addition, Colombian processors realized that the actual trafficking of their product directly to markets would greatly increase profits, so wholesale markets in the United States were created to better control their profits.[2] Consequently, Colombian distribution networks became more elaborate, methods of smuggling became more advanced and violence centering around the drug business increased. Efforts to intercept narcotics coming into the United States were quickly overwhelmed as drug traffickers began testing new routes through Florida, along the Mexican border and with the use of "motherships" which distributed narcotics to smaller waiting vessels. While the United States did prevent the importation of some narcotics, the arrests being made were not having any discernible effect on smuggling or on the amount of drugs entering the United States. The smugglers and "mules" arrested were easily replaced and the major traffickers were practically immune from U.S. prosecution since they were rarely involved in transactions once shipments left South America.[3]

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[1]In 1979, the seizure of 110 pounds of cocaine in the Bahamas was the largest ever, but by the middle of the 1980's, the seizure of fourteen tons in Colombia had a barely discernible effect on the cocaine coming into the United States.

[2]A kilo of cocaine in Colombia was worth only $10,000, but in the United States, that kilo, uncut, would be worth between $30-65,000. After market cuts could render that kilo worth over $130,000.

[3]William Walker, Drug Control in the Americas, revised edition, (Albuquerque: University of New Mexico Press,1989), p. 132.

The cocaine bonanza encouraged the United States to re-evaluate its drug policy and to find new means of assisting Latin America in its enforcement efforts. The two primary tenets of U.S. drug policy abroad, eradication and crop substitution, were obviously not enough. Cocaine eradication programs are meeting considerable local resistance[4], and efforts to encourage crop substitution failed to compete with the unusually high profits being garnered from coca production.[5] In addition, the amount of money and resources provided by the United States to combat the well-equipped traffickers rose dramatically but was apparently having little effect on coca production or discouraging traffickers.

Drug Policy and Latin American Politics

While not unique to Latin America, the involvement of Latin American governments, their leaders and guerrilla organizations in the lucrative drug trade poses serious problems for U.S. drug and foreign policy. Frequent and dramatic changes in Latin American governments have produced three basic types of situations which impede drug enforcement, threaten stable relations between the United States and these nations, and which can provoke a backlash against American drug policy. The first problem involves the creation of dictatorships backed by major drug traffickers. Cooperation by such governments on drug policy is superficial and intended only to secure foreign aid. Secondly, various terrorist and guerrilla groups have been implicated in the drug trade and have violently protested U.S. intervention in their countries. The third, and most common situation arises when countries such as Colombia and Mexico are willing to make

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[4] Eradication programs are both costly and dangerous. Increasingly, efforts to eradicate crops have been met with armed resistance from guerrilla groups protecting fields. Although Mexico and Colombia have both allowed aerial spraying of marijuana fields, the questions raised about the long term toxicity of coca pesticides have prevented the governments of Latin America from employing this method of control. The cost of these programs has also increased dramatically, with the United States supplying a large portion of the working funds and equipment to ensure the continued efforts at eradication.

[5] Jamaica, for example, earns twice as much money from its marijuana exports than any other single export.. In Peru's Upper Huallaga Valley, coca is the primary source of income for over 7000 farmers and accounts for over 60% of the regions economy. Cocaine is also believed to pour over 2 billion dollars into the Colombian economy annually. Congress, House, Committee on Narcotics Abuse and Control, International Narcotics Policy, 98th Congress, 1st Session, December 1982, p. 47.

a commitment to drug control and cooperate with the American government but are unable to make significant gains because of internal corruption and national economies with a growing dependence on the drug trade.

(a) Dictators

In 1981, the United States was concerned with the obvious complicity of the Bolivian government of Garcia Meza in the drug business and the its inability to counter such activities. In response to Meza's release of imprisoned drug traffickers, his blatant negotiations with the drug lords and his policy of persecuting those who opposed his pro-coca stance, the Carter administration withdrew its ambassador and threatened to cut its aid package to Bolivia. Meza's government eventually succumbed to internal pressure within a year of seizing power, but subsequent governments have lost control over several provinces outside of La Paz, major coca producing areas reputedly controlled by local drug lord Roberto Suarez. In 1986, the United States attempted to address this situation by committing close to 200 American military personnel to the region in conjunction with Bolivian forces (called the Panthers) to conduct raids over a period of five months in Operation Blast Furnace. The success of Operation Blast Furnace is dubious but it did ensure the Bolivian government continued U.S. aid and support.[6]

If current allegations are true, Manuel Noriega's lucrative arrangements with the Medellin cartel similarly created another problem for the United States. His de facto control over the country precluded any hopes of extradition, and while internal pressures may have eventually forced his ouster, the United States government's

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[6]While 22 laboratories for cocaine production were seized and dismantled, only one arrest was made during the entire five month operation. All the major producers had left the area, presumably after being tipped off by government officials. But the raid did illustrate two points. First, that the government could launch such an operation without any political consequences, no riots or other forms of retaliation against the raids. Secondly, the raids served to reinforce Colombia's monopoly on the cocaine trade by eliminating some of their competition, although business continued after the American forces and Bolivian government ceased their operation in November of 1986 . Elaine Shannon, Desperados: Latin Drug Lords, US Lawmen, and the War America Can't Win., (New York: Viking Books, 1988) p. 356.

attempts to employ sanctions and calls for his overthrow temporarily rallied Panamanian and Latin American support behind him. His adamant refusal to recognize Panamanian election results or negotiate with the United States for his removal, provoked the United States into taking unilateral action and violating provisions of both the Organization of American States and United Nations charters. Leaders of other countries have also been implicated in the drug trade, but for a variety of reasons the United States has either been unable to intervene, avoid involvement, or allow the national justice systems to resolve the problem.[7]

(b) Narco-terrorists

The involvement of the guerrilla groups who frequently employ terrorism to demonstrate their opposition to U.S. drug policy has contributed to the seriousness the United States attaches to the drug trafficking problem. The United States has asserted that the success of drug enforcement and extradition have placed the drug traffickers on the defensive, and they have responded by implementing terrorist attacks against their government and U.S. property.[8] While it is clear that the drug traffickers and guerrillas have reached some sort of mutually beneficial relationship, the extent of that cooperation is debatable.[9] While the United States maintains that the insurgent

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[7] Other Central and South American leaders have been implicated in the drug trade. The United States has indicted Haiti's former leader, Colonel Jean Claude Paul and several high ranking Cubans, and accused the Sandinista government in Nicaragua of being involved in the transshipment of cocaine to the United States. Lynden O. Pindling, former Prime Minister of the Bahamas, was under investigation for accepting bribes from drug traffickers as were several other cabinet ministers. The Bahamas had become notorious for its tolerance of the booming drug trade and many of its smaller islands had been taken over completely by smuggling rings.

[8] Direct attacks on the United States have been limited. In November 1984, a car bomb exploded outside the U.S. Embassy killing one person and in 1985 another bomb destroyed a language school owned by a U.S. citizen. There have been numerous threats against DEA agents but none of these attacks or threats could be directly attributed to the cartels. Carlos Ledher, the only major Colombian trafficker ever extradited has frequently made references to his connections with the M-19 movement but the retaliatory killings of Americans that he promised should he be extradited never occurred. David Westrate, "How are Drug Trafficking and Terrorism Related?," Narcotics Control Digest, May 29, 1985, pg. 3.

[9] The advent of the Medellin cartel was in fact, a direct response to efforts by M-19 to kidnap family members of the drug lords to hold for ransom. The drug traffickers issued an ultimatum published in the newspapers and distributed by leaflet which threatened the execution of anyone believed to be linked to the guerrilla group or the kidnaping. The kidnaping stopped and several of the guerrilla groups were reportedly

movements are directly tied to the traffickers, it seems more likely that both have their own agendas and their relationship is more business oriented.[10] The heavy concentration of guerrilla groups in areas under narcotics cultivation made the guerrillas a viable threat to the traffickers who would naturally have sought some sort of truce. In addition, the huge profits being brought in by cocaine also provided the guerrilla groups with the funds needed to support their organizations and to make weapons purchases abroad. In most instances, it would seem that the political aims of the guerrilla groups would be unappealing to the drug traffickers, as is the case with M-19 and Sendero Luminoso, who advocate a variety of communist ideologies with the central feature being the redistribution of wealth.

U.S. pressure on these governments to attack drug production can undermine the stability of the regime in power and provoke attacks by the guerrilla movements, in addition to fostering anti-American sentiments. Like Bolivia, the Peruvian government was willing to cooperate with the United States on drug enforcement, but it too had lost control of sections of its territory in the Huallanga Valley now controlled by a Maoist guerrilla group, Sendero Luminoso. In the application of the Maoist strategy of conquering the countryside, guerrillas began building their popular support by organizing peasant growers and providing protection against government forces. Several raids against growers in the Valley were totally counterproductive and only encouraged growers to ally themselves further with the guerrillas for protection. It is not clear how much control Sendero Luminoso exerts on the drug trade, other than protecting the growers and possibly negotiating sales of raw coca to the larger cartels.[11]

Colombia has a long history of insurgent movements and at least six are currently involved in anti-government activity. Fighting these groups has diverted manpower and resources from the drug war while attempts at negotiating truces have failed. The seizure of the

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hired to provide protection to processing sites and to local growers in the provinces where the guerrilla groups were located.

[10]Ibid, p. 1.

[11]Ibid, p. 2.

Colombian Palace of Justice in 1985 and the killing of eleven Supreme Court justices was led by the urban terrorist group, M-19 and was presumably backed by cartel members.[12] FARC (Revolutionary Armed Forces of Colombia),the armed wing of the Communist Party, the ELN (National Liberation Army) and the PLN (Popular Liberation Army) have all been accused of "taxing" growers and traffickers in the areas where they operate fronts, as well as providing protection services for airfields and plantations. The narcoterrorist connection does, however, boost public support in the United States for a more aggressive policy which may aid the Latin American governments in their fight against the insurgencies. However, the political repercussions have often been counterproductive to the drug war and have frequently increased the popular support of guerrilla groups.

(c) Internal corruption

The more extensive a country's involvement in the drug trade, particularly in the case of Mexico which has been a major supplier and an overland route for at least thirty years, the more pervasive are the opportunities for drug based corruption. Police forces, judiciaries and the military have all been affected by the money to be earned from narcotics and drug smuggling. Even dramatic efforts to weed out corrupt officials have failed to significantly reduce the level of corruption or deter others from becoming involved. Compounded with the cost of development programs and sagging export earnings, most Latin American countries have become ideal targets for drug traffickers who are willing to invest substantial sums in the securing of favors, safe routes, and protection. The amount of influence a major drug trafficker or cartel can exert varies, but when the threat of violence and intimidation is used to back up their demands it has crippled the legal system and extended the power of the drug traffickers enormously.

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[12] In addition, M-19 was reportedly involved in negotiating arm sales through the Cuban Ambassador to Colombia, using the drug network of Colombian Jaime Guillot-Lara to smuggle the arms into Colombia. Based on these allegations, the United States issued indictments not only for Guillot but also for several other high ranking officials in the Cuban government. Ibid.

As economies become more dependent on these proceeds, political stability is threatened and U.S. intervention or pressure is highly resented. While the United States is very clear as to what it expects nations to do to interdict narcotics, the problem of corruption and how to overcome it has been elusive. Latin American sensitivity to American intervention in this area of domestic affairs has made the implementation of the U.S. drug strategy even more complicated and has encouraged the United States to focus on extradition to avoid the likelihood that traffickers will not be pursued or prosecuted as aggressively as the United States would intend.

The periodic police sweeps in production areas, often conducted by the military, have destroyed only minor amounts of illicit drugs and only a few processing centers, most of which were rebuilt after the raids ended. While the number of arrests made during such raids were substantial, most suspects were of little importance in the drug trafficking industry and almost all were released. In addition, the police sweeps often produced more resentment against the United States and the national government among the targeted population. These raids, often conducted with the help of the United States military or with U.S. military equipment, were apparently having only a slight disruptive effect on the cocaine industry.[13] No major drug traffickers were ever apprehended and, in several cases, it was apparent that news of the impending raids had been leaked and areas had already been "cleared". As U.S. attention shifted back and forth between Colombia and Bolivia, drug traffickers mobilized their processing sites and relocated until U.S. attention shifted elsewhere. In the process, more and more countries became temporary transit and processing sites, making U.S. efforts at drug enforcement even more difficult.

The United States was also confronted with the fact that when arrests were made in many of these countries, prosecution was rarely followed through. In the producing countries, very few of the national police forces are untouched by the illicit drug trade, so that at this level, arrests are very rare and seldom produce anyone with significant involvement in the drug trade. Instead, the national

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[13]Shannon, Desperados, p. 366.

governments have resorted to using their military forces to carry out drug raids and arrest those suspected of involvement, because the military is believed to be somewhat less compromised by the drug money. Once arrests were made, however, the United States believed the Latin American courts to be either too corrupt and tainted by drug money to take any action, or that the judges were intimidated by the rampant violence which had in effect paralyzed the court system.[14] It was this failure by foreign judicial systems to deal severely with the larger traffickers which gave the United States impetus to go after the major figures in the drug cartels and ensure their prosecution in U.S. courts.

Even before the drug trade became a significant problem the judicial system in Colombia had serious deficiencies which the drug trade later exacerbated and made prosecution nearly impossible. Judges in Colombia, like elsewhere in Latin America, are poorly paid, their workloads are usually excessive with sometimes in excess of 3000 cases on one judge's docket. In addition, it is the judiciary that is given the responsibility to investigate crimes, as opposed to the police force, creating additional delays. Once a case is brought before the court, which may take up to five years, witnesses frequently refuse to appear before the court.[15] In the majority of cases there is never an indictment or a trial. Prosecution of the low and mid-level members of the drug network was not proving to be a substantial deterrent. In the few instances when apparently major traffickers were arrested the national courts were either unwilling or unable to prosecute alleged traffickers for drug offenses and either dismissed pending charges or sought more obscure charges which required only payment of a fine. In the rare case of conviction, maximum penalties are often severely limited because of earlier arrangements with the government while negotiating their surrender.[16]

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[14]In November 1985, members of M-19 seized the Palace of Justice in Bogota and began destroying all records pertaining to extradition. When government troops stormed the building, over one hundred people were killed, including eleven members of the Colombian Supreme Court. Other members of the twenty-four man Supreme Court resigned following the attack and one of the remaining justices who supported extradition was killed in an ambush a few months later.

[15]Paul Eddy, et al., The Cocaine Wars, (New York: W.W. Norton & Co., 1988) p. 32.

[16]In January 1986, the Colombian government upgraded its drug statutes allowing for sentences up to 12 years for trafficking and one to three for use. The government has also been willing to cut deals with

The United States interpreted such cases as definitive affronts to justice which merely encouraged the drug lords to continue business as usual.

Renewed Interest in Extradition

Extradition of drug traffickers to the United States was viewed as the most useful method of relieving the Latin American courts of the pressure they might face and thus guarantee prosecution. This tactic would avoid placing excessive pressure on the Latin American court systems and would bypass many of the problems of corruption and intimidation. Prosecution and conviction in the United States would also relieve the Latin American governments of its responsibility to ensure that the prisoner would remain in jail and serve an appropriate sentence. Penalties for drug offenses in many countries have tended to be rather light in comparison to U.S. practice, where conviction would guarantee a life sentence or possibly the death penalty. The threat of extradition and the likelihood of more severe sentences was generally assumed to produce a deterrent effect and might discourage other traffickers from filling in the gaps left by those extradited.[17]

Ultimately, extradition or the threat of extradition would reduce drug traffic by dismantling the hold the drug traffickers appeared to have within their areas of operation. Latin American cooperation on this issue would demonstrate their willingness to cooperate with the United States which might in turn improve relations and reduce the periodic friction that resulted from U.S. criticism and pressure. In addition, extradition would allow the United States to assume a greater and more international role in the prosecution of drug traffickers which could be useful in securing

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traffickers who turn themselves in, offering reduced sentences, special prison conditions and no seizure of property. Congress, House, Select Committee on Narcotics Abuse and Control, Colombian Drug Trafficking and Control, 100th Congress, 1st Session, May 6, 1987, p. 44.

[17]Ann Wrobleski, "FY 1988 Assistance Requests for Narcotics Control," State Department Bulletin, June 1988, No. 2135, p.48.

more support for U.S. drug policies. As public frustration with the U.S. government's inability to stem the drug problem mounted, extradition of high profile drug traffickers could also serve as an important and symbolic indicator of the success of U.S. drug policy, justifying the larger expenditures of manpower and resources.

In order to apprehend suspected traffickers to the United States, the United States was compelled to broaden its jurisdiction beyond the traditional territorial limitations and indict drug traffickers for conspiring to import illicit drugs into the United States and for any other participatory acts involved in the process. The change in the importance the United States placed on drug traffickers widened the options available to the government in terms of pursuing the drug traffickers, including exercising their rights to request extradition and apprehending suspects abroad. Relying on recently negotiated bilateral treaties, the United States has attempted to exercise its international rights but has encountered a new set of policy problems which could potentially threaten stable relations with these countries. Failure to comply with American extradition requests is now taken as a direct affront to the United States, which has taken more extreme action when extradition became impossible. Except for the few Latin American countries directly affected by this change in U.S. policy, the international community has refrained from criticizing or condoning U.S. activity and is apparently relying on the United States to test internationally tolerable guidelines for extraterritorial jurisdiction and the illegal abductions of drug traffickers.[18]

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[18]United Nations Publication, Extradition for Drug-Related Offenses: A Study of Existing Practices and Suggested Guidelines for Use in Concluding Treaties, (New York: United Nations UNIES, 1985), p. 5.

Section II

Jurisdictional Principles Applied to Drug Trafficking

Interdiction of Narcotics at Sea

The first indicator that the United States was willing to adopt broader unilateral measures occurred in the late 1970s as American courts began to extend their own jurisdiction over drug smuggling in international waters. Most smuggling cases have rested on the principles of nationality of the perpetrators, American boat registry or an overt act in violation of U.S. drug statutes. However, a series of cases involving the seizure of vessels with narcotics on board just outside of U.S. territorial limits afforded the United States courts the opportunity to claim jurisdiction and establish the guidelines for such procedures.

Essentially, the courts based their jurisdiction on the premise that ships carrying illicit drugs clearly intended for distribution inside U.S. territory would have a harmful effect on U.S. citizens, thereby justifying federal law enforcement. These cases illustrated the court's belief that the mere intent to violate U.S. drug laws was sufficient cause to exercise jurisdiction, particularly on the high seas, and that an overt act was not a prerequisite for jurisdiction. Subsequent courts following this line of reasoning have applied these guidelines and have prosecuted drug traffickers for conspiracy if intent to import and distribute can be proven.

Under these circumstances few countries raised any objections to the seizures and prosecutions or challenged U.S. jurisdictional claims. Consequently, the law of the sea has informally incorporated these adjustments to jurisdiction and deemed them to be within reasonable bounds.[19] These smuggling cases have implied that Congressional legislation forbidding the possession of controlled

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[19]Steven Chelberg, "The contours of extraterritorial jurisdiction in drug smuggling cases," Transnational Aspects of Criminal Procedure : Michigan Yearbook of International Legal Studies, , ed. John Lummis, (New York: Clark Boardman Co. Ltd., 1983), p. 48.

substances was intended to have extraterritorial application, a factor the United States was willing to apply to more and more cases.[20] To avoid ambiguity, the 1980 Marijuana on the High Seas Act (which supplemented the 1970 Drug Act) emphasized that American narcotics legislation would apply to acts committed outside the territorial jurisdiction of the United States.[21]

Jurisdictional Problems With Drug Traffickers

While the Coast Guard's battle against smuggling was to continue with increasing success, the U.S. government directed its attention to what it viewed as the more significant threat outside its borders, the increasingly more powerful and visible drug kingpins in Latin America, primarily in Colombia and Bolivia. In order to assert jurisdiction, the United States has tended to rely on a composite of the various principles of international law which determine rights to jurisdiction because no one can be applied directly or conclusively to the problems of the major drug traffickers.[22] The determination of the validity of claims to jurisdiction is not, however, resolved in domestic courts. The basic test of whether or not U.S. courts have jurisdiction is if a formal protest is lodged by the government of the defendant's country, at which point it becomes a political decision to be handled by the State Department based on foreign policy considerations. Since the United States relies on bilateral treaty arrangements in most requests for jurisdiction and extradition, any protest from the country surrendering a fugitive is rare. Protests have been registered against the United States in cases where defendants have been brought before U.S. courts by means other than extradition or other treaty arrangements. Subsequently, illegally obtained or abducted persons have been returned to their native country. In regards to the major cocaine traffickers, most were residents of

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[20] **United States vs. Wright-Barker** 784 F2d 161 (3rd Circuit, 1983) and **United States vs. Williams** 589 F2d 210 (5th Circuit, 1979).

[21] Chelberg, "The Contours of Extraterritorial Jurisdiction," p. 48.

[22] Christopher Blakesley, "A Conceptual Framework for Extradition and Jurisdiction Over Extraterritorial Crimes." Utah Law Review, 1984, p. 723.

Colombia and therefore subject to terms of the extradition treaty between the United States and Colombia, eliminating any question of jurisdictional rights as long as proceedings were conducted according to the treaty.

Active and Passive Personality Inapplicability

To indict and assert jurisdiction over the South American drug lords, the United States had to overcome several obstacles to assert uncontested jurisdiction. Since the drug traffickers the United States intended to target were not U.S. citizens, the active personality (nationality) principle of jurisdiction did not apply.[23] In addition, the traffickers had not personally committed any crimes within U.S. territory so indictments would have to reflect charges of conspiracy with intent to distribute illicit substances and involvement in a continuing criminal enterprise (CCE) or the Racketeer Influenced and Corrupt Organization Act(RICO). These charges made it difficult to utilize the passive personality principle which refers to the nationality of the victim in the determination of jurisdiction allowing states to extend their penal law to include crimes committed against their citizens at home or abroad. The Restatement (Second) of Foreign Relations Law of the United States limits U.S. ability to apply this principle by stating, " A State does not have the jurisdiction to prescribe a rule of law attaching legal consequence to conduct of an alien outside its territory merely on the ground that the conduct affects one of its nationals".[24] The United States has refused to assert jurisdiction over such offenses simply on the basis of the victim's nationality, and has refused other states the right to assert jurisdiction over

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[23] The active and passive personality principles of jurisdiction have little application in drug trafficking offenses except under certain circumstances. Active personality or nationality principle ensures a state the right to assert jurisdiction over crimes committed by its nationals abroad. While there is some variance among the international community as to how vigorously a nation might assert this right, the United States is very reluctant to "rescue" Americans involved in drug offenses in foreign countries or other aspects of criminal law. Since the conditions of imprisonment may be considered inhumane by U.S. standards, the United States has negotiated various prisoner transfer treaties but U.S. courts have upheld the sentences and convictions of American citizens prosecuted abroad.

[24] Restatement (Second) of Foreign Relations Law of the United States 10-19 (1965) 30(2), Blakesley, "A Conceptual Framework for Extradition," p. 715.

U.S. nationals who have committed crimes outside of that state's territory.[25]

While one could argue that the primary victims of the drug traffickers were Americans, the passive personality principle tends to cause some conflict when applied to persons who were never physically present within the state at the time of the crime, as in cases which allege conspiracy. Invocation of the passive personality principle can also carry with it more political overtones and frequently serves as a statement of displeasure with the perceived handling of a case. The cases in which the United States might be predisposed to apply it are usually covered by other international or bilateral agreements.

Objective Territoriality and Conspiracy

While the principle of territorial jurisdiction is seldom controversial when applied to those acts committed in U.S. territory, it has been somewhat modified by the United States to include those acts which occur outside of the United States but which were intended to produce or cause detrimental effects within the United States (objective territorial principle). The United States first used this principle when combatting piracy in the late 1700s, refusing requests by Great Britain to extradite British citizens despite the fact that the acts for which they were charged took place outside of U.S. jurisdiction. The courts stated in *Strassheim v. Dailey* that if such acts produced a detrimental effect on the United States, the United States would be justified in punishing the offender if they were able to bring the perpetrators before the courts.[26] In this form, the United States has applied the objective-territorial principle to cope with drug trafficking as early as 1967, based on previous rulings in liquor smuggling cases. Questions regarding the use of this principle have centered mainly on the issue of illustrating intent or conspiracy when no actual effect or event takes place.

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[25]Ibid., p. 715.

[26]Chelberg, "The Contours of Extraterritorial Jurisdiction," p. 46.

In *Rivard v. United States*, several Canadian nationals were caught in Laredo, Texas, smuggling heroin. Other members of the ring were also indicted and subsequently extradited to the United States from Mexico, although they had never entered the United States. Reasoning for the court's decision referred back to the *Ford v. United States* liquor smuggling case, which concluded that since the conspiracy to violate U.S. laws had actually come to fruition and had produced effects within U.S. territory, all members of the conspiracy were subject to prosecution.[27] In a later case, *United States v. Postal*, the courts further applied the objective territorial to conspiracies which were prevented from occurring and suggested that proof of an overt act may not necessarily be required. In the *Postal* case, the courts found that intent to import illegal narcotics could be found in the purchase and outfitting of the boat in question which had occurred in Florida.[28]

Conspiracy is not recognized by many countries and they frequently lack similar laws pertaining to intent to commit a crime. To counter this problem, recent extradition treaties with the United States all include conspiracy among the list of extraditable offenses. Based on this principle of objective territoriality the United States could have indicted the major drug kingpins if it could be proven that they were part of the conspiracy to import narcotics into the United States which did occur or was likely to, had officials not intervened.

Proving the conspiracy element was much more difficult. It requires that U.S. agents must either penetrate the Colombian and Bolivian cartels, or devise elaborate sting operations to prove the complicity of the upper echelons of the drug network to smuggle narcotics into the United States.[29] Particularly in the case of the

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[27]Ibid., p.47

[28]Ibid., p.48

[29]Efforts to prove conspiracy have also begun to raise questions about the credibility of government witnesses in these cases. Quite frequently, witnesses for the prosecution have themselves been involved in the drug trade and have negotiated grants of immunity or reduced sentences in exchange for information which could be used against other members of drug rings. The U.S. government has also approved the use of financial incentives to further induce potential witnesses into testifying in addition to immunity and guarantees of government protection. In the ensuing trial of Antonio Noriega, the defence has already criticized the U.S. governments for payment of over 1.5 million dollars to witnesses which include drug pilots, corrupt bankers, and various aides to Noriega who are believed to have been the middle men

larger tightly controlled Medellin cartel, infiltration was difficult to implement and the likelihood of former employees testifying against the cartel leadership was very slim, since the threat of retaliatory violence was a verifiable reality in Colombia. Drug enforcement agents (DEA), in a rare opportunity, were able to use the testimony of a flamboyant American drug smuggler, Barry Seal, to issue indictments against all the leading members of the Medellin cartel.[30] Adoption of the territorial principle in this regard, and the fact that the overt act required may not be directly related to a constituent element of the crime, brings it much closer to the realm of the protection principle.

The Protection Principle

By definition the protection principle refers to the right of a nation to protect its economic interests from any acts which can threaten its security by the demanding extradition of individuals. It is the only theory of jurisdiction which allows jurisdiction over conduct that threatens potential danger to either a state's security, sovereignty, treasury or governmental functions.[31] Since the only

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between Noriega and the Colombian cartel members.While no country has asserted any challenge to U.S. use of the objective territoriality in the two major drug kingpin cases the United States has launched, the methods it uses to prove conspiracy and its use of witnesses whose motivations are questionable may discourage nations from subjecting their nationals to this type of trial.

[30] The DEA, through earlier arrangements with drug smuggler Barry Seal, was able to obtain photographs which apparently showed drug kingpin Pablo Escobar, loading duffel bags of cocaine into Seal's plane along with an unidentified Nicaraguan official and Nicaraguan soldiers. That official was later identified as Frederico Vaughan, a member of the Sandinista government and possibly an aide to the Interior Minister.His involvement in the transshipment of cocaine provided the Reagan administration with evidence to link the Sandinista government with the Colombian cartel. Oliver North reportedly leaked the DEA information and photograph to the press to gain public support for the $21 million dollar aid package to the Contras. Public disclosure of the DEA operation destroyed any hopes of capturing Escobar or any of the other cartel members and exposed Seal as the informant. Seal was later shot to death by three Colombians in Baton Rouge where he was serving a probated sentence, having refused to go into a witness protection program. *The Wall Street Journal, The Nation and The Village Voice*have all questioned the veracity of Seal's involvement and suggested that it was merely an attempt to frame the Sandinistas and secure American support for the Contras. Mary Thorton, "The Death of a Drug Informer," The Washington Post National Weekly Edition , April 7, 1986, pg. 33.

[31] A state is generally believed to have jurisdiction in crimes which occur outside its territory by aliens if the crime involves falsification or counterfeiting of the seals, currency, instruments of credit, stamps, passports, or other public documents issued by the state or the making of fraudulent claims to embassies or consular officials. Blakesley, "A Conceptual Framework for Extradition," p. 705 .

restrictions or limitations placed on what might be construed as a viable threat are self imposed, interpretation of the principle can be very broad and can extend to almost any activity or individual in a foreign state. Historically, the United States has applied it to only a few cases of treason and counterfeiting.[32] All cases invoking the protective principle by the United States were against actions where there was a demonstrative effect on the United States in particular. "Never in a published opinion of an American Court has a potentially generalized effect, which might or might not also be an effect on the United States, been sufficient to invoke the protective principle of international law."[33] In cases where extradition is demanded, the requested state is forced to make a value judgement as to the validity of the threat and the requesting country's motives balanced against the protection of its citizens from unlawful prosecution.

Most leaders are reluctant to use the principle of protection for fear of potential repercussions of an openly used and widely abused method of prosecuting all potential enemies (of the state) and reserve it for special circumstances. Use of the protective principle in criminal cases, particularly drug cases, has become more prevalent under the guise of objective territoriality. When extradition is based on either of these principles it places pressure on the requested country to consider denial in order to protect its citizens from unjustified prosecution abroad.[34] Once a request to extradite is denied there is the possibility that more militant action may occur if the individual is deemed dangerous to a nation's security. In such cases a country may justify use of kidnapping or other irregular means of rendition, including military invasion, to secure the persons wanted. The legality of these seizures is questionable and illegal under most bilateral extradition treaties,

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[32] Cherif M. Bassiouni, International Extradition and World Public Order. (Dobbs Ferry, New York: Oceana Publications, 1974), p. 52.

[33] Chelberg, "The Contours of Extraterritorial Jurisdiction," p. 51.

[34] Three basic reasons why a nation may justifiably refuse extradition: 1) a person deserves a trial before his natural judges; 2) a country has the duty to protect its citizens, particularly valid in civil law countries; and 3) a foreign court may be biased and unable to prosecute a foreigner as fairly as it would one of its own citizens. I.A. Shearer, Extradition in International Law (Dobbs Ferry, New York: Oceana Publications Inc., 1971), p. 118-119.

but once a country goes to such lengths to secure such a dangerous person it is unlikely that it will be willing to surrender him or respond to any protests.

Use of the protective principle also carries with it the risk that an individual may be the political target of a particular government subjected to a highly politicized, publicized and inherently biased trial without his adequate knowledge of the legal system or fundamental rights. With no international oversight to determine either the validity of the seizure or the conduct of a fair and impartial trial, it is quite likely that the defendant may not receive a fair hearing or trial. When the objective of the requesting government is clearly to destroy or at least to neutralize drug offenders, few legal restraints are employed on those presenting the case. Pressure is often placed on the accused to implicate other traffickers, giving drug cases the characteristics of political trials.[35]

Even in the United States, the highly publicized apprehension and trials of drug traffickers Carlos Ledher and Manuel Noriega, and the manner in which the United States pursued them, precludes the possibility that they could defend themselves adequately when the United States government is quite willing to spend large sums of money to ensure their conviction. While countries such as the United States may be quite able to conduct such legal proceedings and afford defendants most of the rights protected by the constitution, the possibility that American citizens could also be forcefully detained and tried in Lebanese, Iranian or other foreign court systems for political crimes is good cause for the U.S. government to reconsider the reciprocal implications of a broad interpretation of this principle.

It would seem that demonstrating intent in these cases would be absolutely necessary to justify use of the protective principle but this has not prevented the U.S. courts from relying on it in unusual cases. In the *United States v. Angola*, the United States relied exclusively on the protection principle to claim jurisdiction. The

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[35] Austin Turk, Political Criminality and Defense of Authority, (London: Sage Publications, 1982), p. 63, 137.

defendants, all foreign nationals on a stateless vessel, were arrested outside U.S. territorial waters and charged with possession of marijuana and intent to distribute. The court asserted that the protective principle "supports the assertion of extraterritorial jurisdiction without a showing of actual effects on the nation. It is enough to show that the activity which the nation seeks to regulate has a potentially adverse effect on the nation."[36] Restricting its decision to those cases which involved stateless vessels the court implied that the protective principle might offer a basis for jurisdiction in other drug trafficking cases. The Justice Department has also concluded that use of the protection principle in drug trafficking conspiracy cases make it difficult to demonstrate a possible adverse effect "in the absence of intent to import the substance into the United States or knowledge that it will be imported."[37]

Under the Reagan administration, the issue of drug trafficking was clearly elevated from being a public health and social problem to one which represented a serious threat to American national security, as put forth in the Reagan directive which outlined the need for expanded jurisdiction.[38] The National Security Directive signed April 8, 1986 declared drug traffic into the United States to be a national security concern and authorized the use of military force against it in certain cases. In a statement before the Conference on Narcotics, President Reagan justified his action by citing narcotic traffickers for endangering "our national security by weakening the authority of friendly governments and spewing a trail of terrorism, violence, and corruption."[39] Because of the concentrated supply lines of cocaine and some encouragement that crop control might be effective, the Reagan administration believed that dramatic success could be achieved with additional personnel and equipment.

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[36]Chelberg, "The Contours of Extraterritorial Jurisdiction," p. 51.

[37]Ibid. p. 53.

[38]"Striking at the Source," Time, July 28, 1986, p. 13.

[39]Remarks at a White House Meeting for the U.S. Ambassadors Conference on Narcotics, November 13, 1986. Ronald Reagan, Public Papers of the United States 1986, Vol. I, (Washington D.C.: U.S. Government Printing Office, 1987), p. 1545.

Attention focused on the Colombian drug lords and was reflected in the dramatic rise in the number of U.S. requests for extradition filed in Colombia under the new extradition treaty, from 3 requests in 1983 to 26 requests in 1985 before the treaty was declared void.[40] The Bush administration clearly followed through on this interpretation. It determined that in addition to other problems, Noriega's involvement with the drug traffickers had become intolerable. With no possibility of extradition, Noriega constituted a viable enough threat to American security that it merited a full scale military invasion of Panama.[41] Merely relying on self-imposed limitation to justify use of this principle could present potentially awkward situations for the United States should a backlash against U.S. pressure occur or should U.S. citizens become subject to similar motives for prosecution.

The Principle of Universality

International law also recognizes that certain offenses are matters of international security and of universal concern. This concept is a departure from the traditional theories of jurisdiction which recognize that an act must be determined to be lawful or unlawful based on the law in the country where it is committed. These crimes are by nature and importance quite distinct from common criminal cases and punishability is deemed essential for the safety of the world community.[42] The oldest and most common application of this principle was to the problem of piracy. Later slave trading, genocide, hi-jacking, war crimes and in some cases, terrorism, are considered to be included among those crimes which are of such a universal nature that the consequences could threaten the citizens of all nations. The Constitution recognizes the universality principle in Article I by giving Congress the authority to punish piracy and

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[40]Ron Martz, "Using Death Penalty in Drug Cases Likely to Make Extradition Difficult," Austin-American Statesman , October 17, 1988, p. A6.

[41]In addition to alleging Noriega's involvement in drug trafficking, the Bush administration also cited the need to protect American citizens in the Canal Zone and the integrity of the Panama Canal treaty and Noriega's failure to recognize th democratically elected government of Guillermo Endara.

[42]United Nations Publication. Extradition for Drug-Related Offenses , p. 62.

other violations against the law of nations, and reiterated in the Convention on the High Seas to which the United States is a party. Criminals engaged in these acts may be prosecuted even though the offenders were never present in U.S. territory at the time the crime was committed. All encompassing in its jurisdictional scope, the list has remained fairly short and unchanging, with the recent addition of terrorism.

Perpetrators of these offenses may be prosecuted and punished regardless of their nationality or place of the crime, by whatever nation apprehends them even though that nation may have no other jurisdictional claim, the acts in question having had no effect on their territory or nationals. The right and obligation to apprehend such offenders can be based on the offense, the offender or the victim, the location, nationality or the threat to interests. Universality does not require double criminality to be a factor in the ability to prosecute or extradite an offender.[43] If they cannot be tried in the country in which they are found, they should be extradited to a country willing to try them. As in the more recent cases of terrorism, several countries actively claimed jurisdiction based on nationality of the victims and the location of the crime, but normally these cases are prosecuted by the government of the state which apprehends the terrorists within their territory or has successfully obtained the fugitive abroad and returned him for trial.

[43]United Nations Publication. Extradition for Drug-Related Offenses , p.62.

Section III

Utilizing Universal Jurisdiction

The concept of applying the universal theory to cover drug offenses was not a product of the 1980s War on Drugs although there is a recognizable trend towards enlarging jurisdiction over drug offenses. American delegations to the first drug conventions in the early part of this century had pressed for its use to combat opium traffickers and the 1936 Convention for the Suppression of Illicit Traffic in Dangerous Drugs introduced the optional principle of universality in national penal legislation to ensure that traffickers would not escape prosecution because of lack of criminal statutes. The 1961 Single convention only expressed the desirability of making extradition for narcotic crimes, which was later made mandatory by the amending Protocol in 1972.[44]

There continues to be vocal support, primarily from the United States, for upgrading drug trafficking offenses to qualify as universal crimes. To justify the universal application to drug offences, supporters have compared drug trafficking to be "similar to genocide, in that it entails causing serious bodily harm committed with the intent to destroy a nation or specific race."[45] Others have advocated a hybrid of theories to resolve the problem, relying more heavily on universalism to supplement objective territoriality. In terms of U.S. policy, the obligation might allow for greater prosecution of traffickers who have managed to avoid apprehension because of the current limitations of law enforcement and the unwillingness of nations to prosecute or extradite suspected traffickers.

Some supporters have suggested that instead of unilateral U.S. action to prosecute traffickers, an international tribunal could be

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[44]Cherif Bassiouni, "The International Narcotics Control System: A Proposal." St. John's Law Review, Vol. 46, 1972, p. 752.

[45]Section 404 of The Restatement (Third) of the Foreign Relations Law of the United States, No. 5, 1984. Michael R. Pontoni, "Authority of the United States to Extraterritorially Apprehend and Lawfully Prosecute International Drug Traffickers and Other Fugitives," California Western International Law Journal, Vol. 21, 1990, p. 242.

established to review cases and either determine who may have appropriate and justified jurisdiction or conduct proceedings independently and assign those convicted to serve their prison time in various member countries. A combination of principles has also been suggested, namely, protective and universal, especially in cases which involve extraterritorial conspiracies which do not produce the intended results.[46] This would allow a state to claim jurisdiction as long as the crime was universally recognized as being a significant threat to a nation's interests and had progressed enough to determine the intended effect of the conspiracy and its impact had intervention not prevented it from occurring.[47] Opponents of elevating drug trafficking to a universal crime argue that the rule of reasonableness allows for the expansion of traditional theories of jurisdiction to meet changes in international law enforcement, without drastically altering the distinction between universal and non-universal crimes. The rule of reasonableness requires that proper jurisdiction based on one of the accepted principles must exist and that a nation not object to the broader interpretation by registering a protest. Objective territoriality has already been stretched to include most of the drug trafficking offenses, including those conspiracies which have not culminated in the direct importation of narcotics.

Efforts to broaden jurisdiction of drug trafficking offenses beyond that of traditional territorial limitations, as advocated by the United States, have been met with considerable resistance, despite consensus on the overall harmful effects of the drug trade. The central question is whether or not the act of drug trafficking is viewed by the international community to be such a "heinous and deplorable" crime that use of the universal principle would be an effective tool against it. Examples of such support would be based on custom, universal participation in international agreements, and consensus that the particular crime is internationally intolerable and does affect all nations equally. As such, drug trafficking has not raised sufficient interest. In addition, there are questions as

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[46]Blakesley, "A Conceptual Framework for Extradition ," p. 723.

[47]Ibid., p. 761.

to what constitutes a conspiracy and whether narcotics conspiracies ought to be punished. Unlike such unequivocal examples of universal crimes as piracy, genocide, and hi-jacking, drug trafficking fails to meet the currently accepted criteria for a "crime against humanity" or one so "heinous" in nature that it evokes universal condemnation. More importantly, the victims of universal crimes are usually innocent of any wrongdoing and actions taken against them have been beyond their control. In the case of drugs, the victims are willing consumers, who knowingly violate their own domestic laws and risk their health, departing from the traditional view of victims having no control over their fates in universal crimes. While the international nature of drug trafficking requires special attention and worldwide cooperation, that fact alone does not necessarily imply that universal jurisdiction is necessary. The effects and consequences of drug trafficking must provide the basis for determining if it is indeed a universal crime, considering the involvement of thousands of persons in the drug trade and the large number of willing consumers who propel the multi-billion dollar a year industry.

PART TWO

THE IMPACT OF THE UNITED STATES ON THE FORMULATION OF INTERNATIONAL DRUG POLICY

Section I

Achieving International Consensus on the Dangers of Drug Trafficking

The Trend Towards Universal Jurisdiction

Even before its emergence as the world's largest consumer of illicit drugs, the United States had already established itself as the leader in drug policy. Since the early 1900s, the United States has pursued the problem of illicit drug use, and succeeded in bringing drug trafficking to the forefront of international attention. It has also initiated multilateral agreements that reflect an increasing willingness to further participate in international enforcement action but it became apparent early on that these would not be sufficient to establish international controls. The United States could expect little cooperation from many of the countries involved in the drug trade, and there was little support for the American view that the drug problem was so morally abhorrent that drug traffickers should be subjected to universal jurisdiction to ensure their punishment.

Determination to stem the drug flow has tended to fluctuate a great deal among the various nations but overall the issue of drug trafficking has remained an important part of international cooperation and has encouraged more interaction between national law enforcement and judicial systems. This section will examine how the United States has used multilateral treaties to gain consensus on drug trafficking to the point that general jurisdiction in drug offenses is once again being suggested by the United States to bypass the two main problems that it has continuously encountered in international drug enforcement. Both problems stem from the diversity of interests involved in narcotics traffic and enforcement; the inability of the United Nations to establish competence and authority in the field of drug control and failures at the national level to

guarantee serious prosecution of drug traffickers within their borders.

The Opium Problem in the Philippines

With the acquisition of the Philippines following the Spanish American War, the United States inherited its first serious drug problem and was presented with the first opportunity to initiate international efforts to combat drug abuse. Unrestricted by the doctrine of state's rights, Congress and the Philippines Commission had the authority to adopt whatever policy was necessary to combat the opium problem. Opium smoking was to be gradually phased out and the United States immediately dismantled the elaborate and centralized drug distribution network once operated by the Spanish government. But the breakdown of the opium monopoly dispersed the opium trade and there was an influx of more dealers and smugglers to supply opium, not just to the ethnic Chinese who had previously been the only group permitted to purchase it but more frequently to the Filipino natives.[1] It soon became evident that the United States was making little progress in its unilateral efforts inside the Philippines and directed its focus towards the international community to force them to curb production and smuggling.

At this juncture, the United States stood alone in its willingness to pursue international agreements designed to reduce opium production.[2] Many European nations with colonies in Southeast Asia were benefitting at least indirectly from the lucrative drug market in opium and were reluctant to join the United States, particularly because the problems of addiction were not widespread in

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[1]David Musto, M.D., The American Disease: Origins of Narcotic Control, (New York: Oxford University Press, 1987) p. 22.

[2]China was also interested in confronting its opium problem, with an estimated ten million addicts. The United States, to its credit, did support China on this issue, including China in the international conferences that it convened, pressing Great Britain to eliminate the opium trade between India and China. Articles 15-18 of the 1912 Convention dealt specifically with the problems of opium imports into China, impelling other governments to take effective actions to limit opium smuggling into China and obligating China to promulgate pharmaceutical laws regulating the sale and distribution of morphine, cocaine and other substances. Ibid., p. 26.

Europe nor were they deemed that important in the colonies. In the case of England, the profitable trade in narcotics between India and China was legal and encouraged. Portugal had extensive interest in opium production in Macao, the Dutch East Indies were extensively involved in trafficking and poppy production in Persia was thriving. The only country remotely interested in the problems of addiction was France which was beginning to witness an increase in opium smoking in its colonies.[3] In addition, considerable pressure was growing among the European colonies for independence, so it was also unlikely that the European leaders would be willing to commit personnel or money to drug enforcement.

The Opium Conventions

Despite the lack of international concern, the United States continued to press for legislation which would place some controls on opium farming, trafficking and use. The results included several multilateral treaties which recognized the need for international coordination and more severe punitive measures. The 1912 Convention Relating to the Suppression of the Abuse of Opium established consensus on the need to reduce the flow of opium to only that needed for legitimate purposes. It sought to control the production and distribution of opium through national laws, and required nations to gradually suppress opium smoking. The Convention also limited the sale, manufacture and consumption of morphine and other opiates except for medical purposes or other legitimate needs to be controlled by a system of permits.[4]

The 1912 Convention was followed in 1931 by the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs which instituted a system of quotas to which producing and

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[3]Italy was unconcerned with the opium trade but had expressed concern at limiting the production on Indian hemp, which at the time was not viewed by the United States or any other nations as a serious problem. Ibid., p. 50.

[4]Forty-four governments signed the Convention, including all the major opium producers except for Turkey, but less than half ever ratified it and only five nations would make any attempt to enforce its provisions (The United States, China, the Netherlands, Norway and Honduras). Ibid., p. 53 .and Bassiouni, The International Narcotics Control System , pg. 722.

manufacturing nations must adhere. Governments party to the Convention were to establish a separate narcotics agency to submit estimates on production and use to the Permanent Central Opium Board. If a country violated its import or manufacturing quota, the Permanent Central Opium board could recommend an opium import embargo on the country concerned and which had universal application forcing other nations to abide by the Board's decision and included a provision which allowed a central controlling board to recommend an embargo on nations caught violating the quotas.[5] The export of heroin was prohibited unless expressly requested by importing nations.[6] Protocols to the 1931 Convention expanded the scope of the treaty to include other opium derivatives not previously listed in the convention.[7]

The United States was also involved in the writing of the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs but the treaty was not signed or acceded to, possibly because of conflict with the constitution regarding its provisions for criminal prosecution or because of the Convention's refusal to incorporate United States proposals. The United States had initially opposed the convention on the grounds that bilateral treaty arrangements and earlier conventions were sufficient but decided to join the Convention with the hopes of including provisions against the domestic cultivation of marijuana. The proposal by the U.S. delegation was turned down and the United States was the only nation participating which did not sign the Convention.[8] Its most notable feature were the provisions which were aimed at ensuring prosecution of drug traffickers by facilitating extradition. It included a provision which required signatories to incorporate into their

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[5]Bassiouni, "The International Narcotics Control System ," pg. 724.

[6]Musto, The American Disease , p. 215.

[7]The 1948 Paris Protocol was the first narcotics convention held under the UN and amended the 1931 Convention to include a variety of new synthetic drugs which the Commission on Narcotic Drugs finds to be "either addiction producing or convertible into a dependence producing drug." The protocol gained universal adherence but was supplemented later with the 1971 Convention of Psychotropic Drugs. Bassiouni, "The International Narcotics Control System ," pg. 726.

[8] Although the United States did no sign the treaty, it is still binding for several countries which never ratified the 1961 Single Convention on Narcotics and was the last treaty on narcotics presented under the auspices of the League of Nations. Musto, The American Disease , p. 215.

national laws provisions for imposing more severe punishment for drug trafficking offenders including prison terms instead of fines, and punishing conspiracy or other preparatory acts. It obligated nations to punish all traffickers within their jurisdiction and to surrender fugitive offenders for extradition. Like many of the other treaties it was vaguely worded and provided loopholes for nations which might not be able to reconcile the treaty requirements with national laws.

In 1953, the Commission on Narcotic Drugs issued another protocol which attempted to exercise further control on the production of opium by establishing an international opium monopoly. It limited the countries who would be allowed to grow poppies for international use, and created centers where all opium harvested would be deposited for international distribution.[9] It also limited the amounts of opium that nations could stockpile without affecting their import estimates. The imposition of an opium monopoly as outlined in the 1953 Protocol might have proved to be the most forceful and perhaps successful attempt to rigorously control the opium trade but it was not included in the 1961 Single Convention which was designed to codify and replace earlier treaties.[10] Among the problems cited with the opium monopoly was the fact that many nations were to be left out of the lucrative business and the Protocol made no references to alternating suppliers.

The impact of these conventions on the opium trade is difficult to discern. Some of the larger production and distribution networks for opium were destroyed but replaced with smaller, more dispersed organizations that were more difficult to target or control. Attempts to inhibit production and distribution were evident but the actual decreases in production could also be attributed to concerted efforts to reduce demand and better understanding of the nature of addiction

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[9]United Nations, "Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade In, and Use of Opium, June 23, 1953, TIAS no. 5273, United States Treaties and Other International Agreements, Vol. 14, Article 6. The countries chosen to continue production for the world market were Turkey, Greece, Bulgaria, India, Iran, the USSR and Yugoslavia.

[10]The United States still maintains that the 1953 Protocol is binding on those nations which signed it but did not sign the subsequent Single Convention on Narcotic Drugs and the 1972 Protocol.

and its treatment, supplemented by domestic legislation.[11] Many nations did comply with requests to submit estimates on production and use and took minor steps towards implementing effective drug laws but there were few attempts to eradicate production or introduce alternative crops to dissuade growers from growing poppies. While opium and more particularly heroin remained a substantial problem for the United States, the rising popularity of marijuana and cocaine suggested the need for a more comprehensive approach to drug traffic and control that earlier Conventions did not address.

The 1961 Single Convention on Narcotics

By 1961 the United States had once again aroused sufficient support for an international forum on narcotics control which produced the 1961 Single Convention on Narcotic Drugs. Instead of targeting illicit drug production or future problems of smuggling and law enforcement cooperation, the Convention concentrated on improving the methods of monitoring imports, exports and production of drugs as had been established by the various opium conventions. The Single Convention was based on the premise that production of illicit drugs needed some protection to ensure that adequate amounts would be available for medical use and scientific research. Governments were given the responsibility to oversee the production of the licit drugs[12] and to determine which projects or research would merit their use.[13] It applied the same control requirements placed on opium to cannabis[14] and coca leaves[15] and required each state to adopt legal measures which would ensure the punishment of those found violating

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[11] In the United States, the 1914 Harrison Narcotics Act amended U.S. laws in conformity with the provisions of the various Conventions, regulating those who could prescribe opium derivatives and establishing penalties for those involved in interstate traffic or illegal possession. Michael Lyman, Practical Drug Enforcement: Procedures and Administration, (New York: Elsevier, 1989), p. 355.

[12] United Narions, " Single Convention on Narcotic Drugs," March 30, 1961, TIAS no. 6298, United States Treaties and Other Interantional Agreements, Vol. 18, Article 21 regarding the proper methods of licensing opium cultivation

[13] Single Convention , Art. 19

[14] Single Convention , Art. 28

[15] Single Convention , Art. 26

the provisions of the treaty regarding all aspects of the drug trade (cultivation, production, manufacture, trade and distribution).

Complaints which might arise over non-compliance would be forwarded to a United Nations Narcotics Board which would attempt to mediate the dispute, and issue reports on the transgression to all member parties, possibly issuing a recommendation to place an embargo against the offending nation.[16] While some nations have attempted to address their grievances to the Board, it was quickly apparent that the United Nations Board was unable to enforce any measures and cooperation among its signatories was at best limited. Conflicts which failed to be remedied would be forwarded to the International Court of Justice. The Board has never issued a report condemning a nation of violating production quotas or attempted to apply an embargo. Like other U.N. committees and boards, it is resigned to merely generating public awareness and attention to a particular problem, in the hope of encouraging other nations to adopt unilateral measures.

In addition, the Convention advocated extradition as one of the most effective means of cooperation between nations in regard to drug trafficking.[17] Whether or not the United Nations was contemplating the future implications of extraterritorial jurisdiction and the pursuit of international drug traffickers is not necessarily clear. Relying somewhat on U.S. experience, the U.N. representatives may have concluded that there would be situations in which nations might be unwilling or incompetent to handle such cases. In such instances, suspects would be referred to authorities which could provide for fair prosecution, although it is not clear to whom this obligation applies, presumably the United States. Use of extradition was believed to be one of the most encouraging aspects of drug policy since it had very few ideological implications and tended to conform to the values of the world community.[18]

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[16] Single Convention, Art. 48

[17] Referring to Article. 36, of the 1961 Single Convention. United Nations Publication. Extradition for Drug-Related Offenses, p. 2.

[18] Ibid., p. 3.

Upon interpretation, the United Nations has concluded that the Single Convention requires nations to consider the health and welfare not only of their own populations but also the population of other states, even states not party to the convention.[19] To what extent a nation must go to comply with such requirements has consistently been put to the test by the United States and has provoked indignant complaints that the United States prefers to concentrate its efforts abroad rather than focusing on the drug demand within its own borders. The Single Convention does recognize the supply and demand problem of the drug issue and addressed the need for nations with a consumer oriented drug problem to establish treatment programs, instigate rehabilitation and social integration, with emphasis on drug education for abusers.[20]

While the Preamble to the 1961 Convention stressed the need for coordinated and universal action, requiring signatories to acknowledge the competence of the United Nations in the field of narcotics control, the United States realized that the 1961 Convention would do little to alleviate its growing drug problem. It did not put significant pressure on other governments to comply with the estimate system or generate enforcement action against the illicit production of drugs. In addition, the major producers of drugs in Latin America refused to sign, protesting the mandatory extradition of drug law violators which conflicted with their own laws forbidding the extradition of nationals.[21] Expressing its disappointment in the resulting agreement, the United States waited over six years to ratify the Convention and organized a conference in 1972 to address these perceived weaknesses through an amending protocol.

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[19]Ibid., p. 3.

[20]Single Convention, Article. 38. Article 49 was a transitional reservation for nations attempting to eliminate drug use. Quasi medical use of opium was to be eliminated within fifteen years, and coca leaf chewing to be banned after a period of twenty-five years.

[21] The nations which refused to sign are Colombia, Mexico, Peru, Bolivia and Panama. In the case of Peru and Bolivia, both claimed that use of coca among peasants was traditional and did not constitute any problem to law enforcement. Later agreements would encourage the government to wean the peasants off of coca, setting a six year limit to reduce their production for internal consumption. Later, Peru, Mexico and Panama signed the treaty but reserved the right to refuse extradition of nationals

Protocol of 1972

The Protocol reflected the aims of the United States and the difficulties they were currently facing in drug enforcement, primarily international cooperation with U.S. or U.N. authorities and more diligent prosecution. George Bush, as U.S. representative to the United Nations, submitted a proposal to the U.N. Secretary General outlining the areas that the United States believed needed to be addressed. The United States was primarily concerned that more information be available to the Board regarding the actual amount of a drug under cultivation[22] and that the International Narcotics Control Board (INCB) not be limited to only official reports and estimates put forth by the government of each state. It suggested that any nation having information pertaining to the drug trade in another state should be allowed to submit such information so that the INCB could study all data on the situation. On-site inspections or on-the-spot inquiries were also viewed as necessary tools to strengthen the Board's ability to obtain reliable information.

With this information, the United States also advocated that the Board be allowed to modify the estimates presented by each state to conform with the actual amounts being produced or manufactured. If countries were found to be violating U.N. estimates, the United States proposed that the Board be given sufficient power to enact mandatory embargoes on either imports or exports or reduce quota estimates for that country the following year. Extradition for drug offenders as outlined in the Single Convention should also be upgraded to mandatory. The letter also advised the Commission to consider funding United Nations authorities so that they may assist countries in fulfilling their obligations under the Single Convention and enlarge the Board from eleven members to thirteen to provide better geographic representation.[23] While the suggestions were aimed

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[22]Under the Single Convention, the Board could only request information relating to the consumption of drugs, the stockpiling of drugs, how much was used for manufacturing other derivatives and the amounts involved in the import and export.. It did not include, as Mr. Bush pointed out, estimates of what might actually be under cultivation.

[23]Bassiouni, "The International Narcotics Control System ," p. 734-36.

at the heroin flow into the United States, cocaine was first mentioned in this proposal as a significant concern.

The protocol did include many of the U.S. proposals and corrected some of the perceived weaknesses in the Single Convention. The Board was enlarged, given express authority to control illicit traffic in narcotics, entitled to more information on cultivation and able to consider reports and information gathered by other non-governmental groups.[24] Article 15 required nations to submit estimates on illicit production as well, and allowed the Board to modify future estimates based on overproduction or stockpiling of drugs. When it becomes apparent that a state is serving as an important center for illicit drugs (either because of production, distribution or usage) the Board may initiate consultation with the government in question in an attempt to develop remedial measures. If a state is unwilling to cooperate or fails to adopt reforms, the Board may call attention to this violation by referring matters to the Commission on Narcotic Drugs which may then take the matter up before the General Assembly. The Board may also employ technical and financial assistance in order to help states combatting illicit drug production.

The Protocol reemphasized the mandatory extradition of narcotic law violators and amended Article 36 of the Convention to require that serious offenses, whether they be committed by nationals or foreigners shall be prosecuted, either in the country requesting extradition or through the court system of the requested country.[25] Provisions were also made to include among extraditable crimes, those crimes which involved persons conspiring or attempting to commit drug offenses, and those involved in financial operations connected to drug trafficking, all charges used to bolster prison terms of drug offenders in the United States. The protocol also emphasized the need for prevention of drug abuse along with adequate treatment and rehabilitation of drug abusers either as an alternative to punishment or in conjunction with punishment. While the United States has never

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[24] United Nations, "Protocol Amending the Single Convention on Narcotic Drugs, March 25, 1972, TIAS no. 8118, United States Treaties and Other International Agreements, Vol. 26 , Article 6.

[25] Protocol , Art. 14.

been challenged on this issue, there is some doubt as to whether it has made adequate attempts to adopt this policy and create the facilities necessary to treat its addicted population other than by incarceration.[26]

The 1988 Vienna Convention on Illicit Traffic in Narcotics

The latest United Nations Convention directly addresses the current problems faced in drug enforcement and the illicit traffic in drugs. Moving away from the protection of licit production, the conference recognized the global nature of this type of criminal activity and concentrated on the practical efforts to be made by nations to suppress the drug trade. It expands the international definition of conspiracy, and the conference encourages courts to take into account the offender's involvement in organized criminal activities or abuse of public office and treat such cases in a more serious manner.[27] Confiscation and forfeiture of narcotic drugs and related materials or equipment is sanctioned and it instructs nations to adopt national measures to "identify, trace, and freeze or seize" proceeds, property or other implements of the narcotic smuggling or production.

States party to the convention must cooperate in international investigations and can not refuse to divulge financial information on the basis of bank secrecy.[28] Special emphasis is placed on the problems arising in drug transit countries who require aid in establishing interdiction programs and financial assistance to strengthen the internal infrastructure to better resist the revenues created by drugs.[29] Directed at the United States and other industrialized nations, the Convention appeals to members to make a concerted effort to prevent the sale and distribution of the

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[26] Protocol, Art. 15.

[27] United Nations, "Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," December 20, 1988, International Legal Materials, Vol. 28, (1989), no. 493, Article 3.

[28] Vienna Convention, Art 7.

[29] Vienna Convention, Article 10, International Co-operation and Assistance for Transit States

chemicals known to be used in the processing of cocaine or other substances. It has also adopted a more realistic stance on eradication programs which include tolerating traditional use of narcotics (as Peru and Bolivia have asserted), and protecting the environment from dangerous chemicals used in eradication, as well as encouraging alternative crops.[30] Appropriate labeling on all exports and imports is required to aid interdiction and the Convention also outlines the basis of jurisdiction in regard to extraterritorial seizures at sea.

The adoption of this convention is the most significant step towards narcotic control ever taken by the United Nations. It clearly reflects the policy of the United States over the last decade and the methods the U.S. government has adopted to try and stem importation of narcotic substances. It also limits the grounds for denial of extradition by precluding exceptions that the crimes may be fiscal, political or politically motivated and specifies that extradition does apply to money-laundering offenses. The United States attempted to include a provision which would prohibit the denial of extradition on based on nationality, but while it may be useful in the context of drug trafficking, other nations are still wary of relinquishing this right.

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[30]Vienna Convention , Article 14, Measures to Eradicate Illicit Cultivation of Narcotic Plants and to Eliminate Illicit Demand for Narcotic Drugs and Psychotropic Substances.

Section II

The Failure of International Agreements to Stem the Drug Trade

The Jurisdictional Limits of Multilateral Treaties

While trying to establish itself as the pre-eminent authority on drug policy, with the competence to handle the international complexities of combatting drug trafficking and enforcing multilateral treaties, the United Nations has been stifled by a number of factors. First, it has lacked authority to actually compel nations to abide by the treaties to which they are a party or to encourage the drug producing nations to adopt the basic tenets of international cooperation on drug control. Second, most countries do not share the level of concern with the United States on the issue of how much importance should be placed on drug policy and apprehending drug traffickers, which carries with it certain consequences. And third, the United States has dominated the drug enforcement policy with its resources, tactics, and manpower, and has not recognized the United Nations as being equipped to have much more than a secondary role in the enforcement of drug law.

The United States and other nations have not been willing to allow the United Nations a larger role in drug enforcement by recognizing that long term universal concern may supersede current national interests and that justice might be better attained with less ramifications for foreign policy in a recognized international forum. The Commission on Narcotic Drugs and the International Narcotics Control Board is so limited in its authority that it presents no threat to the nations involved in drug trafficking without any power or machinery to implement a mandatory embargo on countries heavily engaged in the drug trade. With no international enforcement machinery or jurisdictional rights, the INCB can do practically nothing to enforce compliance with any part of the treaty

and must rely on the willingness of the participating nations to abide by such agreements. While punitive measures are alluded to in the treaties, they are rarely utilized and might actually be counterproductive. Using an embargo against countries such as Colombia or Mexico would create more problems for the governments attempting to comply but overwhelmed by the costs of narcotics enforcement Even the provisions for mandatory extradition are weakened by the clause which allows the executive branch to refuse arrest or extradition if they do not believe the offense is "sufficiently serious".[31]

Generally guided by U.S. wishes and actions in regard to narcotics policy, the United Nations has neither attempted to initiate innovative policy which might serve as an alternative to more aggressive and interventionist action by the United States nor established for itself a position by which it might effectively oversee and make judgements on the legality of jurisdictional claims and the use of illegal abduction. Without any authority to carry out punitive measures or adjudicate the more serious and questionable cases of drug trafficking, the United Nations involvement in actual drug enforcement is non-existent. While it is involved in long-range programs aimed at encouraging crop substitution and providing treatment facilities for addicts, the United Nations essentially reflects the general international sentiment and consensus on combatting drug trafficking and has established broad guidelines for nations to follow. So while the United States may try more aggressive, unilateral measures in this regard and risk the consequences to foreign relations, the United Nations must attempt to reconcile the interests of each of its member nations in order to retain some semblance of unity on the issue.

Pressured to recognize U.S. tactics in the drug war, the United Nations has encouraged many countries to remove legal barriers associated with jurisdiction to facilitate extradition, primarily to

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[31]Article 14 of the 1972 Protocol: "... the Party shall have the right to refuse to grant the extradition in cases where the competent authority considers that the offense is not sufficiently serious."

the United States.[32] In this sense the United Nations is following the U.S. lead and helping the international community adopt U.S. methods to fighting drug trafficking. It also demonstrates the need for organizations such as the United Nations to continually examine and readjust their policy to meet the problems posed by drug trafficking. Simplified extradition, along with revived attempts to seize financial assets of drug traffickers abroad[33], and international adoption of laws against narcotics conspiracies tend to illustrate the tendency of the United Nations to move towards a policy which obligate other countries to help the United States fight drug trafficking by recognizing traffickers as a threat to the stability of the international community.

Lack of Consensus on Measures Necessary to Fight Drug Trafficking

Considering the international scope[34] of the drug trafficking problem it would appear that international cooperation and coordination should take place under the auspices of an international body such as the United Nations, through conventions, conferences and international tribunals. Without elevating the situation to that of universally unacceptable, the United Nations has focused its attention on the illicit drug trade and as such, has attempted to offer guidelines by which narcotic violations should be dealt with effectively and with the least amount of international ramifications. There appears to be international consensus at least among foreign leaders that drug abuse is morally distasteful and socially devastating, and most governments have recognized the need for United Nations guidelines on drug trafficking and international coordination through organizations such as INTERPOL. But the consensus begins to

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[32]CCE and RICO, the law of speciality, conspiracy, provisional arrest, double criminality, use of mutual legal assistance treaties have all been clarified and internationally recognized to some degree.

[33] Single Convention , Article 37 on seizure and forfeiture of drug related assets.

[34]The United States currently cites 24 countries as being drug producers. Only five of those countries have limited or no bilateral agreements regarding drug control (Afghanistan, Iran, Syria, Laos and Lebanon). Ann Wrobleski, "FY 1988 Assistance Requests for Narcotics Control," State Department Bulletin , June 1988, No. 2135, p.47.

diminish when discussion turns to methods of actual enforcement and the degree of importance the United States expects other nations to place on the problem of drug trafficking. To counter the potential problems that might arise between nations, the United Nations has encouraged the use of bilateral agreements to facilitate the exchange of information, encourage joint-maneuvers and the extradition of drug traffickers to cope with international crime, and the increased movement of persons and goods around the world.

The United Nations is rendered ineffective by its diverse membership which is decidedly split on how to contend with the problem and just how much intervention and involvement can be tolerated before it becomes a threat to their sovereignty and stability. U.S. pressure on the United Nations to adopt sterner sanctions against drug producing nations by linking United Nations development funds to enforcement cooperation have met with mixed results. The United Nations, with more and more of its member nations becoming at least tacitly involved in the drug trade, would find it difficult to arbitrarily adopt such sanctions against those nations deemed to be the greatest offenders. Loss of incentives to nations involved in the drug trade would merely increase their reliance on drug revenues to support their economies. The drug trade itself serves as a strong disincentive to participate, considering that it does provide employment in nations normally beset by high unemployment, particularly among the peasant populations who have tended to be overlooked in national development efforts. The drug trade also creates great profits, some of which eventually find their way back into the country and have consequently been channeled into political campaigns and many other legitimate businesses, fostering a growing middle class, as well as being used directly for bribery. So even nations who are benefitting indirectly have viable reasons for not pursuing more aggressive and definitive drug enforcement policies and international drug treaties reflect this ambiguity of concern and commitment.

The lack of a strong enforcement mechanism in multilateral treaties has encouraged the United States to take on a more significant role in narcotics control by using its seemingly

unlimited manpower and resources as leverage to enforce cooperation and compliance. Faced with a variety of developmental needs and internal problems, very few countries have the resources or desire to launch a strong attack on drug trafficking. If the United States and the United Nations are going to insist that a high priority be attached to the issue, drug producing nations will be forced to rely on international funds to supplement their own meager drug control budgets. Use of American funds, however, obligates the country to follow the prescribed American policy which may not take into account the internal problems that the drug economy has produced or what the long term effect of that policy might be. What appears to the United States to be clear cut solutions to drug problem outside its borders are often quite controversial inside the drug producing nations.[35] The United States is very quick to criticize what it perceives as lax enforcement and has continued to pressure countries to adopt sterner measures to get a grip on the problem, advocating among other things, use of potentially dangerous pesticides, broader police powers, allowing more DEA involvement, and use of the American military.

American Drug Enforcement Setting Pace for the United Nations

The failure of multilateral treaties to be effective is also to be blamed on the United States. Because the United States has tended to play the dominant role in international drug policy it has begun to be regarded as an ineffective tool of the U.S. government to be relied upon only when other measures have apparently failed, or used to justify U.S. enforcement actions. The United Nations treaties reflect the consumer countries' viewpoint that eradication at the production centers is more important and viable than concentrating on domestic efforts to reduce demand for narcotics. The United States has also deemed the drug problem to be so unacceptable that it has on several occasions violated the United Nations agreements in hopes of

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[35]Debate on extradition in Colombia lasted over eight years and use of American troops in Bolivia has produced tension among local residents and anti-American protests. "Tables Turned in Drug Raid," The Houston Post, October 11, 1986, p. 14A.

achieving its short term objectives. Consequently, other nations may follow U.S. example and place less faith in the United Nations system to handle its problems or to protect itself from U.S.transgressions.

The United States can claim a number of achievements in its efforts to make drug trafficking an issue of international concern, partially through its involvement with the conventions and partially because it is the biggest consumer of illicit drugs which has in turn, involved more countries in production. Previous barriers to jurisdiction such as double criminality, conspiracy charges (CCE and RICO), the law of speciality have all been modified in the latest multilateral treaties to facilitate extradition of drug traffickers based on changes initiated by the United States. The United States has also begun negotiating Mutual Legal Assistance Treaties (MLATs) which have alleviated some of the difficulties encountered in international crimes, such as the transfer and acceptability of evidence from other nations. It has also tried to standardize other international procedures. The United Nations has incorporated these American initiatives into the 1988 Vienna Convention, along with adopting more specific proposals aimed at controlling the sale of chemicals used in processing cocaine, more detailed labeling of international shipments to expedite customs inspections, and condoning the seizure of all drug assets and other material goods. The United States has also been successful in encouraging other nations to broaden the list of extraditable offenses, including most recently, money laundering. American pressure to bar countries from denying extradition of nationals has, however, continued to meet resistance and it is unlikely that the Latin American nations in particular will reverse their stance on this issue.

No other nation has pursued a drug policy as aggressively as the United States and few appear willing to challenge U.S. dominance by questioning the implications of its extraterritorial drug policy or the gravity which the United States attaches to the drug problem. As long as the general domestic strategy to suppress drug use is unsuccessful, the United States will undoubtedly persist in its efforts to prosecute the major drug traffickers and attempt to expand traditional jurisdictional limits to overcome refusals to extradite

nationals. While it is difficult to conceive of the United Nations overriding the objections of its members on the issue of extraditing nationals, it is highly likely that it will allow the United States to use whatever means necessary to apprehend fugitives without officially recognizing drug trafficking as a crime meriting universal jurisdiction. All international drug legislation, with the exception of the 1971 Convention on Psychotropic Substances[36], has been initiated and directed by the United States and it is likely that the United States influence on future directives in drug enforcement and international law will be considerable.

Pressure for Universal Jurisdiction in Multilateral Treaties

Prosecution and conviction of traffickers has become the central focus of U.S. policy because it is believed that such action will ultimately reduce the drug trade by discouraging participants and disrupting the drug networks.37 Unable to rely on multilateral conventions, the United States has initiated bilateral arrangements, broadened its concept and enforcement of extraterritorial jurisdiction, exerted pressure on drug producing countries to extradite their citizens who face drug charges in the United States, and has officially condoned the use of illegal abduction in the cases of major drug traffickers. All of these actions have strained bilateral relations between the United States and the drug producing countries as the United States continues to search for methods of avoiding the jurisdictional problems posed by international drug traffic.

With more and more nations finding it difficult to comply with U.S. requests for apprehension and prosecution of drug traffickers,

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[36]The European nations on the other hand were pressing for drug control on the part of the United States as the illicit spread of psychotropic drugs began making their way to Europe. Since the United States was the primary producer, Europe pressured the United States to cooperate on the 1971 Convention on Psychotropic Substances in return for their participation in the 1972 Protocol.

[37]Barbara Bradley, "New Drug Strategy Focuses on Cartels," The Christian Science Monitor, April 26, 1988, p. 1, 12. and Bernard Weinrub, "President Offers Strategy for U.S. on Drug Control," The New York Times, September 6, 1989, p. A1.

the United States has begun to reconsider application of the universal theory of jurisdiction. By arguing that drug traffic threatens the national stability of drug producing countries and subsequently American security, the United States is implying that drug trafficking is more serious than most extraditable or punishable crimes and the means by which these persons are obtained is of less importance than the need to bring them to trial. Universality would place drug trafficking in the list of crimes which are considered so heinous that international action and prosecution is an obligation and could possibly restore some authority to the United Nations to assume a greater role in the prosecution of serious drug offenses. Universal jurisdiction could also make multilateral treaties more effective, cutting out loopholes which allow the executive branch to make arbitrary decisions on the validity of extradition requests. This would theoretically force other nations to act more decisively on international requests for prosecution, presuming some sort of sanctions exist for non-compliance.

By upgrading the seriousness of drug trafficking to require universal obligation to prosecute, or extradite, the United States believes it can set a deterrent example and avoid many of the enforcement problems that it has encountered. It would also allow the United States to bypass the national judicial systems of countries, such as those in Latin America, which have in the past have not pursued or prosecuted drug traffickers as vigorously as the United States would have intended. But for the same reasons that general jurisdiction is proposed by the United States, to bypass ineffective or corrupt judiciaries and overcome barriers to the extradition of nationals, other nations are reluctant to accept such a classification. Clearly universal jurisdiction would benefit the United States in its efforts to control narcotics but the suggestion of possibly more uninvited intervention by the United States in pursuit of traffickers is not welcome in other countries. It is doubtful that the U.N. membership would voluntarily allow such a broad jurisdiction, which by its nature would directly infringe on a nation's sovereignty and duty to protect its citizens. Nevertheless, all these actions have forced the international community to consider

these practical changes in jurisdictional claims, their effect on international law, and determine if they raise the problem of drug trafficking to that of a "universally" recognized crime against humanity.

PART THREE

TARGETING THE COLOMBIAN CARTEL

FOR EXTRADITION

Section I

International Adoption of Extradition in Drug Offenses

Obstacles to Extradition

Campaigns to fight drug trafficking have usually concentrated on the methods which attack production and distribution, the grassroots of the drug industry. Consensus on this type of strategy is more likely as those most affected by crop eradication or increased interdiction are the least likely to challenge the policy or pose any threat to the government carrying out such actions. While provisions for extradition had become a standard component of multilateral drug treaties, actual use of extradition in drug offenses has been rather limited for several reasons. First, few countries have actively issued indictments against drug traffickers, other than their own nationals, or sought the extradition of traffickers to face prosecution in their courts. Instead, they have relied on individual nations to handle drug offenses through their own judicial systems. Second, traffickers which the United States and other nations might have attempted to extradite are, for a variety of reasons, rarely apprehended. In addition, few countries have the resources necessary to conduct such proceedings and most are unwilling to burden diplomatic channels or their own legal systems with extradition requests for the less significant middlemen who tend to permeate the drug trade.

While exceptional cases have arisen in which extradition has evolved into a foreign policy issue, the simple return of the requesting nation's citizens is part of the general practice of reciprocity. A nation is frequently more reluctant, however, to subject its own citizens to extradition. Many countries have national laws which prohibit such extraditions, severely limiting the usefulness of extradition in drug trafficking cases. The threat of

extraditing major traffickers, who may wield substantial power and influence in their regions, can also provoke political, social and possibly economic repercussions. It may also increase resentment against the country requesting extradition, if such requests are interpreted as further interference in a sovereign nation's drug policy or judicial system. For extradition to be successful in drug offenses, both countries involved in the process must view the extraditable offense with equal disdain and be prepared to forfeit their own right to submit the accused to trial.

Since the late 1970s, the United States has demonstrated an increased willingness to employ extradition against major drug traffickers, encouraging international agreement on the need to utilize extradition as part of a worldwide strategy to combat drug traffic. Reflecting this new focus, U.S. courts have asserted jurisdiction by revitalizing conspiracy offenses, indicting the major traffickers, and issuing warrants for their arrest abroad. The United States has also updated its bilateral extradition treaties with the drug producing or transit countries and narcotic offenses are now listed among those crimes considered extraditable. The United States has further supplemented extradition treaties with Mutual Legal Assistance Treaties (MLATs) which encourage expanded cooperation between countries on law enforcement and judicial proceedings, increasing the likelihood that countries will be able to comply with extradition requests. The UN Commission on Drugs has endorsed all of these measures, recommending that its members adopt similar bilateral arrangements for effective drug enforcement.[1] The United States, meanwhile, has interpreted its progress in bilateral agreements as a signal that the international community is more willing to collaborate in the prosecution of drug offenses and recognize the necessity of universal jurisdiction.

The remaining obstacle to extradition and prosecution of drug traffickers is national policies which prohibit the extradition of nationals and in effect, create safe havens for wanted fugitives. When countries were unable to circumvent or renounce this policy,

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[1]United Nations Publication, Extradition for Drug-Related Offenses , p.5.

U.S. negotiators attempted to include provisions which would enable the executive to grant exceptions in certain cases which may involve serious drug offenses. This has at least widened the possibility that extradition might take place, especially if the United States felt a particular case might warrant using leverage to pressure that country into granting an extradition request. It also offers the requested country an opportunity to avoid handling difficult cases which might expose their judicial systems to corruption or intimidation.

The 1979 United States-Colombia Extradition Treaty was considered a model treaty in that not only was the executive branch given discretionary powers to grant extradition but it also made extradition obligatory for certain offenses whose acts were intended to be consummated in the United States. This provision was specifically directed at the emerging leaders of the Medellin cartel, and drug enforcement officials had high hopes that this would result in the successful prosecution of Colombian traffickers. Despite the heated debate in Colombia over the issue of extraditing nationals, the U.S. government underestimated the power of the cartel and did not anticipate the violence and disruption the treaty would cause when the United States attempted to apply it. Fueling this anger, the United States also appeared to show little sensitivity to the political problems its extradition requests were creating, and instead encouraged the Colombian government to take sterner measures to comply with the agreement and suppress opposition to the treaty.

This section will discuss the various barriers the United States has overcome to make extradition a viable option in drug enforcement and to consider some of the problems this policy can pose to nations heavily entangled in the drug trade. The situation which developed in Colombia may not be typical but it does illustrate some of the difficulties the United States will encounter if it attempts to implement universal jurisdiction to bypass obstacles to bilateral agreements. The 1979 United States-Colombia Extradition Treaty represented a substantial breakthrough in extradition arrangements. Thus the manner in which the United States applied this treaty and the U.S. government's response to the resulting turmoil in Colombia

may be more indicative of the issues U.S. drug policy needs to address to become more effective, at least in regards to extradition.

Establishing Treaties on Extradition

Maintaining and updating extradition treaties has become an important part of American foreign policy for two reasons. First, the international nature of criminal organizations and the ability of criminals to move rapidly from one country to another because of modern transportation has emphasized the need for international coordination and cooperation.[2] The second reason stems from the fact that the United States can not legally conduct extradition proceedings without a treaty outlining the proper procedures for returning a requested fugitive. While some governments have recognized the right of countries to facilitate foreign relations by voluntarily extraditing fugitives without a treaty in force, the United States is prohibited from either honoring an extradition request by another country with whom it has no current extradition agreement, or from requesting the extradition of an individual when no treaty exists between the two countries.[3] To back up other multilateral agreements on the extradition of drug traffickers, the United States has signed over one hundred bilateral treaties and participated in regional agreements designed to further inter-American cooperation in cases involving extradition.

Currently, there are two regional treaties in effect designed to supplement bilateral treaties by ensuring extradition when no treaty exists or when existing treaties lapse or expire.[4] The United States, however, is party to only one of the agreements, the 1933

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[2]Presidents Commission on Organized Crime, Statement of the Honorable William French Smith, Attorney General of the United States, October 23, 1984, p. 2.

[3]The basis for the decision to forbid the United States from making extradition requests without a treaty stems from the *Factor v. Laubenheimer* case (290 US 276, 287 (1933)). The law which prevents the United States government from surrendering a fugitive to a country with which it has no extradition agreement is outlined in 18 USC 3184.

[4]Department of State, "Extradition (Inter-American)," December 26, 1933, 49 Stat. 3111; Treaty Series 882, Multilateral Agreements 1931-1945, Article 21.

Montevideo Convention.[5] The 1933 Pan-American treaty does not attempt to modify or abrogate bilateral or collective treaties regarding extradition but each state has agreed to surrender persons if the extradition request meets three basic conditions; the individual in question must be formally indicted or sentenced, the requesting state must have legitimate jurisdiction and the crime must be considered punishable in both states with a minimum penalty of one year.

The executive branch of each nation retains the right to refuse a request, including the exclusion of nationals from extradition dependent on national legislation or other "circumstances". Only two countries signed the optional clause which declares that in no case will the nationality of the requested person be an impediment to a request for extradition.[6] If a state does not return a requested fugitive, Article 2 of the treaty requires that the requested state initiate its own legal proceedings against the accused. The treaty does not directly address the issue of drug trafficking and provisions recognizing the right to prohibit the surrendering of nationals does not lend itself to application against drug traffickers. When ministers of justice met in Acapulco in December of 1988, they attempted to reach consensus on a multilateral treaty which would include provisions on drug trafficking, but the agreement did not overcome the problem of extraditing nationals in such cases.[7]

Updating Extradition Treaties to Encompass Drug Offenses

Traditionally, one of the key problems with extradition treaties centers on the fact that in the process of international relations, extradition treaties are a low priority until some crisis or legal problem arises which demonstrates the potential loopholes and barriers to extradition. Once the prosecution of major drug traffickers became part of the U.S. drug enforcement strategy, the

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[5]The Inter-American Convention on Extradition, held at Caracas in February 1981 has not been signed by the United States, Colombia or Mexico. Mark Andrew Sherman, "U.S. International Drug Control Policy, Extradition, and the Rule of Law in Colombia," Nova Law Review, Vol. 19, Spring 1991, p. 671.

[6]The two countries which have agreed to the extradition of nationals are Argentina and Uruguay.

[7]"Latin American Leaders Meet in Acapulco," Narcotics Control Digest, December 21, 1988, p. 9.

government vigorously began updating its treaties to cover drug offenses and facilitate the extradition process. The new treaties tackled many of the problems that exist when trying to reconcile different types of legal systems by defining the crimes and possible charges in more universal terms, and contending with other potential barriers to extradition including double criminality, recognition of conspiracy and standards for presenting evidence.

The Carter administration first recognized the importance of updating extradition and mutual cooperation treaties in the fight against drug trafficking, as well as gaining the support of nations presumably involved in laundering drug money through their banks. Treaties were negotiated with Turkey, Colombia, Switzerland, Italy and the Netherlands but the Carter administration did not have the opportunity to immediately employ these treaties. Recognizing the significant changes taking place in the conduct of extradition, Congress attempted to revise laws on extradition in 1981, but by 1983 the Reagan administration was disappointed with the lack of progress and began reforming its bilateral treaties as the need arose.[8] In the process of these negotiations the United States has surmounted most of the traditional impediments to extradition, setting a number of precedents for the international community to incorporate into their own bilateral agreements.

(a) Defining extraditable offenses

To guarantee that extradition was a viable option to all parties, the new treaties[9] carefully spell out what crimes constitute a narcotics offense as recognized by both countries. Older treaties had listed the extraditable offenses individually and there was little flexibility if extradition was sought for something other than a specifically listed violation. When crimes involving drug trafficking, computer and credit card fraud, hijacking and terrorism became more common, there was a need to include these offenses in

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[8]John Kester, "Some Myths of United States Extradition Law," The Georgetown Law Journal , Vol. 76, no. 4, p. 1442.

[9]Referring to the latest treaties on extradition made with Thailand, Costa Rica, Colombia, Italy, the Netherlands, Turkey, Uruguay, Sweden and Jamaica.

bilateral treaties. It was also very important to have nations recognize the crimes of conspiracy and money laundering, particularly in narcotics cases, as these had become an important target of U.S. investigators. In order to prevent constant re-negotiation and updating of treaties, new agreements require that as long as the offense is punishable by both legal systems and mandates a minimum penalty of one year imprisonment, it need not be listed specifically in a bilateral agreements on extradition, moving away from the eliminative method of listing specific offenses.

(b) Double criminality

In recognizing what constitutes an extraditable offense, nations party to such a treaty must amend their national laws to reflect this view and ensure that no questions will be raised on the issue of double criminality. Requiring double criminality in extradition requests ensures that an individual will not be surrendered for conduct which the requested state does recognize as being criminal.[10] It also assures both nations that they can rely on similar cooperation in mutually recognized crimes. As long as there is a wide base of agreement on what constitutes an extraditable crime and this is clearly stated in national law, a country is less likely to attempt means other than extradition to obtain a fugitive. National courts have, however, applied this doctrine quite differently. The United States has a very broad view when applying the requirement of double criminality, suggesting that the crimes only be "sufficiently analogous" or substantially similar.[11] Other nations have strictly interpreted double criminality, particularly in conspiracy cases involving the American use of RICO and CCE.[12] In most cases, however, the actual label of the crime is not as

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[10]In some countries, crimes such as mail and wire fraud (federal crimes in the United States) are not listed specifically in national laws but are sometimes interpreted to be analogous to the common law offense of fraud

[11]John Kester, "Some Myths of U.S. Extradition Law," The Georgetown Law Journal , Vol. 76, No. 4, p. 1462

[12]Congress, Senate, Caucus on International Narcotics Control, Statement of Charles W. Blau, Associate Deputy Attorney General Concerning Compliance with Multilateral and Bilateral Narcotics Control Treaties and Agreement , June 24, 1986, p. 13.

important as the general intent of the crime and the fact that both countries have statutes directed at this type of criminal behavior.

(c) Doctrine of speciality

Renewed interest in establishing the death penalty for known drug kingpins has had some effect on the rule of speciality by being a pertinent factor in extradition proceedings. The rule of speciality maintains that once extradition proceedings have been conducted, the fugitive may not be forced to face charges other than those for which he was arrested, or penalties which are not considered acceptable in the requested country.[13] Generally, nations are very careful to include in their extradition requests all the specific charges which they may or may not use in prosecuting the person in question. The United States has tended to apply this doctrine quite liberally and has at times tried individuals for crimes not specifically listed in extradition requests if the requested country does not register any formal objection to the change in charges. Conversely, the State Department is given the authority to allow other countries to prosecute persons the United States extradites for charges other than those listed as part of the extraditable offenses, assuming probable cause exists. If an individual is brought before the courts other than by treaty arrangements, specifically extradition, he is not entitled to any protection from the rule of speciality.[14]

Questions have arisen over this provision because many nations have contested the right of the countries to enact the death penalty against persons subject to extradition, particularly if the fugitive is a national of a country which has abolished the death penalty and does not recognize its use internationally.[15] In such instances, states may not refuse extradition based on the possible outcome of a

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[13]Steven Bernholtz, Martin Bernholtz and G. Nicholas Herman, "International Extradition in Drug Cases," North Carolina Journal of International Law and Commercial Regulation, Spring 1985, p. 364.

[14]Ibid., p. 365.

[15]Of the 100 extraditing treaties the United States has made with other countries, 65 except their nationals from facing the death penalty, Ron Martz, "Using Death Penalty in Drug Cases Likely to Make Extradition Difficult.," Austin-American Statesman ,October 17, 1988, pg. A6.

trial or the sentence but may limit what sanctions it considers acceptable as part of the conditions of extradition. The conditions placed on a state conducting a trial may include provisions ruling out the death penalty or arranging matters so that if the death penalty is imposed, it will not be carried out. The United States has generally recognized such requests but in several cases has defended its right to prosecute for death penalty crimes even if it is unable to carry out the sentence.[16]

(d) Procedures, documents and evidence

Developments in international transportation and communication have significantly aided both criminal organizations and international law enforcement although national legal systems have not always reflected these advancements. The extradition treaties negotiated in the 1980s directed their attention at streamlining the extradition process and establishing new guidelines for obtaining and submitting evidence. First, because criminals are much more able to flee a country, a government may request that a provisional arrest warrant be issued to prevent the escape of the person in question, pending the formal application for extradition. In order to file such a request, the nation requesting the arrest does not have to rely on the traditional route of going through diplomatic channels and incurring subsequent delays which might allow the accused to escape. Instead, a country may file its request directly with the requested country's justice department and need only demonstrate there is probable cause to suspect the guilt of the fugitive as well as the likelihood that they will attempt to flee the country to avoid apprehension.

Second, lengthy procedural requirements demanding that evidence against the accused be conclusive and "beyond a reasonable doubt" have tended to bog down the extradition process as courts tried to determine if sufficient evidence existed to support the charges. The latest American treaties require that only "probable cause" be shown

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[16]"IDL Interview: Cherif Bassiouni Discusses International Extradition Law and the Role of the Attorney in Drug Related Extradition Proceedings," Inside Drug Law ,Vol. 2, No. 7, September, 1985, p. 3.

and this has allowed the United States to claim jurisdiction much more easily. This innovation has reduced the tension that arises when negotiating extradition between civil and common law countries, as is the case with most of the Latin American nations. Civil law countries usually have no requirements for *prima facie* evidence, so as long as the warrant is issued by a proper authority and the identity of the fugitive is clearly established, probable cause is sufficient in extradition requests.[17] In addition, the evidence requirements and documentation necessary to apply for extradition have been simplified, including the option of avoiding formal extradition hearings if the suspect waives his rights to such proceedings. Past requirements governing the statute of limitations have also been modified to the extent that only the statute of limitations of the requesting state is relevant, instead of requiring that both nations have similar provisions regarding the amount of time in which a fugitive may be prosecuted for crimes committed.[18]

Once an extradition request is filed, the magistrate or courts may examine the grounds for extradition and not become embroiled in the actual details of the allegations. The court in which the extradition hearings are conducted must establish its jurisdiction over the proceedings and the fugitive, determine the crime to be within the parameters outlined by a valid treaty and rule that adequate evidence exists to support extradition.[19] Extradition proceedings, unlike criminal proceedings, are not bound by Federal Rules of Evidence and frequently accept documents of questionable authenticity or evidence based on hearsay. In addition, an individual's rights in these hearings are limited and the defendant may not be entitled to many constitutional protections.[20] The

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[17]Ibid., p 2.

[18]Richard Barnett, "Extradition Treaty Improvements to Combat Drug Trafficking," The Georgia Journal of International and Comparative Law, Summer 1985, p. 307.

[19]Thomas Snow, "International Extradition: Guidelines for the Practitioner," Trial, Vol. 22, 1986, p 58.

[20]Except for the right to counsel, most of the sixth amendment is not considered applicable to extradition proceedings and the fourth amendment outlining the exclusionary rule does not usually apply. The defendant has no right to discovery rights and one court has ruled that the defendant must not necessarily be deemed competent or sane to be subjected to such hearings. Kester, "Myths of Extradition Law," p 1466.

defendant does have the right to counsel and to resist legal proceedings in an attempt to challenge an extradition request, using whatever means are available under the laws of the state in which he currently resides. He is also able to contest the indictment itself and may not necessarily be present in the requesting country to assert his claims for dismissal of charges.[21]

(e) Extradition of nationals

The most difficult problem for the United States to overcome in its negotiations with Latin America has been the issue of whether or not to allow the extradition of nationals and under what conditions.[22] By refusing to extradite nationals, drug traffickers are guaranteed a safe haven, able to operate with relative impunity either within their home country or return to it to escape prosecution elsewhere. Objections to extraditing nationals have traditionally centered on the fact that a citizen of one state is entitled to face prosecution in his own country and not be subjected to the potential unfairness of facing charges in a foreign country where he may lack familiarity with the legal system or might be subject to prejudice.[23]

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[21]In a particularly notable case, international financier Robert Vesco who was living in Jamaica under threat of extradition to the United States, brought claims against the court to dismiss charges against him and to revoke subpoenas which demanded Vesco produce documents to the grand jury. The courts held that even though Verso was a fugitive, it did not prevent him from asserting through counsel any challenges to supply various documents or contesting the indictments directly. The presumption of innocence, unless the fugitive has been previously convicted, is recognized no matter what jurisdiction the person in question is found. Ibid., p. 1457.

[22]Most countries are reluctant to extradite nationals and have provisions in their constitutions prohibiting it. Costa Rica's constitution bars extradition of nationals and this is reflected in the extradition treaty signed with the United States in 1984. Thailand and Jamaica maintain a policy of refusing to extradite nationals but their treaties contain provisions that allow them to take such action if the executive determines it to be necessary. Barnett, "Extradition Treaty Improvements," p. 309.

[23]The United States willingly extradites its citizens abroad and U.S. courts are unable to question either the motives of the demanding country or the possible outcomes of a trial in a foreign country. The 1982 Extradition bill before Congress attempted to address this issue by removing the courts from the process of considering what might await the accused if extradited and allowed the State Department to determine if the offense might be categorized as political in nature. Problems might arise in the American extradition process if it becomes evident that a country is attempting to extradite a suspect based on questionable charges in order to prosecute them for their political beliefs or some other non-extraditable reasons. In such cases, the State Department could not necessarily be relied upon to protect a citizen's interests when weighed against its international law enforcement and foreign policy interests. Kester, "Myths of Extradition," p. 1475.

The problems of intimidation and corruption posed to many court systems by powerful drug traffickers, along with pressure from the United States, have resulted in a few treaties granting the extradition of nationals with some sort of final oversight by the executive branch.[24] Developments in international law also suggest that extraditing nationals is necessary to assure the prosecution does take place and that no nation can grant its citizens such immunity without impinging on the rights of other nations to prosecute crimes against their country or their nationals.[25] When treaties preclude the extradition of nationals or extradition is refused, nations are obliged to prosecute the individual on those charges under their own laws, which may entail transporting witnesses and obtaining affidavits abroad, both being costly and inconvenient but inherently necessary to adequately meet the prosecution requirement. While most requests for extradition tend to be straight forward criminal law cases, the United States has embarked on a much more aggressive campaign of demanding extradition and in some instances, has bypassed procedural safeguards in an attempt to bring the fugitive before American courts. To its credit, the United States has been very willing to comply with extradition requests made by other countries but the United States may reconsider this policy if it suddenly finds its citizens subjected to similar targeting by foreign governments.

(f) Conspiracy charges

Conceivably, the largest obstacle to successful extradition or prosecution of drug traffickers has been the inability to prosecute anyone other than those involved in the physical transaction of the crime. Organized crime's expansion internationally has created large networks of personnel needed to handle the complexities of production, importation and financial operations such as money

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[24] The United States- Mexican extradition treaty dates back to 1887, and despite some revision, has not changed its position on refusing to extradite nationals, although Article 10 can be used to grant extradition in "exceptional cases, at the discretion of the executive." M. Cherif Bassiouni, International Extradition and World Public Order. (Dobbs Ferry, New York: Oceana Publications, 1974), p. 302-303.

[25] United Nations Publication, Extradition for Drug-Related Offenses , p.1.

laundering.[26] As these criminal enterprises develop, they pose a greater threat and increase the likelihood that their endeavors will be more successful and more complex as they attempt to circumvent efforts at detection and apprehension. Conspiracy charges have consequently become essential elements of U.S. indictments and evidence garnered from subsequent hearings and trials is used more frequently to file charges against other suspected participants in the conspiracy who have not yet been arrested or charged. Updating or initiating national laws to prosecute those who aid, abet or assist in narcotics conspiracies will ensure that the drug "kingpins" or ringleaders are not immune to prosecution and that their extradition is possible without violating the requirements of double criminality.

CCE and RICO were developed by the United States to target the major traffickers and their organizations by aggravating the seriousness of basic narcotic crimes when viewed in the context of a criminal enterprise. The main effect of the CCE and RICO charges has been to substantially increase the possible penalties against those convicted. A drug trafficker prosecuted under the CCE provision faces a penalty of twenty years to life imprisonment without possibility of parole, the current average being thirty-five years. A single RICO violation can bring up to twenty years of imprisonment but in combination with CCE can require upwards of thirty years and no possibility of parole.[27] This has been useful in indicting major traffickers and extending the maximum penalties for those involved in the hopes that it might have some deterrent effect on future traffickers. If nations do not have similar laws regarding conspiracy, some national courts have been willing to recognize the single components of the RICO and CCE charges as a sufficient basis for meeting the double criminality test without having an equivalent law.[28]

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[26]Caucus on International Narcotics Control, Statement of Charles W. Blau , p 8.

[27]"Liberal Interpretation of Extradition Treatics," Trial , January 1985, p 60.

[28]For example, Australia examines the component parts of CCE and RICO charges to determine whether they have comparable laws regulating such conduct and may therefore, surrender a person for extradition. In the highly publicized Pizza Connection case, Spanish and Swiss authorities did not recognize RICO as an acceptable charge for extradition but did rule that their laws did recognize the basic components of CCE and they could grant extradition based on those charges . IDL Interview , p. 3.

1. CCE (Continuing Criminal Enterprise)

Specifically directed at the major drug traffickers, CCE is a combination of drug offenses which are indicative of a criminal enterprise whose major component rests on conspiracy. To employ CCE, prosecutors must demonstrate the accused is involved in all five elements of CCE. First, the defendant must have violated, or intended to violate, U.S. law regarding the manufacture, distribution, dispensing or possession of controlled substances, as stated in Title 21 of the U.S. Crime Code. Second, the defendant must have engaged in a continuing series of drug violations and third, he must have committed these violations in concert with five or more persons in order to constitute a criminal enterprise.

The last two requirements make CCE a unique part of American drug law in that it directly targets those who make large profits from illicit narcotics by conducting their business in a highly organized and structured manner. CCE requires that the defendant must have occupied a management position within the drug ring and obtained substantial income or resources from the narcotics trade. These two elements of the CCE charge make it more difficult for foreign countries to attempt to reconcile CCE with their own laws on conspiracy, even though many of the other components could be considered extraditable offenses. Unless other nations adopt similar provisions as the Commission of Narcotics has recommended, the tendency will be to not view CCE as an extraditable offense under the rules of double criminality. Nations may individually choose to extradite based on the fact that the major factor relating these crimes is conspiracy against which most countries now have statutes.

2. RICO (Racketeer Influenced and Corrupt Organizations Act)

Since its advent, RICO has been broadly interpreted and applied to a variety on non-drug offenses. Originally, racketeering referred to enterprises which dealt in narcotic drugs and RICO was aimed at those enterprises which demonstrated a pattern of using their

proceeds and influence to acquire other businesses or interest in various commercial ventures, producing some discernable effect on interstate commerce to make it a federal offense.[29] When contending with the RICO charge, domestic and foreign courts have questioned what constitutes a pattern of racketeering and the appropriate definition of enterprise. RICO itself defines a pattern as meaning that the defendant engaged in at least two acts of racketeering within a ten year period, although American courts have sometimes required that a pattern be demonstrated more clearly by proving that an overall plan existed relating to the racketeering. Other court decisions have ruled that RICO is applicable when only a basic link can be shown between the racketeering activities and the enterprise in question.

The term enterprise is even more broadly construed among the American courts. An enterprise has been interpreted to include either formal or informal groups of persons associated together for a common purpose with the intention of conducting a continuing business. A shared purpose, an identifiable structure and evidence of continuity are all considered to be important factors when determining whether or not such an enterprise exists apart from the acts which are considered to be part of the racketeering pattern. The Canadian courts have recognized RICO even though they have no similar law, reasoning that U.S. courts have construed "enterprise" to mean conspiracy, which is clearly an extraditable crime. The other element of RICO which addresses the affect of such enterprises on interstate commerce has been determined by several foreign courts to be a matter of U.S. domestic law and thus not applicable to extradition requests.

Standardization of Procedures to Fight Drug Traffickers

Almost as significant as the United States attempt to address the drug problem through bilateral treaties and extradition has been the willingness of the United States to develop treaties expanding

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[29]"Liberal Interpretation of Extradition Treaties," p. 62.

legal assistance in international criminal matters. The decision to apply such treaties has resulted in the first steps towards standardization of legal procedures among various countries. It has allowed the United States to provide cooperation and facilitate the exchange of information in narcotics related cases, in return receiving admissible forms of evidence in its own judicial proceedings. Mutual Legal Assistance Treaties (MLATs) were developed to circumvent some of the problems the United States encountered when it attempted to obtain evidence in foreign countries. Basic differences in the legal systems and the numerous layers of bureaucracy that formal requests were obliged to pass through tended to delay action and governments placed little emphasis on the need to comply with such requests. If evidence was obtained, it frequently was considered inadmissible in American courts because of the questionable manner in which it was obtained, and subpoenas for the appearance of foreign witnesses were usually ignored.

The first MLAT was negotiated in 1977 with Switzerland to address its banking secrecy laws which the United States believed allowed criminals to hide their assets.[30] Under DEA pressure, the Office of International Affairs also began talks with the Colombian government which resulted in the 1979 Extradition treaty and an accompanying MLAT. The purpose of the Colombian MLAT would be to facilitate the taking of testimony, ensuring the appearance of witnesses or other prisoners before foreign courts, producing and examining documents or other evidence necessary for the conduct of a fair trial.[31] Colombia already had some background in judicial assistance treaties, having been party to the Inter-American Convention on Taking Evidence Abroad in 1975 and a bilateral agreement with the United States in 1976 which dealt with mutual legal assistance in the investigation of the Lockheed bribery scandal.

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[30]The Swiss pointed out that their banking laws were originally passed to prevent the Nazis from seizing money of Jewish depositors but were eventually willing to loosen the secrecy laws to allow the United States to gather evidence for criminal proceedings under certain conditions.

[31]The transfer and custody of evidence and witnesses is carefully outlined in Articles 12, 13, and 14, including a Safe Conduct clause which ensures that witnesses asked to appear before a hearing abroad will not become victims of de facto extraditions.

The MLAT negotiated with Colombia removed the necessity of double criminality so that the Colombian government in particular would not be hindered from providing legal assistance in cases where they had no similar statutes governing that type of behavior.[32] Article II granted the Attorney General of both countries the function of transmitting and reviewing such requests for assistance as opposed to going through diplomatic channels. It would have allowed either government to release government records to the requesting country to the extent that these records would normally be available to domestic authorities and encouraged both parties to resist denying such evidence or requiring confidentiality in order to conform with the basic concept of the treaty.[33]

Foreign requests relating to search and seizure could be initiated as long as those requests could be sustained with reasonable evidence and might be based on testimony given in other countries to establish probable cause.[34] If evidence is certified as authentic by the requested state it is then considered admissible to foreign courts. This reduced the likelihood that evidence would be deemed inadmissible simply because Colombian law relegates the gathering of evidence and investigation of the crime scene to a ministerio publico or in certain circumstances to the presiding judge. The MLAT, which was negotiated and proposed separately so as not to hinder the passage of the extradition treaty, was not ratified by Colombia, partially because of the controversy surrounding the extradition treaty and uncertainty as to how the United States might attempt to apply it.

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[32]Congress, Senate, Committee on Foreign Relations, Mutual Legal Assistance Treaty with the Republic of Colombia, report submitted by Mr. Percy, 97th Congress, First Session, November 20, 1981, Executive Report No. 97-35, Article 1.

[33]MLAT, Article 14. Articles 5 and 8 do place some limitations on the conditions under which information may be released and permits the refusal to provide assistance if the disclosure of that information would adversely effect the national security of the requested state.

[34]MLAT, Art. 15

Section II

Testing U.S. Extradition Policy in Colombia

The 1979 United States-Colombia Extradition Treaty

The Colombian government was receptive to the idea of updating their extradition treaties with the United States[35] to include drug offenses and the resulting agreement was a significant achievement in that it broadened the base of cooperation and included provisions relating to the extradition of nationals. While the Colombian government did express some reservations regarding the extradition of its citizens, the United States stressed the reciprocal nature of such a provision and the fact that Colombia would also have access to prosecute Americans in Colombian courts.[36] The definition of political offenses was also important to the Colombian government, based on the large number of insurgent groups located there and the military's jurisdiction over their offenses. Once agreement was secured on the extradition of nationals, the United States was quite willing to adjust the treaty to accommodate other Colombian concerns.[37]

(a) Narcotic offenses

Article I of the treaty establishes the basis for determining jurisdiction in crimes involving nationals of the requesting state and is supplemented further with recognition of the attempt to commit

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[35]Congress, Senate, Committee on Foreign Relations, Extradition Treaty with the Republic of Colombia, report submitted by Mr. Percy, 97th Congress, First Session, November 20, 1981, Executive Report No. 97-34. The new treaty replaced the 1888 Convention between Colombia and the United States as well as the 1940 Supplementary Convention, neither of which allowed the extradition of nationals or addressed narcotics trafficking.

[36] Several Americans have been extradited in compliance with the 1979 treaty, even after Colombia renounced its participation in the treaty. Ethan Nadelmann, "Negotiations in Criminal Law Assistance Treaties," The American Journal of Comparative Law ,1985, p. 488.

[37]Because Colombia was concerned about the large number of insurgent and guerrilla groups operating inside its territory and the military's jurisdiction over their offenses, the treaty contains a provision regarding the right to bar extradition for political or military offenses, 1979 Treaty, Article 4..

or indirect participation in the commission of an offense.[38] The extraditable offenses are enumerated rather than categorized by punishment, with #21 and #22 referring specifically to narcotics offenses and related crimes, with newly added provisions for bribery, obstruction of justice, and aircraft hijacking.[39] The treaty contains the standard provision for protection against prior jeopardy by preventing a nation from attempting to extradite a person who has already been convicted or acquitted for the same offense and does assert Colombia's right to refuse extradition if punishment may include the death penalty, unless arrangements are made to ensure that the penalty will not be imposed.[40]

(b) Extradition of nationals

Civil law countries commonly retain jurisdiction over offenses committed by their nationals abroad. To reconcile the differing practices of the United States and Colombia, the executive is given discretionary authority to grant extradition. Under Article 8, nationals of the requested state may be extradited if the executive determines such an action to be proper. If extradition is denied on the basis of nationality, the requested state is obligated to submit the case to competent judicial authorities to initiate an investigation into the charges against the individual in question and prosecute accordingly. An innovative clause in this provision, however, provides that extradition becomes an obligation in certain instances:

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[38]Differences in the legal definition of conspiracy are reconciled in the treaty by recognizing that Colombian laws provide for punishment if "association to commit offenses" occurs, and under U.S. law, "conspiracy to commit". 1979 Treaty , Article 2.

[39] #21 "Offenses against the laws relating to the traffic in, possession or production or manufacture of, narcotics drugs, cannabis, hallucinogenic drugs, cocaine and its derivatives, and other substances which produce physical or psychological dependence."

#22 "Offenses against public health, such as the illicit manufacture of, or traffic in chemical products or substances injurious to health." In addition to offenses which are not listed but punishable by both countries are included and terminology or actual classification of the offense is not important. "

[40]1979 Treaty , Articles 5 and 7.

(a) Where the treaty offenses involves acts taking place in the territory of both states with the intent that the offense be consummated in the Requesting State;[41]

Referring directly to narcotics and narcotics conspiracy cases, Article 8 would have allowed the United States to claim jurisdiction and seek the extradition of Colombian drug traffickers who are involved in a conspiracy to violate U.S. drug laws, whether or not the act is actually consummated in U.S. territory. In comparison to other extradition treaties made with drug producing countries, the Colombian treaty was clearly the most successful effort by the United States to ensure prosecution and conviction of narcotics traffickers. This particular clause became the main topic of debate when the treaty was introduced to the Colombian Congress and provoked extreme reactions from the Colombian traffickers, who initially tried to challenge the treaty, and then presumably embraced more violent measures to prevent its implementation.

(c) Other provisions

The other provisions in the treaty regarding extradition procedures were less controversial and instituted the most generally accepted methods of handling cases. Requests for extradition would be handled through diplomatic channels and would include the necessary documentation to present the case before an extradition hearing.[42] The treaty sets a limit on provisional detention of 60 days in which all necessary documents must be presented, and compels the requested nation to act promptly in communicating its acceptance or rejection of the extradition request.[43] Article 15 reiterates that the person in question will not face charges other than those for which he was

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[41] 1979 Treaty, Art. 8.

[42] 1979 Treaty, Article 9, section 2 covers the nccessary contents of an extradition request. The request for extradition will be accompanied by documents, statements and other evidence which describe the identity and probable location of the person sought, a statement of facts in the case, the texts of law describing the essential elements and the designation of the offense, and a copy of the indictment. Such evidence should provide probable cause to suspect the person sought has committed the offense or evidence relating to the fugitive's prior conviction and the sentence imposed.

[43] 1979 Treaty, Art. 7.

extradited but does make allowances for changes in the legal description of the crime if it is based on the charges for which the person was extradited and the period of incarceration does not exceed that which was contained in the extradition request. The treaty also simplifies extradition in cases where no challenge is presented by the accused provided he is willing to waive all rights to a extradition hearing.

In the United States, the treaty received congressional support without any attached reservations or opposition, going into effect in November 1981. While the Colombian constitution does not specifically require congressional ratification of international treaties, it does give the congress power to approve or reject the treaty by requiring that domestic legislation be enacted to conform to the measures put forth in the agreement. Since the provision allowing the extradition of nationals would require amending domestic laws to reflect the change in policy, the treaty was submitted to the Colombian Congress for approval. After lengthy debate and considerable pressure from the executive branch, the Colombian Congress also ratified the treaty but many legislators considered Article 8 to be a clear violation of Colombia's sovereignty and a sign of submission to U.S. policy interests. The ratified treaty was sent to the President Turbay in November 1980, who according to the Colombian constitution, must endorse a bill before it can go into effect.[44] The treaty was actually signed by the Minister of Government, Dr. German Zea Hernandez, to whom President Turbay had delegated constitutional powers while on a three day state visit to the Dominican Republic. After receiving the endorsement of the Colombian Congress and the executive branch, the bill was subsequently published in Colombia as Law 27 of 1980.

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[44] The actual reading of Article 85 of the Colombian Constitution states :

"After a bill has been passed by both houses, it shall be sent to the President, and if he does not object to it, the bill shall be promulgated by him as law.

Igor Kavass, " Introductory Note to Colombia: Supreme Court Decision on Law Concerning the Extradition Treaty Between Colombia and the United States," 27 International Legal Materials 492 (1988), p. 493.

Overcoming Obstacles to Extradition in Colombia

Since the 1970s, the Colombian government has consistently demonstrated a willingness to maintain good relations with the United States and to cooperate with American drug enforcement efforts in that region. The United States has frequently cited Colombia as an example of a model drug enforcement program in that it has complied with American policy and been receptive to further involvement by drug enforcement officials. While the United States still maintains a close working relationship with Colombia on the issue of drug eradication, extradition turned out to be more divisive, partially because of the concerted effort by the cartel to thwart extradition and in part because the United States did not allow the Colombian government and judicial system sufficient time to get a grip on the situation. The Colombian government found itself facing mounting violence against its officials, growing resentment against the United States, and renewed activity among some of the insurgent groups. Recent efforts by the Colombian government to negotiate conditional surrenders with the traffickers has also angered the United States. Even though this has returned some stability to the country and contributed to a marked decrease in retaliatory violence, the effect on cocaine trafficking has been negligible.

Three factors severely undermined Colombian efforts to extradite nationals and contributed to the eventual abandonment of the treaty. None of these factors are, however, unique to Colombia and future drug policy will have to take into account the importance of these conditions to counter their effect. First, in drug producing countries such as Colombia, Bolivia and Mexico, as well as the Southeast Asian nations, traffic in narcotics has been active for over forty years and has consequently developed a large and frequently mobile infrastructure that has supplemented or replaced other industries. The monetary boom which accompanied the cocaine traffic in Colombia had an overwhelming impact economically. Narco-dollars were spread to not only those directly involved in the cocaine industry but also made their way into legitimate businesses, campaign coffers and were used to supply basic services to sectors of

the population that the government had not reached. So even those not directly involved in cocaine trafficking or production had become at least ambivalent about the issue of extradition in that their livelihoods had become more dependent on the cash surplus cocaine had brought to their country.

Second, the rise of the Medellin cartel proved that collaborative efforts among the various traffickers not only made trafficking easier but it also increased their strength domestically. The traffickers emerged as a distinct and vocal opposition force willing to employ terrorism and assassination to prevent their extradition or eliminate other threats to their livelihood. When it became apparent that legal measures could not be used to block their extradition, the cartel embarked on a successful campaign to implicate and intimidate supporters of extradition until the point that extradition was no longer conceivable as public support disappeared. The cartel has targeted the most vocal supporters of extradition for assassination and in response, Colombian presidents have routinely invoked emergency or state of siege powers to cope with the violence, undermining attempts to work towards democratic solutions.

The third problem exacerbating extradition was the decision of the United States to continue pressuring the Colombian government, even after the treaty had been formally invalidated, to take more forceful measures to comply with American requests for extradition. Foreign intervention in efforts to suppress the drug trade date as far back as the Spanish conquistadores in 1567, and while these campaigns to eliminate either coca, marijuana or poppy production were unsuccessful, they did serve as a unifying force among the peasant growers, the buyers and processors, and the local nationalist groups which viewed foreign interference as a serious threat to their own independence.[45] The renewed attacks on the production of coca in South America in the last decade have again created similar resentment against "foreigners" not just among the various

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[45]The Spanish conquistadores issued hundreds of ordinances to try to curtail the growth and use of the coca leaf, but less than thirty years later, the Spaniards were using coca as a currency to pay the Indian mine workers. Eddy, The Cocaine Wars , p 38.

participants in the drug trade but among the general population as well, aggravated by the fact that the United States is frequently insensitive and continues to press for more tangible results with little regard for the social turmoil this policy has wrought.

(a) The roots of the Medellin Cartel

The conditions which fostered the sudden cocaine boom in Medellin did not occur overnight and many parts of the drug trafficking network had been established long before cocaine became a major economic force. As early as 1959, U.S. federal agents had cited Medellin as one of the major centers for heroin distribution, only later to be dismantled and rebuilt for cocaine processing.[46] In addition, in the late 1960's Europe imposed punitive import tariffs on the foreign textiles, Medellin's primary industry. Along with increased competition from the Far East resulted in a total collapse of the Medellin textile industry and sent thousands of Colombians north to the United States to seek better employment.[47] These large groups of Colombians from Medellin (Antioquians) provided the necessary manpower for Colombian drug lords to set up a wide spread distribution network inside the United States with little difficulty.

By the late seventies, it had become apparent that the U.S. appetite for drugs was shifting to cocaine and many entrepreneurs in Medellin were quick to supply the needs of this growing market. Large, centralized trafficking networks evolved which smuggled narcotics into the United States and returned the profits back to Colombia through a variety of money laundering schemes.[48] Involvement

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[46]William Walker, Drug Control in the Americas, revised edition, , (Albuquerque: University of New Mexico Press,1989), p. 68.

[47]Just as the collapse of the textile industry disrupted the labor force, the recent plunges in the price of coffee have also displaced Colombian workers. The 30-40% decrease in prices has resulted in a loss of 300 to 400 million dollars for the Colombian economy. "Colombia takes hit as coffee prices plunge," In These Times October 11-17, 1989, p 5.

[48]In Colombia, the network of traffickers became more developed as the larger traffickers avoided competing with each other by forming a loose arrangement in which each of the traffickers oversaw one particular phase of the operation, such as processing, transportation or distribution. As a cartel, however, they had very little ability to control prices.The main participants in the Medellin cartel and the target of U.S. extradition requests were the Ochoa family, believed to have handled distribution in Florida and California; Pablo Escobar ,charged with security who reportedly also ran several training camps for

at some level in the business of cocaine has transformed areas such as Medellin, and traffickers have pumped substantial sums of money into the local economy, building low income housing, dispensaries and supporting some social services. The drug industry also provides a profitable alternative to the urban and rural poor and many have aligned themselves with the traffickers, at least on the issue of extradition. But the drug lords ultimately rely on fear rather than generosity to maintain open business and curtail criticism.

(b) Establishing the basis for cooperation on drug policy

In 1974, President Alfonso Lopez Michelsen had adamantly rejected measures proposed by the Carter administration to control marijuana production in Colombia or to recognize the problems that such operations might cause domestically.[49] Marijuana production was not viewed as a significant problem because it had practically no discernable effect at the political level and the economic impact of marijuana smuggling was negligible. By 1977, he yielded to American pressure and media criticism to stem the flow of marijuana and cocaine coming out of Colombia by providing personnel for drug enforcement to seaports and international airports. An elite, highly paid narcotics force was created, backed by a fifteen million dollar budget. In return, the United States government had approved sending three helicopters and over three million dollars in equipment for eradication programs but the helicopters were determined to be too small for use in eradication and much of the equipment was useless against the highly sophisticated equipment used by the traffickers.[50]

His successor, Julio Cesar Turbay Ayala, was hopeful that the United States would be willing to back up the Colombian drug eradication programs with more military equipment and financial support. To demonstrate his commitment and secure U.S. aid, he agreed

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bodyguards and assassins; and Carlos Lehder who set up air transportation to the United States. Groups with similar arrangements such as the Cali cartel targeted other American cities and the European market..

[49]Sherman, "U.S. International Drug Control Policy," p. 675.

[50]Bagley, Bruce. "Colombia and the War on Drug." Foreign Affairs, Fall 1988, Vol. 67, p. 79.

to negotiate the 1979 extradition treaty[51] and three months after entering office invoked state of siege powers[52] to impose a blockade on the Guajira Peninsula where most of the major drug shipments were occurring, placing the entire region under martial law for two years. On DEA advise and backed by two million dollars in U.S. aid, President Turbay instigated Operation Fulminte and used the military to sweep through Guajira arresting those suspected of involvement in the drug trafficking.[53] As has become typical of such raids, large numbers of persons were detained, but the few actually arrested were charged with subversion not drug trafficking and the entire campaign was deeply resented by the local residents.

While the United States applauded Colombia's initiative and tripled funds for Colombia's narcotics program[54], the United States Congress began to set limits on the amount and types of military equipment which could be used in anti-narcotic campaigns overseas, concerned that the foreign militaries might appropriate the equipment for purposes other than drug control. Included in the ban were airborne radar, planes and communications equipment, all considered essential to the Colombian eradication program.[55] In addition, Colombia's limited military resources were diverted from the blockade to cope with re-emerging insurgent groups in other areas and once the military left the Guajira Peninsula, traffickers returned and resumed their operations. Elections in the United States and Colombia shifted attention from the drug problem temporarily, but cocaine traffic out of Colombia was already beginning to surge dramatically and the newly

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[51]President Turbay's decision to sign the extradition treaty was based partly on the fact that the United States was willing to withhold economic and military aid if he did not cooperate with U.S. drug enforcement policy. In addition, Turbay may have felt compelled to demonstrate his commitment after a memorandum had been leaked by the White House, known as the "Boerne Memorandum," prior to his election. The document alleged that Turbay and others in the top echelons of Colombian politics were directly implicated in the drug trade. In April 1979, the House Committee on Narcotics Control and Abuse issued a report which claimed those charges were untrue. Sherman, "U.S. International Drug Control Policy," p. 677.

[52]Estatuto de Seguridad Nacional., or state of siege have been frequently invoked in Colombia and are similar to measures adopted by the military governments in Argentina, Chile and Uruguay to control anti-government opposition. Besides using state of siege powers to conduct extensive drug enforcement activities.

[53]Bagley, "Colombia and the War on Drugs," p. 79

[54] In 1977, U.S. assistance to Colombia for narcotics control rose to 16 million, out of the 42 million allocated to worldwide narcotics interdiction. Ibid., p 80.

[55]The items included in the ban were airborne radar, planes, and communication equipment. Ibid., p. 80.

elected presidents would have conflicting views on the next phase of the drug war.

Reluctance to Resort to Extradition

The Reagan administration was clearly committed to employing the extradition treaty in combination with increased funding to expand eradication programs. The new government of President Belisario Betancur Cuartas, which came into power in 1982, was more populist in its orientation and sought to distance itself from the United States, particularly on the issue of extraditing Colombian nationals.[56] The United States began actively filing requests for the extradition of several of the leading members of the Medellin cartel but despite judicial decisions which authorized such extraditions, President Betancur appeared unwilling to give priority to these requests and all applications for extradition were delayed without his approval. Betancur was decidedly cautious on the issue of extradition for fear that it might turn public opinion against his government or provoke outright attacks by the cartel. He was inclined to continue drug enforcement efforts but hoped that the Colombian judicial system would be able to prosecute and sentence the drug traffickers without resorting to extradition. While the cartel could hardly declare this a victory, it did temporarily relieve their anxiety about the threat of extradition to the United States and encouraged them to adopt legitimate means of testing the treaty and the government's determination to enforce it.

In 1983, Colombian Carlos Lehder Rivas, under indictment in the United States and facing extradition, successfully challenged the treaty's provision for extraditing nationals and had his extradition cleared.[57] Upon appeal, the Colombian Supreme Court denied the lower

[56]Betancur was more inclined to concentrate on the internal problems Colombia was facing and relieving some of the political tension that was a result of the previous governments. He freed political prisoners, began negotiating cease fires with each guerrilla group and implemented an economic reform package. Shannon, Desperados , p. 139.

[57]Lehder was one of the more notorious members of the cartel and early on became the most obvious target for law enforcement. For a time, Lehder ran his own Marxist political party and newspaper which advocated among other things, legalization of drugs, and using cocaine as a weapon against American imperialism. In 1985 he publicly announced he would pay $350,000 to anyone capturing or killing a DEA

courts decision on the grounds that the courts had no jurisdiction to become involved in the conduct of foreign affairs or to hear suits regarding the constitutionality of treaties entered into with congressional and executive approval.[58] The Supreme Court handed down its decision in November of 1983 but it wasn't until June of the following year, after the assassination of the Minister of Justice, that President Betancur authorized the extradition of Carlos Lehder in Resolution 101. Subsequent attempts by individuals to confirm or appeal extraditions through the court system were avoided. Even though Betancur was making no effort to enforce extradition requests, the unsuccessful attempt to challenge the treaty left the cartel members no other legal recourse and the subsequent change in their tactics forced Betancur to reconsider his position on extradition.

(a) The assassination of Rodrigo Lara Bonilla

In April 1984, President Betancur abruptly reversed his policy on extradition following the assassination of his Minister of Justice, Rodrigo Lara Bonilla.[59] Betancur immediately announced a state of siege which suspended individual rights, gave the military broad enforcement powers and approved the outstanding request for the extradition of Carlos Lehder. The incident caused Betancur to renew Colombian cooperation with the United States and he approved a chain of extraditions, over a dozen in a two year period. Most of the traffickers extradited were not particularly powerful or notable, and their extraditions did not provoke any direct retaliation other than increased resentment against the policy.

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agent and promised retaliation from his "friends", the guerrilla group M-19, if he was ever extradited. Bagley, "Colombia and the War on Drugs," p 86.

[58]Kavass, "Introductory Note," p. 494.

[59]In the nine months that Bonilla served as Minister of Justice, he had already survived two assassination attempts and was being transferred to Czechoslovakia to serve as Ambassador to escape further attempts. He was shot and killed only a few days before he was scheduled to depart. Bonilla had angered the cartel by accusing them of using their narcotics profits to become the primary stockholders in a number of Colombia's legitimate businesses, including the national soccer teams and of involvement in the death squads or other paramilitary groups. In addition, the Colombian police, under orders from Bonilla, had only a month earlier destroyed one of the major cocaine refining complex on the Yari River belonging to the Medellin cartel.

Three months after the assassination of Bonilla, Colombian newspapers announced that the government had been approached by the drug traffickers hoping to negotiate a settlement.[60] In May 1984, former President Lopez was in Panama as part of the international delegation observing Panamanian elections when several members of the Medellin cartel, who had fled to Panama following the assassination and imposition of martial law[61], contacted him. In addition to denying responsibility in the death of Bonilla, they offered to dismantle their drug operations if they could be guaranteed immunity from extradition to the United States.[62] A second meeting was held in Panama between the traffickers and Attorney General Carlos Jimenez Gomez at which point the United States was informed of the proposition.[63] Public outcry in the United States and Colombia forced Betancur to dismiss the offer but he was left with very few options other than to continue restricting public activities and instigating major drug raids.

When it became apparent that Betancur fully intended to honor American extradition requests, Colombian traffickers adopted new tactics to protect their interests. They began expanding their contacts with other nations in Latin America and established new routes and processing centers for raw coca in Haiti, Mexico, Jamaica,

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[60]Bagley, "Colombia and the War on Drugs ", p. 82.

[61]Colombians have been constantly subjected to some form of martial law since 1948, the period referred to as La Violencia. The side effect of martial law in Colombia has been increased internal dissent and the re-emergence of insurgencies and guerrilla activity. For this reason, Betancur may have been reluctant to impose state of siege powers until there appeared no be no other options.

[62]While the sincerity of their proposal is dubious, it might have merited some consideration if public opinion in the United States and Colombia had not put an abrupt halt to such discussions . The cartel could have possibly provided valuable information on smuggling, money laundering and involvement in the drug trade by other governments. And even if the cartel actually did dismantle their operations, it might have taken several years for new groups to rebuild or replace the elaborate transportation and distribution networks. The cartel had also offered to repatriate over 15 billion dollars in revenue back into the Colombian economy, some of which might have been used to thwart future drug trafficking operations. Betancur had himself already decided to provide general amnesty on undeclared income in the hopes of bringing capital back into Colombia which would have also allowed the traffickers to repatriate their narcotics profits (dineros calientes). Shannon, Desperados, p.139.

[63] Despite the failure of the "peace offer, the traffickers attempted to make another such offer in May 1986. The Medellin cartel, claiming to represent the interests of over 65 smuggling rings, delivered an open letter to the Colombian press offering to pay Colombia's 13.5 billion dollar foreign debt ,dismantle their labs and repatriate their financial holdings, in exchange for immunity, The Minister of Justice, Enrique Parejo Gonzales rejected the offer and immediately became the cartel's next target. Sent to Hungary to serve as Ambassador, he was shot but not killed by Italian assassins presumably hired by the cartel.

Belize, Honduras and allegedly Cuba[64] and Nicaragua.[65] Other vital operations were transferred out of Colombia and instead of building large coca refining centers, complete with airstrips, processing centers became smaller and more mobile.[66] Traffickers also initiated more violent attacks on the Colombian government and judiciary. Anyone advocating extradition or interfering in the cartel's business was immediately targeted.[67] These attacks culminated in the November 5, 1985 attack on the Palace of Justice by M-19, presumably at the behest of the Colombian traffickers. In the attack and the resulting siege, all records and documents pertaining to extradition requests were destroyed and eleven of the twenty-four justices were killed.[68] Efforts to replace the slain justices were drawn out and many candidates directly turned down offers to serve on the Supreme Court, demonstrating the volatility of the extradition issue and their unwillingness to risk becoming a target of the cartel.

(b) Supreme Court decisions invalidating the 1979 Treaty

President Virgilio Barco Vargas took office in 1986 only to be informed by the recently appointed Colombian Supreme Court that the extradition treaty had been declared unconstitutional. The treaty was determined to be unenforceable because it had not been properly

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[64]The United States accused Cuba of involvement in the drug trade as early as 1982 and in 1990 Cuba did actually prosecute several high ranking members of the Cuban government for drug trafficking. For more on the variety of allegations, see Cuban American National Foundation , Castro and the Narcotics Connection: Special Report. , (Washington D.C. 1983).

[65]Based on photographs taken by DEA informant Barry Seal, the United States government alleged Sandinista complicity in drug smuggling and issued one indictment against Nicaraguan Frederico Vaughan. It has since become apparent that the cartel had also made arrangements with the Nicaraguan Contras and their backers. Jacqueline Sharkey, " The Contra-Drug Trade Off: The U.S. government compromised its war on drugs when support for the contras was at stake." Common Cause September-October 1988, p. 27.

[66]The total tonnage of cocaine being smuggled increased during this period overwhelming U.S. interdiction and actually caused the price of cocaine to drop Bagley, "Colombia and the War on Drugs," p 83.

[67]The death toll in this period was very high. Various judges involved in ruling against the cartel or uncooperative were killed, as was the Supreme Court justice who had negotiated the extradition treaty. The head of Avianca security was assassinated after discovering a shipment of cocaine bound for the United States and the editor of Cali's leading newspaper was also assassinated after advocating extradition. In November of 1986, the colonel that had led the raid on one of the largest refining centers was also assassinated.

[68]Over one hundred people, including all the members of M-19, were killed either by the guerrillas or by Colombian forces when they stormed the building. In a statement released to the press following the attack, M-19 declared that one of their purposes had been to denounce the extradition treaty. Eddy, The Cocaine Wars , p. 324.

approved by the President of the Republic. The "constitutional powers" delegated to the Minister of Government, who had signed the treaty, were deemed to be limited to administrative duties not matters involving international affairs. Upon interpretation, the Court maintained that it was not within the constitutional power of the President to delegate anyone the responsibility of conducting international relations, which as head of state might require "the personal use of presidential prerogative."[69] Their decision was supported by the Attorney General who must issue his own opinion in all cases which question the constitutionality of Colombian laws. Barco remedied the situation two days later by signing the treaty bill and promulgating it as Law 68 of 1986. The treaty was subsequently challenged on the grounds that the President had signed a non-existent law, and Barco must instead re-submit the bill to Congress for approval.[70]

Three days after President Barco signed the treaty, the editor of *El Espectador* and a leading advocate of extradition was killed. Barco responded by initiating a new offensive against the traffickers[71] and used the military to conduct over a thousand raids which netted over two thousand people[72], three of whom were wanted in the United States and subject to extradition.[73] No major traffickers were apprehended and most suspects were released uncharged. In February 1987, with the constitutionality issue of the extradition treaty still pending, local police in Medellin acting on a tip, captured Carlos Lehder. Fearing that he might be able to bribe his way out of Colombian jails and showing uncommon efficiency, the Colombian government processed all the necessary documents and Lehder

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[69]Kavass, Igor, "Introductory Note ," p 496

[70]Supreme Court Decision on Law Concerning the Extradition Treaty Between Colombia and the United States, 27 International Legal Materials 492 (1988) , p. 498. Suit alleging the unenforceability of Law 68 of 1986.

[71]President Barco issued various presidential decrees which to combat the cartel, including tighter controls on helicopter flights, commonly used by cartel leaders, and establishing rewards for information leading to the arrest of major traffickers. "Colombia's Losing War with Drug Kings," Christian Science Monitor , May 13, 1988, p. 9.

[72]Discrepancies in the figures of arrests during these raids is common, considering most of those detained are usually released quickly and not necessarily arrested or charged with any particular crime,

[73]At this time, the United States had 113 extradition requests filed with the Colombian government. Bagley, "Colombia and the War on Drugs," p. 85.

was transported by waiting DEA agents to the United States within eighteen hours of his arrest.[74]

Following the extradition of Lehder, the Supreme Court struck down a decision which would have allowed civilians to be tried in military courts, Barco's back up plan if extraditions were placed on judicial hold[75], and announced that it would no longer rule on extraditions to the United States, although it did allow two extraditions to proceed since their cases were already approaching completion. When confronted with the question of constitutionality, the Supreme Court was equally divided as to whether the absence of proper approval actually invalidated Law 27 of 1980, pertaining to the extradition treaty. The Court then determined that a temporary associate justice should be chosen to cast the deciding vote. After three refusals to serve on the Court in this case, a justice was found to break the judicial tie. In his decision, Alfonso Suarez de Castro ruled that all parts of Law 27 had been totally invalidated and nothing remained to be signed or promulgated.[76] In order to be constitutional, he concluded, a bill must go before Congress and receive its proper numbering before being sent for presidential approval. Without this "number" indicating the law number by the year, the extradition treaty signed by Barco could not be considered constitutional.[77] On June 25th, the law that had ratified the treaty was officially struck down and arrest warrants for Pablo Escobar, Jose Gonzalo Rodriguez Gacha and Everisto Porras were cancelled.[78] In

[74] The United States paid $50,000 for the information that led to Lehder's arrest The police chief who conducted the raid had been recently appointed as part of Barco's clean sweep program to ferret out corruption among the Medellin police department. (Shannon, p.326) Because Ledher was so flamboyant and outspoken, and because there were no retaliatory acts by other members of the cartel, some have asserted that it might have been the cartel who betrayed him. In July 1988, Ledher received the maximum sentence permitted, life imprisonment without parole, although he may have the opportunity to reduce his sentence if he is willing to testify against former Panamanian leader Noriega.

[75] Congress, House, Select Committee on Narcotics Abuse and Control ,Colombian Drug Trafficking and Control. ,100th Congress, First Session, May 6, 1987, p. 8.

[76] Colombian Supreme Court Decision , p. 505. Explanation of the vote case by Associate Justice Alfonso Suarez de Castro.

[77] Sherman, "U.S. International Drug Control Policy," p. 689-90.

[78] Escobar and Gacha were both indicted as being the "masterminds" behind the death of Rodrigo Lara Bonilla and the judge which issued the indictments was later assassinated. The three, Escobar, Gacha and Porras had also been charged with the murder of the editor of El Espectador .In this case, the charges were dismissed for lack of evidence and Escobar has since been cleared of the charges against him relating to Bonilla's assassination. Gacha was determined to have hired the assassins, but was himself killed by police before being arrested in December 1989.

one other pending case against trafficker Gilberto Rodriguez Orejuela, the Cali courts refused to admit evidence gathered by the U.S. Department of Justice and Rodriguez was acquitted.[79]

(c) Judicial Corruption

With the treaty formally revoked, President Barco was left with limited options. If Barco attempted to reintroduce the extradition bill through the Colombian Congress, there was practically no chance that it would pass. It was also unlikely that the United States would be willing to renegotiate the treaty, removing or limiting the reference to nationals. Extradition was no longer feasible and Colombia was once again obligated to allow the judicial system to come to terms with the problem of the traffickers and prosecute them accordingly. In addition, Barco was preoccupied with renewed attacks by guerilla groups on Colombian troops and skirmishes had occurred between guerillas and Venezuelan National Guardsmen.[80] Unfortunately, the arrest of Jorge Ochoa reverted international attention back to the issue of extradition. Ochoa's ability to circumvent punishment proved the judicial system was too weak and corrupt to handle these cases and compelled Barco to take more decisive action and overcome the legal barriers to extradition with emergency powers. Jorge Ochoa's case also indicates that the issue of extraditing national is not the only major obstacle to the recognition of either universal jurisdiction in drug crimes or U.S. competence to handle such cases.

Following the assassination of Bonilla, Jorge Ochoa fled to Spain where he attempted with Gilberto Rodriguez Orejuela, a member of the Cali cartel, to set up new distribution centers for cocaine in Europe. Seized by Spanish police in November 1984, both Colombia and the United States filed extradition requests. DEA agents had provided

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[79]Gilberto Rodriguez Orejuela had been arrested in Spain along with Jorge Ochoa and both were extradited from Spain to Colombia, ignoring U.S. requests. Rodriguez and his brother were both under indictment in the United States, but the United States was more intent or securing the extradition of Ochoa. Gilberto Rodriguez Orejuela spent over a year in jail before his trial but was acquitted in July 1987 of all narcotics charges, despite testimony by DEA agents. In addition, his acquittal freed him from facing similar charges in the United States. Alan Riding, "Colombia Effort Against Drugs Hits Dead End," The New York Times, March 8, 1987, p. A17.

[80]Shannon, Desperados , p.409.

the Spanish government with assistance on the case and they felt such cooperation would ensure the extradition of both suspects to the United States.[81] Despite considerable pressure, Spain ruled in favor of Colombia's extradition request, arguing that Colombia would naturally have first consideration under such conditions and in good faith, extradited both Ochoa and Rodriguez to Colombia to face all the charges contained in the request. In addition to narcotics offenses, Ochoa was also extradited to Colombia to face an outstanding warrant for his arrest on bull smuggling charges. Transferred to Cartegena, Ochoa appeared before a young and inexperienced customs judge who ordered Ochoa to pay $11,000 in fines for bull smuggling and to reappear before the court twice a week, overlooking the narcotics charges and releasing him. The United States was clearly angry with the course of events and Barco responded by firing the judge and launching a nationwide manhunt for Ochoa. The military raids netted over twelve thousand people, although most were released for lack of evidence, but Ochoa was not found. In Miami, a federal court drew up new indictments against cartel members and Congress approved a $500,000 bounty for Jorge Ochoa.[82]

In November 1987, three years after his release, Jorge Ochoa was caught at a routine roadblock for speeding. Turning down numerous bribes, the highway patrolman arrested Ochoa and released him to the Army. With no means to extradite Ochoa to the United States, Barco allowed the Colombian courts to reconvene proceedings on bull smuggling charges and Ochoa was sentenced to twenty months. One month later, Jorge Ochoa walked out of a high security prison, boarded a plane and disappeared. His lawyers had presented prison officials with a writ signed by the same judge who had earlier vacated charges against Escobar[83], and Ochoa was released despite orders contrary to that effect. The State Department which was normally cautious in its

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[81]It has since become apparent that Ochoa and Rodriguez used their extensive contacts and influence to pressure the Colombian government into securing their release from Spain and averting extradition to the United States. John Moody, "A Day with the Chess Player," Time, July 1, 1991, p. 35.

[82]Eddy, The Cocaine Wars, p. 325.

[83]While Escobar was indicted in the United States for smuggling ten tons of cocaine, the only charges he faced in Colombia was for the illegal importation of 82 of his 1500 exotic animals.

criticism of Colombia, issued a statement by Phyllis Oakley saying, "We are disgusted by the fact that this major Colombian narcotics trafficker is now free. The government of Colombia had a clear responsibility to make certain this dangerous criminal was not released... the interests of both countries has been damaged and our common struggle against traffickers has been made more difficult."[84]

President Barco claimed that the whole episode was in open defiance of orders. The judge ignored the fact that bail had been revoked and prison officials had released Ochoa without proper authorization. Attorney General Carlos Mauro Hoyos Jimenez commissioned an investigation into the illegal release of Ochoa and issued warrants for the arrest of all three Ochoa brothers, along with Escobar and Gacha. The United States was also at a loss to demonstrate its disapproval of the affair, partly because Colombia receives very little economic or military aid from the United States but the United States also feared that retaliatory measures would only play into the hands of the drug traffickers, by punishing its allies and the "friendly people" of Colombia.[85] Customs Commissioner Willy von Raab, however, ordered all customs inspectors to "blitz" cargo and persons entering the United States from Colombia, holding up numerous shipments and delaying Colombian passengers.[86] These actions fostered more resentment against the United States and clearly angered, Barco reminded the United States that Colombia was receiving the brunt of the violence in its efforts to help the United States with it drug abuse problems and "...we are convinced that trying to eradicate supply while American consumption remains enormous is to attempt to defy economic gravity."[87]

Attorney General Hoyos had not supported the extradition treaty but was offended by Ochoa's release and disappointed in the judicial system's failure to deal authoritatively with the traffickers. In statements to reporters he concluded that if the Colombian judiciary

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[84]Phillip Shenon, "Colombia Frees Drug Figure Provoking American Anger," The New York Times, January 1, 1988, p. A1.

[85]Ibid., p. A1.

[86]Willy van Raab has been one of the most vocal advocates of taking punitive measures against countries who are either decertified or are unwilling to cooperate fully with American drug policy.

[87] "Drug Wars: The View from Colombia" The Christian Science Monitor, p.13.

could not control the traffickers, extradition was apparently more appropriate.[88] In January 1988, Hoyos was assassinated and President Barco announced that he would invoke state of siege powers and issue a package of emergency measure. The plan included increasing the size of the police forces, military offenses against the traffickers and their operations, and renewed efforts to extradite the traffickers if apprehended. A few months later, however, the new Attorney General Low Mutra announced that Colombia was considering repudiating the treaty unilaterally[89] but attention in the United States was diverted by the Iran-Contra hearings and the up-coming presidential elections, so the issue of extradition was temporarily forgotten. Barco was apparently still committed to finding some means of extraditing Colombians to face charges in the United States and consulted with Department of Justice officials on various measures under consideration by his government.[90]

(d) Decree 1860

In August of 1989, during the Colombian election campaign, the Liberal party's candidate, Carlos Luis Galan was murdered.[91] This provided Barco with a pretext for assuming broader powers and issuing a state of siege order although it was not clear if the traffickers were actually implicated in the assassination. Under the state of siege powers, Barco suspended Article 17 of the penal code which provided that all extraditions be subject to public treaties and requiring that extraditions be legislatively approved.[92] Decree 1860 of 1989 provided for the extradition of anyone held or arrested for whom an extradition request had been filed, along with anyone serving sentences in Colombian jails, or persons who may be involved in a trial as long as a sentence has not yet been rendered.

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[88]Shannon, Desperados , p. 330.

[89]Bagley, "Colombia and the War on Drugs," p. 88.

[90]Sherman, "U.S.International Drug Control Policy," p. 692.

[91]In the 1990 Colombian election, three other candidates were also murdered, but because of the variety of interests involved in the political system, it was impossible to determine whether they were targets of the traffickers or insurgent guerrilla groups.

[92]Law 95 of 1936 expressly forbid the extradition of nationals and was amended by Turbay with Decree Number 100 to allow for extradition under the provisions of public treaties. Sherman, "U.S.International Drug Control Policy," p. 696.

The Decree also denies the right to release on bail or to obtain suspended sentence if extradition proceedings are initiated. Article 8 is important because it outlines the requirements for granting extradition and denies extradition if the requesting state plans to impose the death penalty or a sentence of more that 30 years. A summons must be issued to allow persons to prepare for their defense but resolutions granting extradition may be approved in absentia to facilitate the process. Decree 1860 denied the courts any type of judicial review or due process hearings and allowed Barco to extradite anyone charged with narcotics related offenses wanted in the United States. The cartel responded to the Decree by launching their own counter-offensive with nearly daily bombings.[93]

The Supreme Court ruled on Decree 1860 in October of 1989 and officially recognized the right of the president to assume such powers and amend the penal code accordingly if public order is sufficiently threatened. The Supreme Court also ruled that while the 1979 treaty had been declared invalid, Colombia still remained bound to the treaty under international law unless the treaty was formally denounced in which case Decree 1860 would go into effect. In its decision, the Court concluded that the 1979 Extradition treaty was still binding on Colombia in that extraditions would have to be conducted in the manner outlined by the treaty, not Decree 1860, providing judicial review, proper extradition hearings and necessary documentation to recognize an extradition request. Instead of recognizing the authority of Colombia's highest court, the United States encouraged Barco to ignore the ruling and was apparently pleased that extraditions would be continuing, even though the legality of such arrangements had been disputed. Barco proceeded to extradite fourteen Colombians to the United States before his term as president ended.

It is possible that this arrangement served both countries in their efforts to prosecute the traffickers and might be a more realistic approach to extradition in similar situations. Because good relations with the United States are viewed by the Colombian

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[93]"Colombia Signs Peace Agreement with Guerrillas," Austin-American Statesman , September 28, 1989, p. A·

government to be essential, Colombia is forced to comply with the two basic demands of American drug policy, eradication and extradition. The decision of President Barco to commit himself to extradition, even without legislative support, momentarily resolved both of Colombia's problems, ensuring good relations with the United States and providing domestic stability. As long as the extraditions were taking place and the United States was able to prosecute some of the traffickers, there seemed to be little concern as to the method or law by which these persons were extradited, much less apprehended. By appeasing the United States with a regular flow of Colombian nationals, Colombia was able to avoid criticism of its commitment to narcotics control and proceed with otherwise normal relations. With extradition tightly under the control of the executive, the court system in Colombia was less exposed to corruption and intimidation, and undoubtedly relieved that it would no longer be the target of the cartels. This alone may facilitate the ability of the Colombian judiciary to cope with other legal matters and could increase its competence to handle drug trafficking cases in the future.

While the immediate problems of extradition were resolved by Decree 1860, the drawbacks of relying on presidential mandate or emergency legislation to accomplish extradition may run contrary to the long term interests of both countries. By depending on Decree 1860 to execute extraditions, the support and commitment of the executive is imperative. Public pressure and the political consequences of continuing extradition would certainly discourage future presidents from abiding by Barco's policy. Instead of having a formal treaty or multilateral agreement, the United States is placed in a position of having to compel each new administration to mandate extradition which is likely to increase resentment and strain bilateral relations. With such a vested interest in extradition, the United States might also be inclined to interfere in Colombia's presidential elections by officially backing a pro-extradition candidate. Second, the policy appears to only work if those extradited are not of sufficient stature as to command retaliatory acts or public concern. While the United States may be temporarily satisfied with the mid-level traffickers that Colombia is willing to

extradite, the new Colombian government is more inclined to adopt a policy of negotiated surrender in regard to the major traffickers such as Jorge Ochoa and Pablo Escobar.[94] While the United States has expressed disappointment with the Colombian decision to negotiate with the traffickers, Colombia is attempting to fulfill its international obligations and responsibilities in the overall effort to eliminate drug traffic, and criticism by the United States would only hinder those efforts.

Most importantly, Barco's determination to bypass the judiciary in extradition requests has the ultimate effect of negating the authority of the courts. By not recognizing the Supreme Court's decision on Decree 1860 or the constitutional rights of the judiciary to handle either narcotics related offenses or extraditions, President Barco's successors might be inclined to invoke similar powers and deny the courts the right to participate in other types of criminal matters. Like his predecessors, Barco was quick to invoke state of siege powers to fight back against the traffickers. But by restricting the rights of individuals, suppressing political opposition and broadening the powers of the military, it has had the ultimate effect of turning Colombia into a police state, increasing resentment against the United States as well as the Colombian government.

Under such conditions it is difficult to imagine Colombia making great strides in achieving economic independence and political stability. The frequent use of state of siege powers has also set a dangerous precedent for future Colombian leaders who may use such powers with less discretion. This might force broader sections of the population into alliances with the traffickers or various dissident and guerilla movements operating within Colombia, creating further political upheaval.[95] While the decree solved many of the short term problems facing Colombia, the long term affect of such legislation could seriously undermine the authority of the Colombian government and create more social unrest. In addition, state of siege powers and

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[94] Tom Post, "10 Acres, Valley Vu: A Drug Lord's Jail," Newsweek , July 1, 1991 p. 34 .

[95] President Barco was successful in peace treatics with the various dissident groups, but the truces have been tenuous. "Colombia Signs Peace Agreement ," Austin-American Statesman, p. A4.

Decree 1860 have had practically no impact on cocaine traffic other than to cause its dispersion and relocation. Even though the major drug traffickers have tended to flee the country under these circumstances, they have usually returned to Colombia once the crisis passes and continued their operations.

(e) Suspension of Decree 1860

In 1990, Cesar Gaviria was elected president, replacing Luis Carlos Galan as the candidate for the Liberal party following Galan's assassination. Gaviria has stated that he will continue efforts at eradicating coca production and contend with the latest switch by growers to poppies, but has renounced the policy of extraditing nationals and has made efforts to see that they are prosecuted in Colombian courts. The legislature has also followed through on its part, by formally banning the extradition of Colombian nationals and encouraging the Medellin cartel members and other traffickers to turn themselves in for prosecution under Gaviria's leniency plan. The Ochoas secured their legitimate and illegitimate businesses by negotiating the conditions of their surrender and turning themselves over to Colombian authorities. All three brothers are currently serving their sentences, beyond the reach of US justice and assured that their trials on narcotics offenses will also negate their ability to be prosecuted in the United States under the rules of double jeopardy. While some of their assets were seized, most have been returned to various front operatives who have formally claimed title.[96]

Pablo Escobar also opened talks with the Colombian government and made arrangements for his prosecution. It is unlikely though that his surrender to authorities will have much effect on either his business or cocaine traffic in general. Under President Gaviria's leniency plan, Escobar will automatically have his sentence reduced by one third for turning himself in and could be eligible for further reductions if he cooperates with the government on pending cases in which cartel involvement is suspected, including the murder of Lara

[96]"The Billionaires," Forbes, July 22, 1991, p. 115.

Bonilla and the assassination of the three presidential candidates in 1990.[97] Other traffickers are under less pressure to surrender but the option still remains open, without the threat of extradition. The only hope for the United States is that members of the Cali cartel and other traffickers may be apprehended outside of Colombia and possibly extradited to the United States if Colombia makes no counter claims for jurisdiction.

From the American viewpoint, the experiment with extradition in Colombia could only be considered a limited success. Extraditions did take place but at an extremely high cost, with the bulk of the burden falling on the Colombian people. Now the United States finds itself in the same position as prior to the 1979 extradition treaty, with little chance of renegotiating. Keenly aware of the Colombian experience, other nations are also unwilling to commit to the extradition of their nationals and while the latest batch of treaties provide for extradition at the executive's discretion, most presidents will be wary of implementing such a policy against the major traffickers. As for Colombia, renouncing extradition appears to be the only viable method of regaining control over the country and reducing the excessive violence which has plagued the country for over a decade. While it is not likely that significant results will come out of the eradication efforts[98], Colombia is now afforded the opportunity to focus its attention on its internal development and meeting the needs of its people, which in the long term might be more successful in decreasing narcotics production and traffic than attempting to use extradition to deter traffickers.

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[97]The maximum sentence for any crime in Colombia is thirty years and only twelve for drug offenses so it is unlikely that Escobar will receive the maximum. House Committee on Narcotics Abuse and Control, Colombian Drug Trafficking and Control, p 10.

[98]Cocaine production has nearly tripled in three years, up from 350 tons in 1988 to 1000 tons in 1991. Tom Morgenthau, "The Widening Drug War," Newsweek, July 1, 1991, p. 34.

Section III

Extradition and the Recognition of Universal Jurisdiction

Using Bilateral Treaties to Guarantee Commitment to the Drug War

The decision to rely on bilateral extradition treaties rather than multilateral arrangements has been regarded as an important and more realistic approach to the conduct of international relations. Whereas multilateral treaties have tended to represent an instrument of mutual support, bilateral treaties are indicative of a mutual commitment to action between two governments. Bilateral treaties afford countries the opportunity to express the differences in their legal system without being forced to succumb to a purposefully general and broadly interpreted multinational treaty, to which are attached numerous reservations frequently not pertinent to the relationship between two countries. Tailor made, bilateral treaties are designed to fit the specific needs or problems between two countries, to avert confrontation or misunderstandings. The failure of multilateral treaties to compel the cooperation of its signatories is thus supplemented by the presence of a bilateral treaty to resolve technical differences in the legal systems and to address areas of particular concern, whether it be tax matters, political crimes or nationality.

There is little doubt that the United States has made significant steps in improving bilateral extradition treaties and has established a useful model for the international community, particularly in narcotics cases. Clarification on procedures and documentation, relaxation of evidence requirements and the development of conspiracy laws has become more standardized, facilitating the process of extradition and encouraging nations to rely on these arrangements rather than resorting to less acceptable or politically risky means of securing a fugitive. While the United

States was widely praised for its innovative approach to the issue of extraditing nationals in its 1979 treaty with Colombia, the actual success of the policy, once applied, created unforeseen tensions. Designing treaties to accommodate the extradition of nationals may be worthwhile in efforts to stem the illegal narcotics traffic, but careful consideration must be given to the reasons countries have implemented laws denying extradition, and whether or not they have the popular support of their citizens to be able to change this policy.

The most obvious flaw in the relationship between Colombia and the United States, which was subsequently reflected in the 1979 extradition treaty, was the assumption on the part of the United States government that both countries were equally committed to the drug war and that Colombia would be willing to forego traditional legal barriers to extradition. Upon careful examination of its relations with Colombia prior to 1979 on eradication programs, the United States should have concluded that while the political elite in Colombia have supported drug enforcement, they are substantially hindered in this effort by corruption, poverty and intimidation, all of which would undoubtedly effect the execution of extraditions. In this sense, the government of Colombia was not accurately reflecting the views of its population and initiated extremely unpopular legislation primarily to secure U.S. financial aid. Even though the treaty was ratified, the popular belief that Colombia's sovereignty was threatened should have been indicative of the problems that could arise when the United States tried to implement the treaty.

In agreeing to allow the extradition of nationals, the United States failed to appreciate the significance of this concession by the Colombian government and interpreted it as full fledged support for the policy. Instead of using this option sparingly and for exceptional cases, the United States flooded Colombia with extradition requests, with over one hundred pending at any given time. Not only would Colombia be unable to comply with the increased demands on its legal system to secure fugitives but corruption in the judiciary would undoubtedly lead, in some cases, to obvious

miscarriages of justice and unsanctioned releases. Instead of allowing the Colombian judiciary and government to try and address these obstacles in their own manner, the United States interpreted these problems as clear grounds for why extradition was necessary. While the United States could have anticipated some of the problems which hindered extradition, it could not have predicted how effectively the cartel would demonstrate its opposition or how quickly public support for the treaty disappeared. The broad application of Article 8 in the treaty thus became a rallying point for Colombian nationalism and anti-Americanism.

In Colombia, at least a portion of the population regarded the ban on extraditing nationals as an inherent part of their rights as Colombian citizens and were not willing to limit that right even to the major traffickers. What may have compounded the problem in Colombia was the fact that it was the United States, as opposed to a European or Latin American nation, demanding extradition and the implication that the United States viewed the Colombian judicial system as incapable of meeting such a challenge. In addition, the United States has alternated between criticizing the Colombian government's commitment to drug enforcement and advocating more American intervention, neither of which have made Colombia feel comfortable in its relationship with the United States or increased support for universal jurisdiction in drug trafficking offenses. Instead, it has made them more wary of any request which could possibly be interpreted as a threat to their sovereignty.

Similar situations exist in most of the Latin American countries. Wary of American interference in their political systems, these countries are often defensive about U.S. demands in regard to drug policy. They argue, justifiably, that the problem of drug consumption is not adequately being addressed in the United States and consequently their political and economic stability is threatened by continued pressure to successfully eradicate crop production and prosecute major traffickers. With a myriad of other internal problems, Latin America can hardly afford to devote its manpower and financial resources towards meeting U.S. expectations and conversely,

the United States can not really afford to fund programs that are not implemented in a serious manner.

Now that practically all of Central and South America has become engaged or exposed to some form of the narcotics trade, complete cooperation is even less likely. In addition, significant numbers of people are benefitting from illicit traffic in drugs and particularly in the countries where money laundering has become an important part of the economy, those involved are ambivalent to the importance of drug enforcement. While all of the Latin American countries agree to the need for drug enforcement as put forth in multilateral and bilateral treaties, the essential difference between U.S.and Latin American commitment to the drug war stems from the differing level of importance attached to drug trafficking. Even though narcotics traffic has had some negative impact on Latin America, the fact that these countries are relatively unaffected by the problems of domestic consumption and drug abuse prevents them from adopting the zealous approach assumed by consumer nations.[99] Until these nations are negatively affected by domestic drug use, it is unlikely they will regard drug traffic as a high priority and will only view it as a major hindrance in its otherwise normally cordial relations with the United States.[100]

Using Bilateral Treaties to Recognize Universal Jurisdiction

Since many nations are unwilling to subject their nationals to extradition, despite basic agreements pertaining to the necessity of prosecuting drug traffickers, the United States can really claim very little support for application of universal jurisdiction. While such issues as terrorism and hijacking may have the general support of the

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[99]Drug abuse is growing in some of the countries, notably Colombia, where the highly addictive, processed cocaine leftovers are now sold domestically to a relatively small population of addicts.

[100]There are other indications that domestically some nations are becoming increasingly annoyed with the power and influence of the traffickers, which might provide incentive to governments to take more definitive action. Efforts in Colombia to implement land reform have been largely unsuccessful due to the territorial control exerted by the traffickers and traffickers have also angered Colombia's coffee growers and cattle ranchers who are losing control of their acreage and are frequently subject to extortion or "operating taxes." Merrill Collett, "Traffickers Threaten Land Reform," The Christian Science Monitor, January 24, 1989, p. 3.

community of nations, drug trafficking is not viewed with equal importance internationally and some nations, particularly drug producing countries, have not conceded that the need to prosecute drug traffickers might supersede their right to protect their citizens from prosecution abroad. Until a majority of nations are willing to amend their laws to allow the extradition of nationals, at least in drug trafficking cases, universal jurisdiction would have very little effect in the countries where the United States would be most inclined to use it and could easily provoke hostility.

Not only does universal jurisdiction imply that all or most nations view the crimes as so serious as to represent a threat to all members of the international community but it also implies that the only method of deterring these crimes is by securing prosecution of those involved. Most nations have not implemented policies domestically that treat drug trafficking as a "heinous" crime, nor have all members of the international community been equally threatened or affected by drug trafficking. In addition, there are a variety of other options available to contend with the problem besides symbolic prosecution of the major drug traffickers, including increased efforts at demand reduction and creating viable alternatives to the populations engaged in drug production. While bilateral agreements have stimulated agreement on the need to recognize narcotics offenses as crimes with international impact, they have not succeeded in increasing commitment or concern for what is essentially a U.S. drug problem and enforcement initiatives are only brought about by U.S. pressure. Extradition treaties have stimulated cooperation in the return of American citizens wanted for drug offenses, but they have done little to facilitate the prosecution of the major foreign traffickers in the United States. To avoid the issue of extraditing nationals, more countries may be willing to prosecute their nationals involved in drug offenses domestically but such measures will not necessarily avert U.S. interference, criticism, or sanctions regarding the handling of these cases, particularly in Latin America where punitive action is less severe.

PART FOUR

ALTERNATIVES TO EXTRADITION

Section I

Using Extraterritorial Abduction to Apprehend Terrorists and Drug Traffickers

Universal Jurisdiction and Irregular Rendition

Considering the importance that the United States now attaches to the prosecution of drug traffickers and terrorists, and the problems it has encountered in its attempts to encourage international legal assistance and extradition, the United States has also resorted to alternative methods of gaining custody over these persons. Despite an elaborate array of extradition treaties which have eliminated many of the past deficiencies and loopholes that complicated the return of fugitives, the United States has determined that there are still situations which prevent the legal acquisition of suspects and may require bypassing limits imposed by extradition treaties or international law. While there are a number of legitimate reasons for resorting to alternative forms of rendition, the United States has resorted to extralegal methods of apprehending fugitives primarily to circumvent restrictions imposed in its treaties which forbid the extradition of nationals or in cases of particular interest to the United States where it perceives a lack of due diligence on the part of national police forces or judicial systems in foreign countries.

A key component of universal jurisdiction and one which the United States is very intent on utilizing, is the right of any government to seize and prosecute fugitives without necessarily having any nexus between themselves and the crime. It is also likely that the United States will possibly attempt to apprehend fugitives without obtaining the consent of the fugitive's governments or the asylum country, especially if these governments have been hostile to

the concept of turning over their nationals or other persons granted asylum. Since the nations which tend to harbor drug traffickers or terrorists have not taken it upon themselves to prosecute accordingly, they would conceivably be the target of illegal renditions and would justifiably raise serious objections to the implementation of such policies in violation of their territory and in many cases, their extradition treaties. While the United States may believe that universal jurisdiction is necessary to combat narcotics traffic, it will not change the stance adopted by the international community on the legality of irregular rendition or abduction, which would still be viewed as a disruptive force to otherwise stable relations between nations. In addition, the United States is the primary market for narcotics; therefore they already have sufficient cause to assert jurisdiction without relying on universality unless they interpret universal jurisdiction as entitling them the right to refuse the return of persons obtained in an irregular manner. While the principle of universal jurisdiction does not go so far as to sanction extraterritorial abduction, it does imply that all nations have a vital interest in seeing those persons suspected of universal crimes punished appropriately and this may encourage the United States to resort to irregular rendition if it believes the resulting protests can be remedied by some other means without being forced to return the fugitive in question.

Judging by the protests registered against the United States, the formal adoption of irregular rendition or abduction has not been supported internationally, primarily because the United States has tended to assert jurisdiction based on the subject matter, claiming the acts committed by traffickers and terrorists have a deleterious effect on the United States and constitute a threat to national interests. By assuming the prosecution of terrorists and drug traffickers is for the benefit of the all nations, the United States believes it can justify intrusions on the territorial sovereignty of its allies or pressure them to take other legal measures to ensure that the United States is given the sole responsibility for prosecution whether or not all other legal

methods of rendition have been exhausted.[1] Some countries have been willing to accept the zealous nature of U.S. law enforcement in regards to narcotics control and extradition but have not been tolerant on the issue of territorial violations, even if those apprehended are wanted for drug trafficking or terrorism. Countries whose nationals are illegally seized and transported to the United States have filed protests and are usually successful in regaining custody of their citizens.

Rationale for Illegal Rendition

By deviating from extradition and relying on other forms of gaining custody, the United States not only risks losing the fugitive in subsequent hearings on its jurisdictional rights to prosecute such cases in violation of treaty arrangements, but it also diminishes the rights of the accused to a fair hearing and due process. While alternatives such as deportation or exclusion may be less costly, time consuming and create fewer political ramifications, the ultimate effect may undermine international law and significant developments in human rights. Rendition by means other than extradition may be considered necessary or more practical in some situations, but more frequently it is used to bypass the rights of the accused or other barriers which prevent extradition. In most cases of irregular rendition, the decision to avoid extradition proceedings is normally determined by the asylum country although the requesting country may have its own reasons for pursuing alternative modes of gaining custody over fugitives, including the belief that it can not expect

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[1] Both Italy and West Germany have denied U.S. extradition requests involving the terrorists suspected of hijacking the Achille Lauro, and Italy actually released Mohammed Abbas, whom the United States believed was the mastermind behind the incident. The apprehension and arrest of Fawaz Yunis for his participation in the hijacking of a Jordanian airliner indicates that the United States is relying more frequently on universal jurisdiction as a basis for its actions, since the only connection the United States had with the incident was the fact that three Americans were aboard the plane. Yunis was tried in American courts however, for crimes taking place in Beirut, against property owned by Jordan and for violence committed against several Jordanian security agents. Abraham Abramovsky, "Extraterritorial Abductions: America's 'Catch and Snatch' Policy Runs Amok," Virginia Journal of International Law , Vol. 31, Winter 1990, p. 179.

any international cooperation and may need to resort to illegal abduction.

(a) Absence of treaty

The most common reason cited for using alternatives to extradition in the past has been the fact that many countries did not have extradition agreements, or that treaties were out of date and did not include more modern offenses such as hijacking, computer fraud, or drug trafficking conspiracies. The U.S. network of extradition treaties has, however, diminished this problem and there are virtually no countries left which could be considered a safe haven for criminals, as was Brazil up until 1964. Other countries have preferred not to be bound by extradition treaties and have used expulsion or deportation in place of extradition to meet the requests of other countries.[2] While this policy does avoid the expense and controversy sometimes associated with extradition, cooperation is dependent on maintaining good relations and may be subject to abrupt changes in policies when new governments enter office since no formal obligation exists to recognize such requests. Occasionally political situations arise which lead a nation to unilaterally revoke its extradition treaties in protest against the illegal seizure of power or, as in the case with Colombia, in protest over the treaty itself. When a nation refuses to recognize a government and has temporarily suspended extradition, that does not necessarily imply that it will not continue to make informal requests regarding fugitives believed to be within the country although compliance with such requests is frequently limited. In 1913, the U.S. government withdrew all diplomatic personnel and rescinded its treaties when General Madero seized power in Mexico, creating a safe haven for American fugitives. The Mexican government was, however, quite willing to use expulsion to rid itself of U.S. criminals by complying with informal requests.

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[2]For a number of years, Greece preferred to handle requests by foreign governments by using deportation and avoided developing extradition treaties. Alona Evans, " Acquisition of Custody Over the International Fugitive Offender- Alternatives to Extradition: A Survey of United States Practice," The British Yearbook of International Law, 1964, p. 94.

In more recent incidents, cessation of foreign relations between the United States and other countries has not resulted in such arrangements of comity.

(b) Delays, loopholes and cost

Some treaties have purposefully contained major loopholes which are known and exploited by the fugitive, or upon interpretation by national courts make extradition difficult, such as requiring a strict adherence to the list of extraditable offenses. With the exception of nationality, most of the recent extradition treaties have overcome these problems and future ones by standardizing terminology and classifying extraditable offenses in terms of punishment rather than specific offenses. The fact that the national judicial system may be corrupt may also provide a loophole for fugitives which might discourage other countries from initiating extradition requests for fear that it will be a waste of time and money. The costs associated with handling cases abroad and transportation back to the requesting nation may sometimes inhibit countries from seeking extradition but this is seldom a consideration if the requesting country is intent on gaining custody and is actively pursuing the fugitive. On the other hand, the cost of holding extradition hearings places a significant burden on the asylum country and they may decide to forego extradition just to avoid the added expense.

Frequently, the delay and uncertainty of extradition proceedings makes irregular rendition a more viable option. First, there is the possibility that the commencement of extradition proceedings may cause the fugitive to flee the country and force the requesting nation to initiate diplomatic requests in another country. In addition, the involvement of extradition judges, appeals courts and the eventual decision by the executive branch or Secretary of State may make requesting countries less inclined to risk going through the hearing process for fear that the request will be formally turned down. In some cases the asylum country may actually wish to avoid controversy or pressure from powerful interest groups

or political parties and choose some other method which allows them to dispose of the matter quickly, even if there is the chance that the fugitive will not be handed over directly to the requesting country. Irregular methods of rendition can also be a viable option if it is believed that extradition may threaten domestic stability or disrupt international relations, as was the case in Colombia where an executive order was used to diminish the likelihood of losing U.S. support and to prevent further retaliation against the Colombian judiciary and other government officials.

(c) Interests of the fugitive

It may also be in the interest of the fugitive to be returned by irregular means if it entitles him to avoid prosecution in the asylum country. If extradition is refused, bilateral extradition treaties require that the asylum state take it upon itself to try the individual. Clearly, many fugitives may prefer to face prosecution in their home country where they have familiarity with the legal system, access to witnesses or the financial resources necessary to provide a defense. In addition, the legal system of the asylum country may not afford the accused all the procedural rights accorded a defendant in the United States for example, or the penalty upon conviction might actually be less severe. The fugitive may also wish to avoid incarceration in the asylum country where conditions may be notoriously inadequate. In such cases, a defendant may agree to an informal surrender and agree to waive all rights to deportation or extradition hearings. This is the most effective means of ensuring prosecution and the least expensive manner by which a nations can obtain custody over a fugitive. It does not disrupt diplomatic relations and is usually satisfactory to proper authorities in both governments.

(d) Problems with the presentation of evidence

Other factors may influence a country's decision to seek rendition by some means other than extradition. First, the requesting

country may have a very weak case, which might rely on hearsay, circumstantial evidence or witnesses whose credibility is questionable. The requesting country may avoid submitting a request if it believes that the country of asylum might formally reject the extradition request on the grounds that the evidence does not meet its standards. In addition, countries hoping to prosecute a defendant may not be willing to release all the evidence against the fugitive or may attempt to withhold evidence as part of the trial strategy. By avoiding extradition and resorting to some form of irregular rendition, such evidence need not be presented to the defendant or evaluated by authorities in the asylum country. Recent U.S. extradition treaties only require that probable cause be established so countries are less likely to reject extradition requests based on insufficient evidence, although they may reject evidence or request that additional proof be provided.

(e) Political situations adverse to extradition

When the process of extradition becomes complicated by politics, domestic turmoil or ineffective treaties, countries are much more likely to adopt alternative methods of rendition to avoid these problems. The outbreak of war might hinder extradition agreements and make it difficult for nations to provide witnesses, evidence necessary for a hearing, or transportation back to the requested country. As long as no other conflicts of interest exist, deportation is usually a suitable method of returning the fugitive. In other situations, those persons sought may be completely immune to efforts to extradite because of their position in the upper echelons of government where they are afforded a certain degree of protection. The corruption and obvious complicity of the Bolivian government of Garcia Meza in drug trafficking negated any efforts by the international community to seek legal methods of rendition, although its immediate collapse made attempts to remove them unnecessary. Manuel Noriega's de facto control over the Panamanian government also made extradition attempts impossible. Although economic sanctions were initially employed to force his ouster, military action by the

United States appeared to be the only viable method of removing him from office to face prosecution. While reliance on irregular rendition or abduction in these cases may enjoy some international support, the broader implications of this policy have prevented the world community from condoning such activities even though no official protests are registered.

Governments heavily implicated in drug trafficking or with known ties to terrorists have refused to cooperate in either extradition proceedings or irregular forms of rendition, leaving the requesting states with no alternatives other than forcible abduction or abandoning efforts to gain custody over the fugitives entirely. The United States has also tried to bypass national governments and treaties when it perceives a reluctance on the part of a country's police or judicial system to deal effectively with fugitives of particular interest to the United States. Since the United States attaches great importance to the prosecution of both these types of criminals, it is unlikely that it will abandon its efforts and will be compelled to find other means of obtaining custody, primarily by exerting pressure on other countries to assist them in apprehending suspects by irregular means or by resorting unilaterally to more blatant forms of abduction.

Persons engaged in treason, espionage, or those who directly threaten the stability of the government may pose such a threat to national security that a nation may resort to any method of rendition likely to bring that fugitive within their jurisdiction and may not even attempt to request extradition.[3] The sensitivity of some nations, particularly in Latin America, to the issue of political offenses has also diluted extradition treaties by providing for various exceptions and permitting broad interpretation of what constitutes a political offense. Persons accused of crimes that might be termed political offenses, including terrorism, may then be protected from extradition, provoking requesting states to resort to

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[3]In one recent incident, Israel abducted an Israeli citizen who had disclosed sensitive information on Israel's nuclear armaments to a London newspaper. Mordechai Vanunu was lured from London to Rome where he was abducted and returned to Israel by Mossad agents. Both Great Britain and Italy protested the seizure but Vanunu was found guilty of treason and espionage. Abramovsky, "Catch and Snatch Policy," p. 202.

more forcible methods if they believe the individual constitutes a threat even outside of their territory. Especially in cases which involve terrorists or drug traffickers, countries may decide that the importance of apprehending these individuals for the good of the community may outweigh any violations of international law incurred in the process. While nations are encouraged to exhaust all legal means of gaining custody over fugitives before considering other options, the various political barriers to extradition may make irregular rendition the only viable option.

In drug trafficking offenses, the main obstacles to prosecution has been domestic laws barring the extradition of nationals and the unwillingness of various governments to deal effectively with the suspects within their territory. In some cases, Latin American governments have avoided their own laws regarding the extradition of nationals and invoked irregular means of turning over fugitives to the United States if they believed that such actions were in their best interest and that domestic protest would be limited. While such actions generally please the requesting country, it may provoke accusations that the asylum country was coerced into turning over a national or intentionally ignored the rights of the individual, both of which could undermine the stability and future cooperation of the asylum government.

Legal Alternatives to Extradition

Even though attempts to extradite suspects may fail, there are still a number of legal options available to nations trying to gain custody over fugitives, although they can still be challenged by the countries involved. Irregular rendition generally refers to agreements made between asylum and requesting states to apprehend a fugitive and forcibly return him to the state seeking his prosecution. Agents of the requesting state must have formally obtained permission to apprehend the individual, and law enforcement officials of the asylum state either assist directly in the rendition or indirectly allow the seizure to take place by the requesting

country. The asylum country may invoke immigration laws to remove the fugitive from their territory, or personally capture the fugitive and deliver him directly to officials of the requesting country, or both these methods may be employed.

Abduction or illegal rendition, on the other hand, is a unilateral act distinguished by the fact that no prior consultation has occurred between the two governments involved and it has been undertaken without the formal consent of the asylum country. In some cases it may be difficult to determine the distinction between irregular rendition and abduction if asylum nations are vulnerable to economic or political pressure and might be indirectly coerced into compliance with informal requests.[4] In addition, irregular rendition might be approved by persons lacking the proper authority to make such arrangements, in which case the asylum country may conclude that the arrest was in violation of treaty agreements and territorial sovereignty, and legitimately protest the abduction.

Unlike extradition, irregular rendition is not an obligation and the removal of the accused must be in the interest of both the requesting and asylum state, therefore the decision to initiate legal action is made by members of the executive branch who may use their discretion to determine which cases might merit such attention and cooperation. In this sense, irregular rendition is not a reliable means of obtaining custody over fugitives and is extremely dependent of the good will and mutual interests of the nations involved. While many countries have been willing to assist the United States in its informal requests for the apprehension of drug traffickers, it has produced tension among the various Latin American countries who have had their nationals turned over to the United States by neighboring countries in violation of treaties with the United States. If the United States intends to rely on this as a means of circumventing the barriers to extradition, such as nationality, it must retain good

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[4]Particularly in the case of the Latin American countries,many countries are dependent on either U.S. aid or U.S. markets for their goods, nations may be compelled to at least tolerate irregular rendition if they perceive they might suffer sanctions for not cooperating. Abraham Abramovsky and Steven J. Eagle, "U.S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition?" Oregon Law Review, Vol. 57, 1977, p. 86.

relations and refrain from exerting too much pressure on the governments to comply with their informal requests.

Several factors are of importance for a state considering irregular methods of rendition or even abduction including the nationality of the offender, the crimes with which he is charged, and relations with the asylum state. If the fugitive is a native of the country requesting his return and his crimes are not of a political nature which might entitle him to political asylum, most countries are willing to consent to formal requests for extradition or informal requests for deportation. The situation is more complicated if the person sought is not a citizen or resident alien of the requesting country at which point the other two factors of consideration come into play. If the asylum country has demonstrated a willingness to comply with extradition requests or is capable of conducting legal proceedings against those it refuses to extradite, the need to resort to irregular rendition is not usually necessary. Even laws barring the extradition of nationals need not be a reason for resorting to other forms of rendition if the country has indicated a commitment to prosecution.

Those persons most likely to be targeted for irregular forms of rendition are nationals of countries unwilling or unable to extradite their citizens, or who have not demonstrated any intention of prosecuting the fugitive under their own laws. In both situations, the asylum nations will rarely approve intrusions into their territory to retrieve fugitives so frequently a third country may be employed to make the apprehension while the fugitive is outside the protection of his native state, although the seizure might still violate extradition agreements. In these cases, a nation must determine if the offense for which the fugitive is sought is of such importance that the opportunity to prosecute justifies any repercussions resulting from the method of rendition employed. If the crime is of such a universal nature that it is in the interest of most nations to see that it is punished, an asylum country may not

protest the rendition or may be willing to accept nominal reparations without demanding the return of the individual.[5]

In regards to drug traffickers, irregular rendition as a reliable means to obtain fugitives barred from extradition by treaty is almost useless without the consent of the fugitive's country. First, the major traffickers have become more cautious in their excursions outside of their home countries where they are afforded protection against extradition by laws governing the extradition of nationals. Second, if traffickers are obtained outside their native countries, protests filed against the seizure and jurisdictional claims have usually resulted in the return of the fugitive. And third, asylum countries may refuse attempts to remove non-nationals by irregular means for fear that they could jeopardize the security of their own citizens abroad. The various police crackdowns inside Colombia did disperse the traffickers into other Latin American countries where they would have been subject to violations of immigration laws, but for a variety of reasons, those nations were unwilling to pursue them. While a series of arrests have been made in the murder case of DEA agent Enrique Camarena as a result of irregular methods of rendition, U.S. courts were not always able to sustain jurisdictional claims because such arrests clearly violated the extradition agreement between the United States and Mexico. Barring any major changes in policies protecting nationals from extradition, the inability to use irregular rendition to fight drug traffickers may make illegal abduction a more viable option for the United States if it is intent on aggressively pursuing this policy.

(a) Expulsion or deportation

If extradition is not a viable option, utilizing immigration laws to comply with informal requests for fugitives provides countries with several options. Although immigration laws are not enacted for the benefit of foreign governments or for the purpose of bringing fugitives to justice, they do in fact provide for the

[5]Possible reparations may constitute a formal apology or payment of fines.

exclusion of aliens on a number of grounds intended to protect that nation from criminals or other persons who may have a negative effect on the safety or health of its citizens.[6] Reasons for the exclusion of aliens vary from country to country, but most include provisions covering the lack of proper documentation, entry into the country under falsified records, previous or potential anti-social behavior, or undesirable political beliefs. In addition, aliens under indictment or having been convicted abroad, are excluded from entering most countries, as are those who admit to having committed crimes or participated in the essential elements of a crime.[7]

Recognized as a state right, expulsion applies to individuals who have already entered the country in violation of immigration laws and may be used as a component of cooperative arrangements between neighboring states. Countries may alert their neighbors or other nations that a wanted fugitive is subject to expulsion at which point arrangements can be made to ensure his release to proper authorities. Expulsion does allow a fugitive some recourse when deportation proceedings are enacted and the alien is frequently allowed to choose his next destination or may attempt to enter evidence that he might face political or religious persecution if returned to the place of previous departure. In such cases, the Attorney General, or his equivalent, is normally given broad discretionary powers to determine if such claims are true. The burden of proof, however, rests on the alien and may be difficult to demonstrate. In such cases, the alien may be able to depart the country voluntarily and could thereby avoid returning to a country where he might be liable to face criminal proceedings or persecution for his beliefs.

Expulsion is relatively more convenient and less expensive than extradition, and the United States has long utilized this policy with both Canada and Mexico so that fugitives can be returned quickly without going through the cumbersome process of extradition in each case. Expulsion can not be used when the alien has entered the country legally and has not violated any domestic laws. In addition,

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[6]Evans, "Acquisition of Custody ," p. 82.

[7]In addition to these immigration restrictions, countries may exclude the mentally or physically handicapped, the illiterate, or persons with communicable diseases.

authorities may determine that the individual is not actually implicated in an offense, as alleged by the requesting country's authorities and may be guaranteed asylum in that country. The United States has not used expulsion as part of its official policy but rather saved it for special circumstances. It has, however, pressured other countries to comply with U.S. requests for the expulsion of fugitives wanted in the United States. By relying on other nations to arrange "selected" deportation because of illegal entry or falsified identification papers, U.S. authorities do not have to initiate any formal action or proceedings. Once proceedings have begun, U.S. officials are able to cooperate with national immigration officials in securing the arrest following deportation or to request that other nations exclude the fugitive in order to gain custody.[8]

(b) Exclusion

If an alien attempts to enter the country in violation of immigration restrictions, he may then be subject to exclusion and must be returned to the country where he resided prior to his attempted illegal entry into the asylum country. He is unable to leave the asylum country voluntarily, can not choose his next destination and any claims made by the fugitive that he might be subjected to persecution for his political or religious beliefs have no bearing on exclusion proceedings. In cases where the alien is wanted for prosecution in the country of previous departure, exclusion provides a legal method of rendition. If the alien is wanted in a country other than the one from which he most recently departed, officials desiring his arrest may make arrangements to limit the destinations available to the fugitive by exclusion. If an individual is expelled from one country, several other states may refuse to admit him into their countries, and his return to the requesting country, where he faces criminal charges may be his only option.

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[8]Colin Warbrick, "Irregular Extradition," Public Law , Vol. 83, p. 273.

Treaties are generally designed to aid the state trying to arrest a fugitive and do not necessarily prevent the return of the fugitive by means other than extradition or guarantee any right to asylum. In both cases of exclusion or expulsion, a formal process does exist and there is at least limited cooperation and coordination between the governments concerned. No territorial transgressions occur and in the case of expulsion, the fugitive is entitled to some protections. Occasionally, countries develop elaborate schemes to use expulsion and exclusion to gain access to a fugitive, but even in such cases, the proper authorities in both countries have been consulted and have agreed to the course of action. The drawback to depending on immigration laws to return or remove fugitives is that it is limited in its scope and there is the potential that extradition proceedings will be avoided in order to circumvent the rights of the accused to present their cases before competent authorities. In addition, the rendition of a fugitive must be in the interest of both states and relations between those states must be kept in good order to ensure cooperation.

While the participation of the asylum state in the apprehension and return of a fugitive prevents the requesting country from violating international laws covering illegal abduction it does not necessarily ensure that the accused will be successfully prosecuted. The return of a fugitive to a requesting country is frequently challenged if the person in question is a national of a country other than the asylum state and his seizure violates current extradition treaties, even if the official reason for his removal is for violation of immigration laws. The existence of an extradition agreement is binding on both counties involved and may result in the surrender of the individual back to his home country if a formal protest is filed. If no protest is filed, and the accused attempts to challenge the forcible abduction, American courts will uphold claims to U.S. jurisdiction even if the methods employed are somewhat unorthodox.[9] Technically, the fugitive has no standing to challenge

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[9]In several cases, U.S. agents have resorted to unusual tactics in order to bring suspects before American courts. In most cases, the courts have upheld their right to jurisdiction despite the circumstances of the arrest.. In *Darby v. the United States* (744 F2d.), DEA agents with the acquiescence of the

the violation of treaties and must rely on either his home country or asylum county to file formal protests, but he is able to dispute the manner and circumstances of his abduction which could force courts to divest themselves of jurisdiction if his rights to due process have obviously been violated and can be demonstrated to the court.

Illegal Acquisition of Fugitives

When efforts to expel, exclude or extradite a fugitive fail, governments are more likely to attempt other means if they have determined that the individual poses a direct threat to their national security and that prosecution of the fugitive is necessary no matter under what conditions he may be returned to that country. Illegal rendition cases tend to be highly publicized, partially because of their illegality and the methods used to return the suspects but also because the individuals involved or the charges leveled against them are controversial, politically motivated or derived from unusual circumstances.[10] Kidnapping as performed by the agents of one country, without the consent of proper authorities constitutes an intrusion on a nation's sovereignty and territorial integrity, as well as a nation's right to grant asylum.[11] Most commonly, agents of one state are sent to surreptitiously abduct the individual in question without prior approval from the government where the fugitive currently resides, although some cases have

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Honduran government captured a fugitive at gunpoint and against his will, forced him to board a plane to Miami where he faced charges of drug smuggling. In *Wilson v. the United States* (732 F2d.), federal agents arrested the defendant while aboard an airline departing Libya, which he was led to believe was bound for the Dominican Republic although the actual destination was the United States. Michael Pontoni, "Authority of the United States to Extraterritorially Apprehend and Lawfully Prosecute International Drug Traffickers and Other Fugitives," California Western International Law Journal, no. 21, (1990-1991), p. 225.

[10]In the late 1950's the Soviet Union and other members of the Communist bloc attempted a vigorous campaign to "repatriate" defectors, and the United States, as well as European governments refused to recognize requests for the return of these persons and reaffirmed the illegality of such actions in their territory. In 1956, Professor Jesus de Galindez was abducted from New York and returned to the Dominican Republic where he was reportedly killed and in 1964, two Egyptian diplomats attempted to kidnap an Egyptian national from Italy by shipping him to Egypt in a trunk. Evans, "Acquisition of Custody," p. 89.

[11]Clare Lewis, "Unlawful Arrest: A Bar to the Jurisdiction of the Court or Mala Captus Bene Detentus? Sidney Jaffee: A Case in Point," Criminal Law Quarterly , Vol. 28, June 1986, p. 343

occurred in which arrangements have been agreed to by law enforcement officials of both countries involved but not recognized as legitimate acts of the state.[12] In some situations, a third state might recognize the request of another state and be in the position to apprehend or abduct the fugitive not in its own territory. Extraterritorial kidnapping may be performed by either official agents of a government or may be conducted by private persons or bounty hunters and this may have some effect on determining whether the courts should divest themselves of jurisdiction.

In the case of the United States, the American courts have clearly delineated under what circumstances an abduction will be tolerated without having to renounce jurisdiction. Since the violation of territorial integrity is only a matter of concern to the state in question, and not the individual who is apprehended, domestic courts have steadily maintained that they have no authority to inquire into the manner in which a defendant has been brought within their jurisdiction. Protests against extralegal rendition or questions involving the legality of a defendant's apprehension are matters of foreign policy and as such relegated to the Department of State, only if formal protests are filed by the countries involved.[13] In addition, if a country does not protest the abduction or violation of its territory, the extradition treaty is not considered to be violated or breached.

Some courts have held that illegal rendition is completely separate from the extradition process, so consent of a nation is not required, especially since extradition treaties rarely contain provisions which prohibit intervention or affirm the inviolability of state territory. But because the consequences of such acts can carry

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[12]In the 1920's, police officials from Canada and the United States agreed to a plan in which an American narcotics agent and his informant would try to lure suspected narcotics smugglers across the border in order to gain custody and prosecute. The plan went awry when one smuggler was shot by the U.S. narcotics agent and the other suspect was forcibly taken to the United States. Despite the prior agreement between the police departments, Canada protested the violation of its territory and sought the extradition of both the narcotics agent and his informant. The Fourth Circuit Court of Appeals upheld Canada's request for extradition on kidnapping charges against the U.S. agent despite the fact that the act had been conducted in a semi-official capacity. Since the plan was not formally authorized by the United States it could not be considered as protected as an "act of state". Evans, "Acquisition of Custody," p. 91. A second example of this will be discussed later, see *Verdugo Urquidez v. United States.*

[13]Pontoni, "Authority of the United States," p. 216.

serious ramifications for foreign policy, international law expressly forbids nations to engage in such behavior, although U.S. courts have not recognized violations of international law or U.N. agreements as having any bearing on their jurisdiction.[14] Article II of the United Nations Charter obligates all members to refrain from using force or the threat of force against the territorial integrity of other nations which would undoubtedly create a sense of insecurity. The Charter of the Organization of American States is more specific and states:

> "The territory of the state is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another state, directly or indirectly, on any grounds whatsoever. No territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized."[15]

Unlike treaties which are incorporated upon execution into national law, U.S. courts have not been compelled to abide by either the U.N. or O.A.S. Charters because they have not been recognized as being self-executing. Self-executing treaties are those which by their language imply that they will be incorporated into the general domestic body of law. Whether or not a treaty is self-executing is usually determined by the courts based on an analysis of the purpose and intention of its creators, if there are means to enforce and implement it, and the potential long range consequences of employing the treaty in a self-executing manner.[16] Treaties may also contain an executory provision which directs the legislature of each signatory to adopt the treaty stipulations as part of their body of national law. Since the U.N. and O.A.S. Charters do not contain executory

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[14]Yvonne Grassie, "Federally sponsored International Kidnapping: An Acceptable Alternative to Extradition?" Washington University Law Quarterly, Vol. 64, 1986, p. 1215, and Pontoni, "Authority of the United States," p. 230.

[15]Article 2, Charter of the Organization of American States.

[16]The Second Restatement of Foreign Relations Law of the United States (1965) outlines the basic factors relevant to determining whether or not a treaty is self-executing. Pontoni, "Authority of the United States," p. 229,

clauses, U.S. courts have determined that neither are self-executing and therefore not binding on the issue of extraterritorial abductions.

The other issue of concern in the abduction of fugitives abroad is whether or not such actions constitute a violation of human rights. While American courts have granted foreign defendants the right to the constitutional protections of due process[17], U.S. courts have not recognized that these individuals are entitled to other rights as put forth in various multilateral treaties. Those rights, as described in the U.N. Charter and the Declaration of Human Rights, include the right to "life, liberty, and security of persons"[18] and protection against "arbitrary arrest, detention or exile."[19] Of most concern to the defendant abducted and returned to face prosecution would be the right to challenge either the methods employed in his abduction or the jurisdiction of the courts to prosecute him without having to rely on a formal complaint filed by either his home country or the asylum country. In addition, some asylum countries have violated their own laws protecting nationals from prosecution in a foreign country, in which cases the defendant has no means to challenge those violations. Once again, because the United States does not consider these agreements on human rights to be self-executing, they do not prevent it from prosecuting an individual whose rights may have been violated under international law.

Kidnapping or illegal abduction involves three distinct international law violations: disruption of world public order, infringement on the sovereignty and territorial integrity of other nations and violation of human rights which afford the individual the right to appropriate recourse. Despite the problems which arise when extradition is unsuccessful, legal experts tend to regard the use of abduction as posing inherent dangers to the relations between states and should not be considered as an alterative to extradition.[20] When

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[17]Richard Downing, "The Domestic and International Legal Implications of the Abduction of Criminals from Foreign Soil," Stanford Journal of International Law, Vol. 26, 1990, p. 582.

[18]United Nations Charter, Article 3.

[19]Ibid., Article 9.

[20]I.A. Shearer, Extradition in International Law, , p. 75

Israeli "volunteers" succeeded in retrieving Adolph Eichmann from Argentina, the U.N. Security Council condemned the seizure and demanded that Israel make reparations to Argentina for violations of its territorial sovereignty.[21] The Council concluded that while it certainly did not condone the crimes for which Eichmann was accused, abduction should not be tolerated under international law even though those crimes might be universally recognized. Toleration of abductions in any circumstances would constitute a dangerous precedent which would threaten international security and world peace.[22]

In the United States, Congress has made no laws which sanction illegal abduction or prohibit it, although U.S. law, which incorporates international agreements to which the United States is party, make abduction a violation of not just international law but national laws as well. Without national laws to enforce international rules governing the methods of surrendering fugitives, the most vulnerable persons in such proceedings are those who are sought for political reasons; and a nation may go to great lengths and expense to secure their custody and prosecution, overruling any protests filed by asylum countries.

Some U.S. courts have, however, expressed concern that while abduction may be a pragmatic remedy to the problems posed by drug traffickers or terrorists, the United States should consider such violations as potentially dangerous precedents and should avoid infringements on the sovereign rights of other nations if they expect reciprocal respect for their own territorial integrity.[23] In addition, as a dominant world power, the United States has some responsibility to abide by customary international law if it intends to enlist further cooperation on matters of international concern including drug trafficking. Despite these changes in the judicial position regarding abduction, the United States government has

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[21]Israel did make a formal apology to the government of Argentina, stating that if it had violated international law, it deeply regretted the intrusion. The fact that Argentina protested Israeli intrusions but did not seek the return of Eichmann illustrates the point that while his crimes were recognized as punishable, that did not necessarily justify abduction or violations of Argentina's sovereignty.

[22]Abramovsky, "Apprehending Offender Abroad," p. 63.

[23]Lewis, "Unlawful Arrest," p. 353.

formally condoned extraterritorial abductions as a basic tool of law enforcement in cases of terrorism, and more recently drug trafficking. However, the large number of extradition treaties in force, many of which provide for the protection of nationals, has made it more difficult for the U.S. government to assert its jurisdictional rights and has led to the return of many foreign fugitives apprehended by irregular rendition.

Challenges to Irregular Rendition

In several of the landmark decisions regarding extraterritorial arrests, the courts have defined the basic guidelines for which a defendant may legally challenge U.S. jurisdiction based on the circumstances of his arrest. The participation or acquiescence of law enforcement agents of the asylum nations, while crucial to prevent accusations of illegal abduction, has frequently resulted in allegations of torture at the hands of these officers, and has forced American courts to determine if this alone might deprive the courts of jurisdiction. In addition, since U.S. agents frequently assist in these apprehensions, their presence or involvement in either torture or other forms of coercion violates the Constitution which U.S. courts have asserted does apply to officials of the U.S. government when operating abroad and this may be grounds for relinquishing jurisdiction. The distinction between abduction and irregular rendition has consequently become less clear and has become a matter for interpretation in future court cases.

The U.S. policy on irregular apprehension stems from the 1886 landmark case *Ker v. Illinois* which involved the abduction of an American national from Peru. Wanted in the United States for larceny and embezzlement, the State Department dispatched a Pinkerton agent to Peru with a warrant for Frederick Ker's arrest. In the midst of political turmoil in Peru and the presence of Chilean troops, extradition requests had been ignored and efforts to gain the acquiescence of Peruvian authorities was impossible. Ker was then forcibly abducted by the American agent and returned to the United

States where he argued that his arrest violated the extradition treaty with Peru and he had subsequently been denied his right to due process. The Court ruled that while the treaty was in force, failure to resort to its provisions did not necessarily constitute a violation of the treaty since the agent acted independently, was not an official of the U.S. government and did not profess to be carrying out treaty obligations. The decision of the court implied that the means by which the defendant was brought before U.S. courts did not necessarily require the court to divest itself of jurisdiction.[24] The Court also concluded that the Constitution does not require formal authorization for every arrest and that mere irregularities in the process of taking Ker into custody did not violate the due process clause as long as the defendant was properly indicted and received a fair trial.[25] The Peruvian government might have registered a complaint or sought the extradition of the Pinkerton agent involved in the abduction but U.S. courts would not be forced to relinquish jurisdiction over Ker.

While the *Ker* decision has been broadly applied and referred to, certain conditions limit its applicability. The Supreme Court has held that entry into an extradition treaty infers an intention to relinquish the rights recognized in *Ker*, and that recognition of abduction would erode the very purpose of extradition treaties if so applied.[26] Abduction, or even irregular rendition carried out against nationals by either the asylum or requesting state without the consent of the fugitive's government would therefore be considered a violation of extradition treaties, which carefully detail the prerequisites for rendition of fugitives. In addition, the arrest in the Ker case was conducted by a private individual, not by U.S. agents who are bound to comply with treaty obligations. Individuals brought before U.S. courts by bounty hunters or private agents are not formally bound to uphold extradition treaties, although the

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[24]Abramovsky, "Catch and Snatch Policy," p. 157.

[25]Martin Sipple, "The Wild, Wild Western Hemisphere: Due Process and Treaty Limitations on the Power of the United States Courts to Try Foreign Nationals Abducted Abroad by Government Agents," Washington University Law Quarterly, Vol. 68, 1990, p. 1053.

[26]Ibid., p. 1058.

asylum nation may have grounds to protest the action or seek the extradition of those involved in the abduction.[27]

The *Ker* case remained the basis for jurisdictional claims in cases of irregular apprehension or abduction until 1974 when it was formally challenged by an Italian national seized in Uruguay at the behest of the U.S. government. In the *United States v. Toscanino*, Toscanino claimed that Uruguayan police removed him from his home at gunpoint and drove him to the Brazilian border where he was turned over to Brazilian and American officials. Before being returned to the United States where he faced narcotics charges, Toscanino accused American and Brazilian law enforcement agents of denying him sleep and nourishment, subjecting him to extraordinary brutality including electrical shocks and other forms of torture, none of which left any visible scars. The Second Circuit Court refused to mechanically apply the *Ker* decision to the case and instead created the "Toscanino exception" referring to cases in which law enforcement authorities engage in "deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights," or if the circumstances of the abduction "shock the conscience of the court."[28] When U.S. courts find that the defendant's rights have been deliberately abused by American agents prior to his return to the United States, the *Toscanino* decision requires that courts divest themselves of jurisdiction and return the fugitive, whether or not a formal protest is filed by the asylum country.

The *Toscanino* exception is so narrowly applied, however, that no indictment thus far has been dismissed based on allegations of physical abuse. Toscanino, himself, was unable to prove his allegations and the courts ruled against his motion for dismissal,

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[27]In a particularly unusual case, Sidney Jaffe, an American citizen, was indicted for fraud but jumped bail and fled to Canada where he obtained Canadian citizenship. The state of Florida made no attempt to file extradition requests and the presiding judge demanded forfeiture of bail moneys before the one year statutory grace period actually passed, which provided the bail bondsman incentive to retrieve Jaffee in Canada. Bounty hunters were hired and they successfully returned Jaffe to Florida. Canada not only protested the violation of its territory but demanded Jaffee be returned and the two bounty hunters extradited to face charges of kidnapping. After considerable federal pressure, Florida returned all three men to Canada. Jaffee has, however, again jumped bail and refused to appear before the courts to face new charges brought against him while he was detained in Florida.

[28]Abramovsky, "Catch and Snatch Policy," p. 159. and Sipple, "Wild, Wild, Western Hemisphere," p.1055.

refusing to divest itself of jurisdiction despite the circumstances of the abduction. While the *Toscanino* case did recognize that agents of the U.S. government could not engage in behavior which violated the Constitution, later cases have demonstrated that in practice, defendants are unable to actually prove that either the behavior of American agents was "shocking" or that American agents actively participated in the torture. Because of the nature of irregular apprehension, the law enforcement agencies of both countries are frequently involved in prisoner interrogations, and while foreign police departments may engage in brutality, torture or mistreatment of defendants pending their return to the United States, only such action by U.S. agents might require the courts to forego jurisdiction and return the defendant.[29] One of the results of the *Toscanino* decision, and charges of abuse by foreign law enforcement agents, has been the conclusion that defendants making such accusation should definitely not be returned to the country whose agents inflicted such abuse, ensuring their prosecution in U.S. courts.[30]

In later cases, U.S. courts have determined that courts need to divest themselves of jurisdiction when irregularities occur in the apprehension of fugitives abroad, only if the countries with a direct interest in the rendition raise objections to the transgression. In *Lujan v. Gangler* (1975), the defendant, who was alleged to be a member of the same narcotics smuggling ring as Toscanino, was lured out of Argentina by an agent hired by American drug enforcement agents.[31] Upon arrival in Bolivia, the defendant was taken into custody by Bolivian police officers and six days later placed on a plane to the United States, accompanied by officials of both the Bolivian and U.S. governments. The *Toscanino* decision had recognized that both the U.N. and O.A.S. Charter specifically provided for the inviolability of state territory, and because both treaties had been

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[29] *United States v. Lira* (515 F2d. 68, 2nd Circuit 1979) The defendant unable to prove DEA involvement in his mistreatment while in the custody of Chilean officials. *United States vs. DeGollado* (696 F. Supp. 1136, S.D. Texas 1988) U.S. agent accused of complicity in the torture of the defendant while in Mexico. *United States v. DiLorenzo* (496 F. Supp. 79, 82, S.D. N. Y., 1980) American agents not held liable for torture inflicted on a fugitive by Panamanian officials prior to his extradition.

[30] Warbrick, "Irregular Extradition", p. 276.

[31] Abramovsky, "Apprehending Alleged Offenders," p.57

ratified, this prevented the United States from engaging in seizures of fugitives abroad. In the *Lujan* case, however, the courts determined that unless a formal protest was registered, the United States would not consider its actions to be in violation of international law.[32] Since neither Argentina nor Bolivia objected to the seizure, and particularly in light of the cooperation provided by Bolivian officials, the court stated that the defendant could not rely on the Charters of either the U.N. or O.A.S. to dispute U.S. jurisdiction in the case as that right under the Charters is delegated to sovereign states, not to defendants who must rely on states to register such protests for them.

The United States may have decided to resort to irregular rendition rather than extradition in both the *Toscanino* and *Lujan* cases because many Latin American countries were not party to bilateral agreements covering narcotics or narcotics conspiracy offenses. In addition, Uruguay was not party to either the Montevideo Convention on extradition of 1933 or the Single Convention of 1961, so that there was no basis for extradition in the *Toscanino* case. The United States could have attempted to extradite Lujan from Argentina since it was party to the Single Convention, although the Single Convention did not provide for mandatory extradition and there was the possibility that extradition requests might have been refused. Once Lujan reached Bolivia, the only available option for removing him to the United States was by irregular methods since Bolivia was not party to the 1961 Single Convention.[33]

As the *Toscanino* and *Lujan* cases illustrate, the cooperation of national law enforcement officials makes it difficult to determine whether an illegal abduction actually occurred. Technically, abduction would require that the authorities of an asylum country have no knowledge of the apprehension and that the removal of the fugitive from their territory constituted a violation of their sovereign right to grant asylum when deemed appropriate. The extensive involvement of Bolivian and Brazilian officials would

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[32]Ibid., p. 57.

[33]Ibid., p. 58.

disprove the defendants' claims of illegal abduction, and even in the case of Lujuan's removal from Argentina, U.S. officials did not attempt to abduct him directly but rather, lured him into Bolivia where national authorities were willing to cooperate in his transportation to the United States. In addition, neither Italy nor Argentina actually participated in the abduction of their citizens or made any attempt to protest U.S. action once the defendants reached the United States, giving at least tacit approval to their arrest and prosecution.

Other Latin American countries have at times participated in the removal of fugitives to the United States by irregular means to circumvent restrictions on the extradition of nationals, as was the case in *United States v. Quesada*. In 1976, Venezuelan police apprehended a suspected drug trafficker and a national of Venezuela, forcing him to board a flight for Puerto Rico where he was arrested by waiting DEA agents. He subsequently challenged the arrest based on the mode of rendition but the acquiescence of Venezuelan officials in the capture and transportation to American territory precluded any chance that Venezuela would protest any violation of national laws or international agreements.[34] Quesada might have challenged the Venezuelan government's actions in Venezuelan courts but U.S. officials could not voluntarily limit their jurisdiction simply on the basis that his rights had been violated by his own government without unjustly interfering in that state's internal affairs. It is possible that Colombia might have attempted similar actions after the invalidation of the 1979 treaty by cooperating with American agents on the removal of suspected drug traffickers, instead of implementing Decree 1860.

The individual in such cases is not granted any recognized standing before the courts and can not contest treaty violations without the support of his native government or the asylum country from which he was removed. The 1982 case, *United States v. Cordero*, a Panamanian national was sized by Panamanian officials and transferred to Puerto Rico to face charges of conspiracy to import cocaine. While

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[34]Ibid., p. 60.

this act did not conform to the procedure expressed in the United States-Panama extradition treaty, U.S. courts maintained that treaties were designed for the benefit of nations not for individuals who may be subject to them, and that the defendant had no right to complain over any violations which might have occurred prior to his appearance before the court.[35]

U.S. Condones Extraterritorial Abduction

Both the Reagan and Bush administrations have endorsed irregular apprehension as a suitable method of fighting terrorism and more recently, narco-terrorism, and have dismissed the ramifications of adopting such a policy which may actually discourage nations from practicing international extradition or might place American citizens in danger of similar action by foreign governments. In the last two decades the incidents involving irregular rendition have increased dramatically, particularly in Latin America, but nations have usually been quick to register protests against the seizure of their nationals in violation of treaty arrangements. In addition, U.S. courts have recently demonstrated a willingness to uphold these claims and have ordered the return of fugitives obtained illegally.

The updated extradition treaties provide a formal mechanism for the return of fugitives although circumstances have arisen when abduction appears to be the only option other than abandoning hope of obtaining legal custody. The Carter administration considered the issue of extraterritorial arrest in the case of Robert Vesco, a Wall Street financier who had embezzled two hundred million dollars from mutual funds and fled to the Bahamas where requests for extradition were refused.[36] Based on the opinions of the Office of Legal Counsel, the Carter administration concluded that U.S. agents have no law enforcement authority outside U.S. territory, and successful arrest

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[35]Grassic, "Federally Sponsored Kidnapping," p. 1212

[36]It is believed that Vesco was able to bribe high level officials in the Bahamanian government to prevent his extradition. Pontoni, "Authority of the United States," p.215. See also Ronald Ostrow, "FBI Gets OK for Overseas Arrest," Los Angles Times, 13 October 1989, p. A10.

and prosecution could not occur without the consent of authorities in the Bahamas. As long as international law was not violated, the U.S. courts could legally claim jurisdiction once the defendant was brought before them, but FBI or other U.S. agents could possibly be subject to civil liability or extradition if they are not expressly authorized to conduct such operations. The report concluded that, "asylum state consent appears pivotal to the success of the operation, both as a matter of litigation and public perception,"[37] and recommended that extraterritorial arrests without the acquiescence of foreign governments should therefore be avoided to prevent the disruption of foreign relations and potential political embarrassment if such measures should fail.[38]

After a series of hijacking and bombings by terrorists in the early 1980's,[39] the number of supporters for government sanctioned abductions began to increase. Senator Arlen Specter of Pennsylvania had long been an advocate of official kidnapping abroad, justifying such action under the doctrine of "state responsibility" which permits, "an aggrieved nation to apprehend a terrorist on foreign soil when he is being harbored by another nation in violation of its responsibilities to the international community."[40] Specter was supported on this issue by Secretary of State George Schultz[41] and Attorney General Edwin Meese who both believed that it was within the President's authority to sanction moderate force or abduction against certain individuals.[42] State Department Legal Advisor Abraham Sofaer acknowledged that forcible abduction without the consent of the asylum country would be in violation of international law but stressed that the threat of terrorism and the lack of cooperation

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[37]Ostrow, "FBI Gets OK," A10.

[38]Pontoni, "Authority of the United States," p. 220

[39]Terrorist attacks between 1983 and 1986 were particularly disturbing to U.S. officials. They included the kidnapping of six Americans in Beirut, the hijacking of the Achille Lauro cruise ship and TWA flight 847, the shootings at the Rome and Vienna airports, bomb attacks against the U.S. Embassies in Kuwait and Beirut, as well as the attack on the marine barracks in southern Lebanon.

[40]Arlen Specter, "How To Make Terrorists Think Twice," The New York Times, 22 May 1986, p. A31.

[41]Schultz also indicated that extradition treaties may need to be re-examined to better define terrorism and prevent its classification under protected political crimes as some countries have interpreted them. Bernard Gwertzman, "Schultz Backs 'Moderate Force' Against Terrorists," The New York Times, 14 March 1986, p. A8.

[42]Kester, "Myths of Extradition Laws ," p. 1453.

internationally in apprehending these persons might provide adequate reasons for "bending the rules in extraordinary circumstances".[43] Arguing that every government retains the right to self defense, as outlined in Article 51 of the U.N. Charter, he went so far as to conclude that international law actually permits extraterritorial arrests in extraordinary circumstances.[44] While the government's legal advisors stressed the dangerous precedent that this policy might set and the risk that an operation might go awry, a major concern was how European allies would react to such action in their territory and whether or not this might prevent future cooperation.

In June 1989, Attorney General William Barr issued a legal opinion reversing the 1980 opinion on extraterritorial abduction and authorized FBI agents to abduct foreign nationals wanted in the United States without the consent of foreign governments, as long as they consulted with other branches of the U.S. government so as not to disrupt foreign policy.[45] While the change in policy did not specifically suggest that this was aimed at drug traffickers, members of the Bush administration were growing increasingly critical of Manuel Noriega and they appeared to be searching for a suitable method of removing him from power if economic sanctions failed to force him out. In addition, extraditions of Colombians were not proceeding according to U.S. expectations and violent retaliation was becoming much more frequent, so drug traffickers or narco-terrorists were also included as possible targets of abduction.[46] President Bush expressed his view that such a policy of extraterritorial arrest

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[43]The United States was particularly disappointed with Italy who had refused to extradite three suspects in the hijacking of TWA flight 847, whose plane was intercepted by U.S. jet fighters and forced to land in Italy. The fourth suspect , Mohammed Abbas, was released by the Italian government despite U.S. requests for a provisional arrest warrant. Stephen Engelberg, "U.S. Said to Weigh Abducting Terrorists Abroad for Trials Here," The New York Times, 19 January 1986, p. 1.

[44]Gwertzman, "Schultz Backs Moderate Force," p. A8, and Congress, House, Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, 101st Congress, First Session, 11

[45]The report was entitled, Authority of the FBI to Override Customary or Other International Law in the Course of Extraterritorial Law Enforcement Activities, but the actual content of the report is being withheld on the grounds that the State Department and President enjoy an attorney-client privilege regarding their private consultations. Pontoni, "Authority of the United States," p. 215.

[46]The cancellation of the extradition treaty between Colombia and the United States may have provoked the United States to consider this option but the United States has traditionally been very cautious in its relations with Colombia and is aware that such intrusions might result in serious conflict between the two nations, create internal problems for the Colombian government or result in the disruption of drug enforcement efforts.

would be useful in pursuing the major traffickers in Latin America[47] and in statements before the House subcommittee on Civil and Constitutional Rights, Oliver Revell, Associate Deputy Director of the FBI, conveyed this position pointing out that the United States was now subjected to, "increasingly serious threats to its domestic security from both terrorist groups and narcotics traffickers."[48]

[47]These measures were probably intended to contend with the problems of extraditing drug traffickers in Colombia or the desire to gain custody of suspects wanted in the murder of DEA agent Enrique Camarena in Mexico.The Omnibus Diplomatic Security and Anti-terrorism Act of 1986 had already extended the FBI's power abroad to investigate crimes against Americans committed by terrorists abroad and to take necessary action, so the 1989 announcements would have had little effect on the FBI's activities against terrorism. Pontoni, "Authority of the United States," p. 220

[48]Subcommittee on Civil and Constitutional Rights, p. 3.

Section II

U.S. Attempts to Secure Fugitives Outside of Treaty Arrangements

The Enrique Camarena Case

Two situations have emerged in the last decade which appear to have motivated the change in U.S. policy regarding the extraterritorial abduction of drug traffickers. The first arose from the kidnapping, torture and murder of DEA agent, Enrique Camarena, and Mexico's perceived lack of commitment to resolving the case, and the second was the inability of the U.S. government to remove Manuel Noriega from power in Panama. Among the reasons the United States has cited for justifying irregular rendition and abduction, particularly in efforts to apprehend terrorists, has been the fact that the countries which harbor terrorists are not willing to cooperate with the United States, have no extradition treaties in force and usually regard the crimes committed by terrorists as political offenses, barring their extradition if a treaty did exist. In the case of drug traffickers, however, the United States has employed irregular rendition against Latin American countries with whom it maintains good relations, who have demonstrated a willingness to cooperate on narcotics policy and who have treaties in force which not only cover drug offenses but specifically disallow irregular rendition as a substitute for extradition. In addition, the O.A.S. Charter directly prohibits intrusions on a nation's territory or sovereignty, but the United States has not been recognized these agreements as prohibiting irregular rendition in situations which it considers to be "extraordinary".

After successfully infiltrating the Guadalajara drug cartel of Rafael Caro-Quintero, Enrique Camarena initiated a series of raids conducted by Mexican drug enforcement agents that resulted in the

seizure of 3,500 tons of marijuana.[49] In February 1985, apparently in retaliation for the raids, Camarena was kidnapped in Guadalajara, transported to a nearby ranch where he was interrogated, tortured and eventually died. The bodies of both Camarena and his pilot were found buried in shallow graves on a ranch raided by Mexican Federal Judicial Police (MFJP) one month after their abduction. In the months following the murder of Camarena, the United States became increasingly disappointed with the manner in which Mexico was handling the case and the apparent complicity of Mexican police in the abduction.

To protest the "lack of vigor" on the part of the Mexican government, the DEA initiated its own investigation which lasted over five years and resulted in the indictment of twenty-two Mexicans suspected of involvement in Camarena's death and the capture of eleven alleged members of the Guadalajara cartel. Some of those were captured in the United States and were resident aliens but three others were apprehended abroad and returned to the United States forcibly. Those three cases of irregular abduction have since become test cases for the government's assertion that it is justified in seizing persons overseas in extraordinary circumstances. The death of a U.S. agent at the hands of drug traffickers was a matter of importance to the United States, but its decision to resort to irregular rendition in order to gain custody of the suspects, particularly after Mexico had demonstrated a commitment to prosecute those involved, was interpreted as a direct affront to the Mexican government and their ability to handle the case unilaterally.

The Camarena case severely strained relations between the United States and Mexico for several reasons. First, the United States expected Mexico to act swiftly and resolve the case but a series of incidents during the investigation were perceived by the United States as evidence that Mexico was not committed to finding Camarena's killers. Despite twenty years of close cooperation with Mexico in drug enforcement, the United States failed to appreciate the differences in their legal systems and the manner in which

[49]Ronald Ostrow, "Police Aid to Kidnap Gang Figure Charged," Los Angeles Times, 21 February 1985, p. A1

investigations are conducted, as well as the serious problems of corruption in Mexican law enforcement which have hindered investigations in the past. The United States expected Mexico to treat this case with special attention and give it high priority without considering that Mexico had also lost many law enforcement agents in the drug war and that the Camarena case was no more important than any of those cases.[50] Second, the United States resorted to a number of other tactics to indicate their displeasure and exert pressure on the Mexican government to be more vigorous in their investigation. The Camarena's case became the central focus of U.S.-Mexican relations for several years even though the Mexican government had already prosecuted many of the suspects. The threat of sanctions, conducting intensive searches of Mexican nationals at the border crossings, and criticism of the handling of the case were intended to prod the Mexican government to further action but may have actually made the Mexican government more reluctant to cooperate, especially when the United States seized its nationals in violation of its extradition agreements.

The Return of Caro-Quintero to Mexico

One of the first indicators that the United States was going to assume a leading role in the investigation of the Camarenas case was its pursuit of Rafael Caro-Quintero. Caro-Quintero, the alleged head of the Guadalajara cartel and suspected of ordering the kidnapping of Camarena, was able to flee Mexico shortly after the agent disappeared. Surrounded by police at the airport in Guadalajara, Caro-Quintero and several bodyguards, all heavily armed, were allowed to depart after he supposedly bribed the officers sent to apprehend him. It was later learned that Caro-Quintero had been protected by members of the Federal Judicial Police (MFJP) and that at least two of Camarena's abductors had been police officers that Camarena knew. These revelations led to a massive reorganization of the police

[50]Between 1982 and 1987, drug traffickers are suspected in the death of 155 Mexican law enforcement officers.

forces by President de la Madrid and the dismissal of the entire judicial system, including the state attorney general, police and all administrative personnel in the state of Morelos.[51] Twelve persons were arrested for their involvement in the abduction, including six members of the MFJP, the top Mexican security agency.[52]

Caro-Quintero's capture in Costa Rica less than two months after Camarenas kidnapping and his extradition to Mexico was a prime example of international cooperation within the legal boundaries of international law. U.S. agents traced Caro-Quintero to a remote villa in Costa Rica, alerted Costa Rican authorities who obtained the necessary warrants and in an early morning raid, a forty man SWAT team caught Caro-Quintero and four of his bodyguards.[53] Based on extradition agreements between Costa Rica and Mexico, Caro -Quintero should have been extradited and entitled to a hearing to examine evidence for such a request. In an attempt to avoid further delay and uncertainty, the DEA pressed the Costa Rican government to deport Caro-Quintero rather than going through extradition proceedings. With the approval of Costa Rican officials, he was technically deported, although he was not prosecuted for violations of Costa Rican immigration laws and was not given the opportunity to challenge the deportation order in a hearing.[54] The United States did have grounds for jurisdiction and could have requested his extradition, but Mexican law prevents the extradition of its nationals abroad, whether it is conducted by Mexico or another country and his extradition anywhere other than Mexico could have been challenged.[55]

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[51]President de la Madrid strengthened federal control over the various police forces run by other ministries in an attempt to wipe out corruption. Richard Meislin, "Mexico Drug Arrests: 'Tip of the Iceberg'," The New York Times, 30 April 1985, p. A3.

[52]One of those arrested was the chief of homicide for the state of Guadaljara, who had previously been described as one of most competent and incorruptible investigators in the police force. Gabriel Gonzalez, however, died while in the custody of police and was subsequently accused by the Attorney General's office as being a cocaine addict with extensive links to several narcotics traffickers including Caro-Quintero. Richard Meislin, "U.S. Says Abductors of Agent in Mexico Included Policemen," The New York Times, 16 March 1985, p. A1-2.

[53]Ronald Ostrow, "Camarena Case Suspect Caught in Costa Rica," Los Angles Times, 18 March 1985, p. A7

[54]Abramovsky, "Catch and Snatch Policy," p. 161-162

[55]U.S. Department of State, "Extradition Treaty Between the United States and the United Mexican States," 4 May 1978, TIAS no.9656, Treaties and Other International Agreements of the United States, Vol. 31,

Formally convicted four years after his arrest, Caro-Quintero was sentenced to forty years in prison for his part in the murder of DEA agent Camarenas. Additional charges of kidnapping, drug trafficking and weapons smuggling brought his total sentence to 116 years, although under Mexican law he would only be forced to serve forty years, after completing a 34 year prison term imposed in an earlier conviction.[56] In addition to the conviction of Caro-Quintero, Mexican authorities also convicted twenty-four other members of the cartel, including Ernesto Rafael Fonseca-Carrillo who the United States believed was directly involved in Camarena's death.

American authorities were also involved in a number of court cases involving suspects in the Camarena's case. Hoping that one of their cases would shed light on the events surrounding Camarena's death, the United States had concentrated it efforts on breaking the Guadalajara cartel's connections in the United States. Ruben Zuno Arce, a Mexican national, was apprehended when he arrived in Los Angeles. He was wanted on charges for his complicity in Camarena's death although Mexican officials claimed they had no evidence to indicate his involvement.[57] Jesus Felix Gutierrez, a resident alien, had been convicted and sentenced to ten years. He pled guilty to drug trafficking charges but did not admit to participation in the Camarena's murder.[58] A former Mexican police officer, Raul Alvarez-Lopez, was also apprehended in the United States and sentenced to 240 years for his part in the DEA agent's abduction.[59]

United States v. Verdugo-Urquidez

The United States had also issued an indictment against another resident alien, Rene Martin Verdugo-Urquidez, who had since returned

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[56]Hector Tobar, "Drug Lord Convicted in Camarena's 1985 Murder," Los Angeles Times, 11 December 1989, p. A3.

[57]Ibid. p. A 32.

[58]Gutierrez ran a Los Angeles seafood company and was reputed to be a close friend of Caro Quintero since he owned the Costa Rican ranch where Caro Quintero was found.

[59]Alvarez had been arrested in Mexico on charges relating to the Camarena's case but was released and ended up in the United States. In an undercover sting operation, U.S. agents videotaped Alvarez agreeing to kill a DEA agent and boasting to having witnessed Camarena's torture, claims he later denied. Shannon, Desperados, p. 450.

to Mexico, presumably to avoid arrest. Following an agreement between the director of the MFJP and the DEA, Verdugo was seized on January 24, 1986 and pushed through a hole in the border fence where U.S. Border Patrol officers arrested him. Even though extradition was not an available option, the United States should have referred its indictment to the Attorney General in the appropriate state, who would have then arrested the suspect and charged him under Mexican law at which point other arrangements could have been contemplated.[60]

Verdugo's attempt to challenge U.S. jurisdiction based the manner in which he was apprehended was rejected by the courts on the grounds that the defendant had no standing to make such a claim and Mexico had not filed a formal protest over the abduction. Mexico later protested the abduction claiming that the action had not received proper approval and the agreement entered into by the director of MFJP was beyond his authority. Although a formal complaint was registered, Verdugo never attempted to appeal the court's decision so the issue of U.S. jurisdiction in such cases was not explored.[61] Instead, Verdugo sought to exclude the evidence seized from his home on the grounds that it was seized without proper warrants. A district court upheld his claims but upon review, the Supreme Court, in its opinion recognized that aliens before U.S. courts may not be entitled to all the constitutional protections afforded an American citizen, particularly the fourth amendment regarding unlawful search and seizures. The Court interpreted the fourth amendment to apply only to those "persons who are a part of the national community," although both the fifth and sixth amendments are applicable to individuals not citizens of the United States.[62] Verdugo was later convicted and received a 240 years prison sentence. The ultimate effect of the court's decision may be to allow the United States to use more intrusive law enforcement practices in the apprehension of fugitives abroad.

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[60]Abramovsky, "Catch and Snatch Policy," p. 163.

[61]Ibid., p. 163.

[62]Richard Downing, "The Domestic and Legal Implications of the of Abduction of Criminals From Foreign Soil," Stanford Journal of International Law, Vol. 26, 1990, p. 579.

The Seizure of Ramon Matta-Ballestros

In April 1988, Chief of Operations for the U.S. Marshals Service, Howard Safir, persuaded the Honduran military to arrest Ramon Juan Matta-Ballestros, a Honduran national. Matta was believed to have extensive connections with the Guadalajara cartel and his business partner, Miquel Angel Felix Gallardo, was under indictment in the United States for involvement in the Camarena's case. Matta was suspected of participation in Camarena's death but was also wanted in the United States for escaping from a U.S. prison camp at Elgin Air Force Base, based on an earlier drug smuggling conviction. Due to official stalling, he had also avoided arrest in Mexico by fleeing the country following the disappearance of Camarena.[63] Despite laws preventing the extradition of Honduran nationals, the Honduran military and several U.S. Marshals did seize the defendant and forced him to board a plane bound for the Dominican Republic. By prior arrangement with Safir, officials in the Dominican Republic expelled Matta for entering the country illegally and immediately forced him to board a flight to Puerto Rico where he was formally arrested by U.S. Marshals.

Matta did file a writ of *habeas corpus* challenging his arrest and presented extensive evidence of physical abuse based on medical exams performed upon his return to the United States. In its rejection of Matta's appeal, the court reaffirmed that the accused had no standing to challenge violations of the U.S.-Honduran extradition treaty and that the treaty was not viewed as self-executing. Although the Honduran government did not protest the defendant's abduction, members of the Honduran Congress signed an affidavit which condemned the seizure and claimed that it had incited public demonstrations which resulted in the death of five persons and over six million dollars in property damage to the U.S. embassy. In order to quell the riots, a national emergency had been declared and

[63]Shannon, Desperados, p. 451.

the Honduran military was brought in to subdue the rioters.[64] In reference to the allegations of torture, the court stated, "even if the *Toscanino* exception were to be applied in the Seventh Circuit, the Court finds that, as a matter of law, the allegations ... do not rise to the threshold standard of Toscanino. The allegations of torture do not meet the required level of outrageousness."[65]

The Abduction of Dr. Alvarez-Machain

Dr. Humberto Alvarez-Machain[66] was abducted from his Guadalajara office by bounty hunters in April 1990, five years after the death of Enrique Camarena. The abduction was apparently conducted by one of Camarena's former drug informants, Antonio Garate-Bustamante[67], who had continued to provide information to the DEA following Camarena's death. The U.S. government claimed that talks regarding the irregular rendition of Alvarez were initiated by a commandant of the MFJP, Jorge Castillo del Rey who indicated that this seizure had the approval of the Attorney General if the United States was willing to surrender a Mexican national who was then residing in the United States. Garate served as a middleman between the DEA and Castillo del Rey, and informed DEA agents that $50,000 was required to cover the expenses of returning Alvarez. The DEA refused but several months later agreed to provide the same sum to Garate if he could bring Alvarez to the United States.[68]

Alvarez was abducted by four men in police uniforms, who he claims tortured him with electric shocks, and placed him on a plane to El Paso. After turning over the fugitive, the DEA paid $20,000 to the abductors and offered asylum to seven of them, along with their families, agreeing to pay $6,000 a week to support them while in the

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[64]Sipple, "Wild, Wild Western Hemisphere," p. 1064

[65]Abramovsky, "Catch and Snatch Policy," p. 165.

[66]Alvarez was alleged to have administered drugs to revive Camarena during his interrogation by the Guadaljara cartel. Jay Mathews, "Defendant Was Abducted In DEA Case, Judge Says," Los Angeles Times, 11 August 1990, p. A3.

[67]In addition to his involvement in narcotics trafficking, Garate was formerly a lieutenant colonel in the Mexican army and a law enforcement agent. Abramovsky, "Catch and Snatch Policy," p. 166.

[68]Ibid., p. 168

United States.[69] The Mexican government issued three formal complaints, demanding the return of Alvarez, the extradition of DEA agent Hector Berrellez who had negotiated the deal, as well as Garate and his accomplices and threatened to discontinue participation in the drug war if the United States did not comply. The DEA claimed that Alvarez was actually in the custody of the MFJP when initial discussions were held, but the refusal to pay $50,000 had resulted in his release. They also claimed that Alvarez had not been forcibly abducted and had greeted DEA agents, saying he was "very glad to be in the United States" and that he wished to cooperate in the investigation.

In the court's decision, the judge held that the extradition treaty between the United States and Mexico was self-executing and that the treaty had been violated because it prevented irregular rendition as a substitution for extradition. In addition, Mexico denied it had ever offered to make such an exchange, stated it would investigate the charges against Alvarez and prosecute if necessary and had filed the obligatory protest over the abduction and violation of treaty arrangements.[70] Citing the DEA's extensive involvement in the kidnapping, including the payment of reward money and the fact that U.S. Attorney General's office had knowledge of the plan, the judge determined that the U.S. government had therefore violated the treaty without the consent of the Mexican government and the court should divest itself of jurisdiction.[71]

Irregular Rendition and the Camarena's Case

The decision to resort to irregular rendition in order to arrest suspects in the Camarena's case was most certainly a result of what the United States perceived to be lack of due diligence in pursuing members of the Guadalajara cartel. Each move by Mexican law

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[69]Jay Mathews, "Defendant Was Abducted in DEA Case, Judge Says," Washington Post , 11 August 1990, p. A3.

[70]Majorie Miller, "Mexico Asks U.S. to Extradite Doctor in Camarena Case," Los Angeles Times, 24 May 1990, p. A3.

[71]Abramovsky, "Catch and Snatch Policy," p. 172. and Sipple, "Wild, Wild Western Hemisphere," p. 1060.

enforcement was carefully scrutinized and every "mistake" amplified. Allowing Caro-Quintero and Matta-Ballesteros to flee Mexico following the kidnapping, the imposition of court orders blocking DEA involvement in Mexican interrogations[72], not acting promptly on information provided by the United States or other informants, obvious leaks of impending raids and the loss of important evidence were some of the reasons the United States determined that it needed to assume a larger role in the investigation. Using public criticism and pressure to demonstrate its disappointment, the United States prodded Mexico to be more aggressive in its search for Camarena's killers, but once Mexico believed that it had fulfilled that obligation, the United States continued to press for further arrests. In the five year time span since Camarena's death, over forty persons have been convicted of involvement in Camarena's abduction and murder, yet the United States continues to believe there may still be others with knowledge of the crime who have not been prosecuted. The incident continues to strain relations, although the return of Dr. Alvarez-Machain and his Mexican abductors may reduce some of the tension.

Recent court rulings have upheld the validity of extradition treaties and determined that irregular rendition does not provide a substitute for the extradition process, especially when it occurs without the consent of the asylum nation. While this may possibly discourage the notion that future courts will not examine the methods by which fugitives are brought before them, the Verdugo decision, however, indicates a willingness of the courts to limit other aspects of a defendant's rights, allowing U.S. agents broader reign in the conduct of their investigations overseas. Very little evidence gathered abroad will be considered inadmissible and the courts have indicated that constitutional protections against unreasonable search and seizure and police lawlessness, or judicial integrity are not necessarily applicable to actions carried out by U.S. law enforcement

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[72]"Amparos," or protective orders were issued by the Mexican courts to prevent DEA agents from questioning at least twenty-five of the initial suspects. Ronald Ostrow, "Police Aid to Kidnap Gang Figure Charged", Los Angeles Times, 21 February 1985 , p. A6.

agents abroad.[73] In addition, the willingness to use extralegal means to prevent either extradition or deportation hearings further deprives the defendant of his basic rights and prevents him from seeking adequate counsel when arrests are made.

In addition, the *Toscanino* exception has proven to be practically impossible to invoke, so that even allegations or evidence of torture will have no bearing on the U.S. courts in their determination of jurisdiction. It also implies that such action will be tolerated by the court, as long as U.S. agents do not directly participate in the torture.[74] The right to due process for a foreign national requires only that his conviction must stem from a fair trial, no matter what methods may be used to bring him within U.S. jurisdiction. While the decision to return Alvarez to Mexico was a serious setback to the U.S. policy of apprehending suspects by irregular means and demonstrated how quickly the process had degenerated to relying on bounty hunters, the other extraterritorial arrests in the Camarena's case do provide for further use of this policy if U.S. officials succeed in gaining the acquiescence of the asylum state.

Panamanian Politics and Noriega's Fall From Power

Noriega began work for the CIA on a contractual basis in 1966 or 1967 and was placed by then President Omar Torrijos in the position of organizing the province's first intelligence service at the Chiriqui Province garrison. The United States first ran into problems with Noriega when it was discovered that he was involved in gun running in 1979 but attempts to arrest him on U.S. territory failed when Noriega refused to come to the United States having been tipped off of his possible arrest. The indictments against Noriega were not pursued after he agreed to allow the Shah of Iran sanctuary in Panama, and was able to avert problems by cooperating with U.S.

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[73]Sipple, "Wild, Wild Western Hemisphere," p. 1055.

[74]The courts held in a similar case that although U.S. agents watched as Mexican investigators sprayed seltzer water up a defendant's nose during interrogation, their decision to leave after this occurred and the fact that they were not present when the Mexican police used other forms of torture, did not constitute a due process violation. (*DeGollado* 696 F. Supp.) Ibid., p. 1057.

foreign policy considerations. By August 1983 General Noriega established himself as the de facto leader of Panama. What made Noriega so sure that the Reagan administration would not indict him on the growing evidence of complicity in drug trafficking was his close involvement with the Reagan administration's pet project, the Contras. The Contras had been allowed a training base in Panama and Noriega supposedly helped arrange a sabotage attack on a Sandanista arsenal. Though his involvement was limited, it did temporarily avert any direct criticism from the Reagan administration.[75]

In the May 1984 Panama held its first presidential elections since 1968 but Noriega was widely accused of rigging the election in favor of his candidate Nicolas Ardito Barletta. Noriega did not deny the charges, but the Reagan administration decided to not protest the results vigorously, since at least some initiative at democracy had occurred. After the discovery of the mutilated body of Dr. Hugo Spadafora, a prominent Panamanian opposition leader who had accused Noriega of conspiring with drug traffickers, Barletta announced an investigation into the role of the Panamanian Defense Force (PDF) in his murder. Noriega forced Barletta to resign and replaced him with Eric Arturo Delvalle. In response, the US withheld 5 million dollars in aid, refused to participate in joint military exercises with the PDF and canceled a Thunderbirds show. No one in the administration was willing to cut their ties with Noriega completely, despite Noriega's apparent involvement in the drug traffic, since Panama still enjoyed some aspects of democracy, as Elliot Abrams pointed out in his statement on Panamanian certification for narcotics policy. "Panama is one of the most open societies in the hemisphere, with pluralistic social and economic institutions, a free enterprise economy, " and he went on to add, "there is general freedom to express political dissent and the legal rights of individuals are generally respected."[76]

In March 1987 the administration recommended that Panama be certified as fully cooperative on drug issues. Associate Attorney

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[75]Kempe, Frederick, "Ties That Bind: U.S. Taught Noriega to Spy, but the Pupil Had His Own Agenda," Wall Street Journal, 18 October 1989, A14.

[76]Shannon, Desperados, p. 435.

General Steve Trott told the Senate Foreign Relations Committee that Panamanian cooperation was "superb". Jack Lawn, head of the DEA, said as long as Noriega was helping DEA to fulfil its mission he did not care about the general's motives, his politics or his past. In December 1986, Panama had passed legislation giving American law officers access to bank accounts suspected of having drug laundered money. Lawn indicated in his testimony before Congress that if Panama was decertified, they would have absolutely no chance at access to such information and at least with certification they might get some help. Along with the DEA, the Departments of State and Justice all recommended certification, and the only opposition came from Customs Commissioner von Rabb who accused Panama of being seriously involved in drug smuggling. The Senate did reject certification by one vote but no economic sanctions were attached to the bill and the House did not act on the matter at all.[77]

A year later, however, Panama had become the primary target of the State Department and Noriega was no longer regarded as a tolerable asset. Elliot Abrams was now charging Noriega with wrecking the economy and destabilizing a strategic interest of the United States. Fueled by allegations made by one of Noriega's colonels who had recently been fired, reports were also beginning to circulate in Panama that Noriega had conspired with the CIA to bomb former President Torrijo's plane, ordered the Spadafora murder, stolen the 1984 election, and collaborated with drug traffickers. This provoked large protests in Panama and Noriega responded by having Colonel Roberto Diaz Herrera arrested, dispatching troops to suppress the demonstrations, suspending the constitution, closing the opposition media, forcing opposition leaders into exile, and harassing or expelling foreign reporters.[78] The Reagan administration immediately cut aid, and with the cooperation from drug traffickers held in Miami, the Justice Department ordered all available information on Noriega accumulated.

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[77]Ibid., p. 436.

[78]Ibid., p. 438.

Indictments were issued against Noriega charging him with racketeering and conspiracy to smuggle drugs into the United States. After the indictments, there were more riots and strikes and Noriega forced President Delvalle to resign presumably for trying to oust him. The U.S. government then froze 50 million dollars in Panamanian funds held in U.S. banks, setting off more strikes and protests when government employees and pensioners stopped receiving their paychecks. Noriega might have actually lost power in 1988 because of economic problems but increasing external pressure has given him more excuses for repression and the United States served as a scapegoat for the internal problems. In May 1989, Secretary of State George Schultz went to Noriega and offered to drop the indictments if he left office. When news of the offer was leaked to the press, government officials denied it and the White House stated that they would not bargain with drug dealers.[79] The administration continued efforts to negotiate Noriega's removal and exile from Panamanian politics up through December 1989 but Noriega did not agree, possibly believing that the United States would lose interest in Panama and go on to other problems.

Gaining Custody of Manuel Noriega

In January 1990, General Manuel Antonio Noriega turned himself over to U.S. authorities to face drug trafficking charges in the United States. Since the U.S. had mounted a military invasion, his surrender could not be considered voluntary and U.S. courts were forced to determine whether the conditions of his arrest might prevent them from asserting jurisdiction in the case. Its decision would be based on three essential questions; (1) because the United States had obviously authorized Noriega's arrest and the invasion, did this constitute a violation of its extradition treaty with Panama which prohibits the extradition of nationals; (2) if the treaty had indeed been violated, did the defendant have any rights to challenge the abduction without relying on a formal protest from the Panamanian

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[79]Ibid., p. 440.

government; and (3) whether or not the failure of the United States to submit formal requests for Noriega's extradition or to allow him legal recourse before returning him to the United States might affect the court's jurisdiction in the case.[80] The fact that military force was used to return him to the United States was not a factor to be considered by the courts, as they have always maintained that is a matter to be settled exclusively by the executive branches of the countries involved.

In its final determination, the court ruled that the acquiescence of the Endara government and their willingness to allow for Noriega's prosecution in the United States did not constitute a violation of the extradition treaty and upheld earlier court decisions which prohibited the defendant from directly challenging such violations. Although the United States had not attempted to extradite Noriega under the procedure outlined in the treaty, this did not necessarily make his irregular rendition illegal because his de facto control of the country's judicial and law enforcement bodies precluded any hope that such a request would be considered or carried out, besides the fact that Panama's extradition treaty contains no provisions for drug conspiracies, the charges for which Noriega was sought.[81] The new Panamanian government expressed no desire to attempt prosecution at that time and made no attempt to register a protest against the abduction itself, so there was no challenge to U.S. claims of jurisdiction.

Head of State Immunity

In its pre-trial hearing, the government argued that because President Bush had sworn in the elected government of Guillermo Endera prior to launching the invasion of Panama, General Noriega was subsequently deprived of immunities granted to heads of state. Three theories of immunity might still have pertained to this case, the act of state doctrine, diplomatic immunity and sovereign immunity, none

[80]Sipple, "Wild, Wild Western Hemisphere," p. 1068.

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of which guaranteed that a defendant will not be held responsible for acts committed while in an official capacity.[82] The defense, on the other hand, argued that Noriega was a political prisoner and was brought before the court "under coercion and intimidation," neither of which have prevented U.S. courts from asserting jurisdiction in the past.[83] The act of state immunity is a judicially created opportunity for the courts to avoid legal entanglements in the realm of foreign affairs. Courts are allowed to limit their jurisdiction over acts which are of a governmental nature done by a foreign state within its own territory. It does not, however, apply to private acts committed by public officers or to acts of a government no longer in power.[84] Noriega might have claimed that his involvement in drug trafficking was a formal method of fighting U.S. imperialism in Panama and therefore his acts were in effect a declaration of war against the United States, although international law would not necessarily recognize this as a legitimate excuse for such behavior.

Head of state immunity and diplomatic immunity are closely linked, but diplomatic immunity is so widely recognized that it bars anyone acting in an official capacity from facing criminal charges for acts committed while performing a diplomatic function. Diplomatic immunity is classified in two forms, *ratione personae* and *ratione materiae*. The first applies to criminal acts which occur while a diplomat or other government official is abroad and acting in an official capacity but terminates when that person is removed from that position. *Ratione materiae* allows the diplomat unlimited immunity for those acts which he performed as part of his diplomatic duties. Head of state immunity also encompasses both these distinctions, with ratione materiae referring to what is generally termed sovereign immunity.[85] Head of state immunity is formally "suggested" by the State Department as a consideration of whether or

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[82]Bassiouni lists six forms of immunity recognized under international law: (1) acts of state immunity; (2) sovereign immunity; (3) immunity of heads of state; (4) immunity of diplomats; (5) the political offense exception; and (6) the defense of obedience to superior orders. M.C. Bassiouni, "Major Contemporary Issues in Extradition Law," American Society of International Law, 1990, p. 393.

[83]Berke, Richard, "Noriega Arraigned in Miami in a Drug Trafficking Case; He Refuses to Enter a Plea," The New York Times, 5 January 1990, p. A1.

[84]Downing, "Abduction of Criminals from Foreign Soil," p. 587.

[85]Remarks by Yoram Dinstein, "Major Contemporary Issues," p. 404.

not to follow through with charges. It applies only to those leaders still in power, only to those duties committed while head of state and is applicable only to governments recognized by the United States.[86] The decision to recommend immunity, however, is somewhat arbitrary and tends to be granted to leaders who are in good standing with the United States and denied to leaders such as Noriega who no longer enjoy U.S. support.

Under the guidelines of diplomatic immunity, as long as Noriega was in power, he remained free from prosecution, but his official replacement by Endara terminated such protection. In addition, the government of Eric Delvalle had not been recognized as the legitimate power in Panama so Noriega was deprived of claiming the head of state immunity. Noriega's involvement in drug trafficking was basically a private act and could not be construed as part of a diplomatic function therefore any claims that crimes committed while serving as head of state might enjoy sovereign immunity could easily be disputed. None of the immunities would have therefore applied to Noriega's situation or would have forced U.S. court's to relinquish jurisdiction simply because the arrest was conducted by irregular rendition.

The Aftereffects of Noriega's Removal

Noriega's removal and his on-going trial have substantially improved the economic outlook for Panama but the effects of the invasion are still evident and drug enforcement efforts remain limited. Once Noriega was removed, economic sanctions imposed by the United States were lifted, opening the flow of goods between the two countries and freeing up $400 million in bank accounts frozen when sanctions were imposed.[87] Efforts are still underway to clear the rubble caused by U.S. bombing and to deal with the $500 million worth

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[86]Downing, "Abduction of Criminals from Foreign Soil," p. 587.

[87]Statement by Press Secretary Fitzwater on United States Military Action in Panama, December 21, 1989, George Bush, Public Papers of the Presidents of the United States, 1989, Vol II , (Washington D.C.: U.S. Government Printing Office, 1990), p. 1726.

of damage and looting that ensued following the invasion. Panamanian officials have requested that larger injections of international funds are needed to overcome the economic devastation brought about by two and a half years of economic sanctions.[88]

Drug trafficking through Panama, however, has remained relatively unaffected by the departure of Noriega and it has become apparent how limited narcotics interdiction actually was under Noriega's administration. Immediately following Noriega's arrest, President Bush re-certified Panama after it demonstrated its commitment to aiding U.S. narcotics investigations by freezing hundreds of bank accounts of suspected drug traffickers. He praised Endera for making the drug war the centerpiece of its policy and for complying with international efforts to combat drugs.[89] But, the Panamanian Special Anti-Narcotics Unit, Maritime Service and Customs Service all report a lack of equipment and trained personnel now that the Endera government has placed renewed emphasis on drug enforcement in compliance with U.S. certification standards and traffickers continue to take advantage of the opportunity to use Panama as a transit point for drugs entering the United States.[90]

From the U.S. perspective, the entire rendition was accomplished with unusual bipartisan support and U.S. courts have upheld their jurisdiction in the case, although there was little doubt that after such extensive efforts to gain custody over Noriega that the courts would voluntarily rule otherwise. The use of military force to achieve his apprehension, however, creates a new dimension to irregular rendition and although the United Nations and O.A.S. states protested the violation of their agreements against such intrusions, they were unable to effect any real sanctions

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[88]Larry Rohter, "'Criminal Is Gone,' but Joy Is Fleeting in Land He Ruled," The New York Times, 5 January 1990, p. A10.

[89]Communications from the President of the United States, Narcotics Control Certification for Panama, (Washington D.C.: U.S. Government Printing Office, 29 January 1990), p. 3-4.

[90]The anti Narcotics Unit is limited to only five automobiles and gasoline is rationed for these vehicles, the Panamanian Maritime Service has no boats of its own that are operational and instead patrols Panamanian waters with two shrimp boats it has leased and the Customs Service has complained that the government has not allotted sufficient funds to feed the five dog canine drug detection team. "Drug Activity May Be Rising in Panama," Austin American-Statesman, 23 July 1991, p A6.

against the United States for its actions. The United States no doubt anticipated such reactions but determined that whatever transgressions occurred in Noriega's apprehension were clearly outweighed by the desire to prosecute him and the government does not appear to be concerned over threats by the defense to expose the role of the U.S. government in drug trafficking or its involvement in covert activities, including providing aid to the Contras at the behest of U.S. officials.[91]

Noriega's trial has also indicated that U.S. courts may continue to limit the rights of the defendant if it serves the overall purpose of convicting Noriega. His lawyers attempted to dismiss the case when it was learned that his former attorney was a secret government informant when he was advising Noriega to surrender himself prior to the US invasion. It was alleged that Raymond Takiff was working for the for the federal government in Operation Court Broom, a joint state and federal investigation in Dade County while simultaneously representing Noriega. Within hours after Noriega's arrest, Takiff resigned from the case claiming he was ill. Prosecutors did not dispute the allegation but argued that as a foreigner, Noriega had no constitutional right to privileged communication with his attorney under the Sixth Amendment.[92] It was also discovered in October 1991 that U.S. Marshals serving subpoenas under judicial orders of secrecy, sent copies of the defense's witness list to the prosecuting attorney. Noriega's lawyers protested the action as grounds for dismissal but were overturned.[93] In addition, the prosecution has relied almost exclusively on the

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[91]Jose Blandon, Noriega's former aide and now chief witness for the prosecution, first revealed that Noriega might use this tactic as part of his defense in 1988 when he appeared before the Senate Foreign Relations Committee. Brandishing a letter from Noriega, Blandon read portions of it to the committee which referred to U.S. involvement in shipments of drugs from Honduras, Costa Rica and Guatemala and accused U.S. politicians of supporting various Panamanians with known ties to drug traffickers. U.S. Congress, Senate, Subcommittee on Terrorism, Narcotics and International Communication of the Committee on Foreign Relations, Drugs, Law Enforcement and Foreign Policy: Panama, Part II, 100th Congress, Second Session, 8-11 February 1988, p.8.

[92]"Defense: Attorney Advising Noriega was a Secret Agent," Austin American-Statesman, 5 September 1991, p. A13.

[93]Richard Cole, "Noriega's Lawyers Complain of Witness Leak," Austin American-Statesman, 10 October 1991, p. A29

testimony of former drug traffickers and corrupt banking officials, as well as Noriega's former aid, Jose Blandon, all of whom have negotiated deals with the government in exchange for their testimony. Others have asserted that Noriega, like other foreigners, brought before U.S. courts has very little opportunity for a fair trial because there is a natural tendency to treat aliens with some prejudice. In addition, the highly publicized invasion and the political motivations behind his seizure makes it even more difficult to find unbiased jurors.[94]

[94]Downing, "Abduction of Criminals from Foreign Soil," p. 598.

Section III

Potential Problems Arising

from the Use of Irregular Rendition

Evaluating the International Ramifications of Irregular Rendition

While the ultimate purpose of detaining and punishing drug lords may be sufficient reason for the Bush administration to engage in illegal abductions, the precedent this sets for the international community may extend well past drug traffickers and terrorists. In November 1989, the Iranian Parliament approved a bill which would allow Iran to arrest any American found anywhere in the world who "offends" Iran. The Chief Justice of the Iranian Supreme Court upheld the bills passage referring specifically to the U.S. Justice Department's ruling that U.S. agents could apprehend terrorists in other countries without obtaining their approval, which he stated was "the worst kind of terrorism and kidnapping."[95] While the United States is not likely to reform or reverse its policy based on criticism by the Iranian government, who could quite conceivably be the target of U.S. policy in the future considering its apparent toleration of terrorists within its borders, it does better illustrate the problem with condoning extraterritorial abductions if American citizens could be the subject of such action.

In determining whether or not the desire to punish certain offenses may supersede the issue of how those persons are brought

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[95]Following the enactment of the Iranian law regarding the seizure of Americans abroad, Iranian newspapers suggested that Will Rogers III be the first target. Rogers was the captain of the U.S.S. *Vincennes* which shot down an Iranian aircraft over the Persian Gulf in 1988. The bounty placed on Salmon Rushdie for his novel, The Satanic Verses, by the Ayatollah Khomeini is also indicative of how perverted assertions of extraterritorial rights can become."Iran Bill Allows Arrest of Americans Who Offend Nation," Los Angeles Times, 1 November 1989, p. A7

before the courts, the United States should consider the long term impact of its recent policy and determine if by employing extraordinary means of rendition might create a general sense of lawlessness among the international community. If, however, the United States determines that its short-term goals of disrupting narcotics traffic and prosecuting traffickers outweigh the potential problems which might arise between the United States and its neighbors, it needs to consider what remedies may be available to satisfy a protesting nation without necessarily returning the fugitive. In either case, the United States government should not rely entirely on the courts to determine the standards or situations which might merit using irregular rendition and should attempt to define when extraordinary measures may be needed and under what conditions they should be undertaken. On the other hand, if U.S. courts decide to abdicate their authority to hear issues involving international jurisdiction, other departments such as the State and Justice Departments may attempt to implement policy in an ad hoc manner, and without a clear policy there would be few incentives to avoid violating the rights of the accused or the territorial sovereignty of other nations.

The U.S. Congress attempted to address some of these issues in the 1976 Mansfield Amendment, which specifically prohibited federal agents from engaging in certain actions in the conduct of narcotics investigations abroad. Its primary purpose is to prevent federal agents from directly participating in an arrest of a suspected narcotics trafficker, although they may "assist" foreign officials in the arrest. In the midst of the drug war, Congress revised the law to allow DEA agents to be present in the arrest of foreign nationals, if prior to the arrest those agents had received the approval of the U.S. Ambassador in the asylum country.[96] The Verdugo case also provided some guidelines as to what will be acceptable before U.S. courts in regard to "joint" law enforcement ventures. As long as arrests, interrogations and the gathering of evidence are officially conducted by law enforcement officials of the asylum state, and then

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[96]Downing, "Abduction of Criminals from Foreign Soil," p. 197.

turned over to U.S. agents, the courts will not challenge any part of the apprehension.[97]

Drawbacks to Irregular Rendition

(a) Disrupting International Relations

Of primary concern to the United States should be the problem which might develop if more attempts are made to bring foreign nationals before the courts other than by extradition. Not only does the United States risk disrupting relations with the asylum state, it may also cause other countries to align themselves with the aggrieved nation. International organizations may also join the asylum country in protest over the employment of irregular rendition. Both the U.N. and O.A.S. members objected to the U.S. invasion of Panama but their inability to adopt any sanctions against the United States and the acquiescence of the Endera government precluded any formal protest. In addition, international organizations may not recognize protests by the United States or their appeals for international support if one of its citizens is abducted, and may instead remind them that they initiated such policies. The fact that neither the U.N. or O.A.S. has any designated powers to take retaliatory action weakens their ability to respond to such transgressions of international law or their charters and does not effectively inhibit other nations from violating international agreements. By engaging in actions which violate international agreements, governments seldom face any sort of punitive measures by the international community, although nations may unilaterally impose sanctions to demonstrate their disapproval. The United States, however, is in fact immune to economic or diplomatic sanctions and violations of international charters only limits its credibility when it attempts to protest the behavior of other countries involved in similar behavior.

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[97]Ibid., p. 199.

Especially in Latin America where governments and the public are susceptible to anti-American hostility, irregular rendition could not only threaten drug enforcement but also other realms of foreign affairs in which the United States has a keen interest. Irregular rendition also increases resentment against the United States who is more frequently regarded as a bully and even when the United States has not directly participated in the abduction, the perception or knowledge that the United States was behind the action may cause considerable internal problems as was the case in Honduras following the arrest of Matta-Ballesteros.

(b) Encouraging irregular rendition internationally

Irregular rendition could ultimately discourage nations from negotiating or honoring extradition agreements with the United States. In the process of seizing custody over a few drug traffickers, other nations may be less inclined to cooperate on any future action and the United States could easily jeopardize its right to request the legal extradition of other fugitives. If the United States insists on adopting a policy in which irregular rendition is an accepted form of gaining custody over fugitives, it may also encourage other nations to disregard the sovereign and territorial rights of their neighbors and define their own version of appropriate behavior. While the United States might dismiss claims by the Iranian government to assert jurisdiction over citizens which "offend" it, U.S. policy essentially puts forth the same premise although it may be backed up with other legal tools such as indictments and evidence.

In the case against Noriega, the United States tolerated his de facto control for many years, praising him for his drug enforcement efforts, overlooking allegations of his involvement in arms smuggling and ties to unfriendly governments such as Cuba. It was only when the executive branch and the State Department began to consider him more of a political liability that accusations of drug trafficking were circulated which precipitated his indictment and seizure. Other world leaders have been implicated in far more serious crimes but the

United States has been selective in its criticism and use of irregular rendition, with a tendency to use it to register a political statement rather than a judicial finding.

When other nations have also resorted to irregular rendition, the United States has very little ability to criticize such actions because it has at least tacitly adopted a similar policy. In a recent incident, Israeli military forces invaded Lebanese territory and seized Sheik Abdul Karim Obeid, a Shi'ite Moslem leader suspected of involvement in the kidnapping of American hostages in Lebanon. Since no trial has occurred, his abduction was presumably meant to be used as a bargaining chip in return for the release of missing Israelis or possibly foreign hostages held by Shi'ite groups in Beirut.[98] The United States criticized the abduction, but its own policy on irregular rendition recognizes the same basic principles for abduction although it does follow through with prosecution.

(c) The Effect on Asylum Countries

The effect of an illegal abduction or irregular rendition may also cause political upheaval in the countries where it occurs as was the case in Honduras. Citizens of a country may vent their anger at the government for not honoring domestic laws barring extradition and may undermine the stability of the current government, one which may be friendly to the United States and whose stability may be important for regional security. The national population may also find it intolerable that their government is unable to protect them and guarantee their security against unlawful seizure. Territorial integrity and the sovereign rights of nations are the basis of most international agreements and intentional violations would undoubtedly derogate all international or bilateral agreements. In other cases where a non-national is illegally removed from an asylum country, relations between all three countries with an interest in the fugitive could be strained.

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[98]Ibid., p. 202.

(d) The Effect on Prosecution

Prosecution of a fugitive who is subjected to irregular rendition is also very uncertain and costly. By not relying on extradition, a state takes the risk that the fugitive may be deported to a country other than the one which may have initially requested his seizure. While there is considerable uncertainty and delay in the extradition hearing process, once the decision to extradite is made, the requesting state is assured not only of the fugitive's surrender to the proper authorities but also that his prosecution will not be challenged. More uncertainty actually exists in the case of a fugitive rendered irregularly whose country may successfully challenge the seizure and have the fugitive returned. In the case of Dr. Alvarez-Machain, his illegal abduction not only resulted in his return but cost the U.S. government a considerable amount of time and money, including the $20,000 paid out for his abduction and the $6000 a week for the living expenses of the abductors.

(e) The Rights of the Accused

While not all states have assumed responsibility for the rights of the individual, this idea is gaining slow acceptance internationally but policies advocating irregular rendition clearly do not reflect this trend. Use of expulsion is frequently undertaken without any attempt to conduct a hearing, and is sometimes used merely as a pretense for a fugitive's removal or to disguise the real reasons for a fugitive's return. Extradition provides the defendant with the greatest protection despite the right of the executive to use his discretion to take into account other foreign and domestic considerations which might be affected by the extradition. By circumventing a defendant's rights to a hearing before competent authorities, there is no examination of evidence, no consideration of the requesting state's motives or intentions, and no opportunity for the defendant to obtain adequate counsel.

Once the accused arrives in the requesting states by means other than extradition, he has very little ability to challenge the determination of jurisdiction. He could sue the officials involved in transporting him forcibly but because the individual is seldom granted the right to challenge such renditions in the absence of a formal diplomatic protest, he has no ability to challenge the method by which he was brought before the court or the court's jurisdiction in his case. A fugitive brought before the courts by irregular rendition is accorded fewer rights that those extradited, including the fact that he may be prosecuted for any crimes the state wishes to charge him with without the protections of the law of speciality. In addition, an alien might have no familiarity with the court system in the requesting country, he is deprived of the financial and emotional support that might have been available in his asylum country and has no access to witnesses which might bolster his defense. Under these circumstances, his right to due process and a fair trial are severely limited. The prejudice of the courts and jury may also affect the outcome and it is possible that an alien may be subject to more severe sentencing than that accorded to a citizen of that country.

Another potential drawback would be the chance that a attempt to apprehend a fugitive abroad may fail and the government officials involved may either be caught and arrested, or requests for their extradition on charges of kidnaping may be submitted. In both situations, the incident could be politically embarrassing if exposed. Besides federal agents involved in such cases, Americans living abroad may also be subjected to irregular rendition by an asylum country. Considering the influence the United States has on international affairs and the part it hopes to play in the prosecution of terrorists and drug traffickers, it should be an important duty to demonstrate a commitment towards respecting the rights of foreign citizens if it expects other nations to respect and protect American citizens abroad.

Legalizing Irregular Rendition

The ability of certain criminals such as drug traffickers and terrorists to evade apprehension, and the protection provided by domestic laws barring extradition of nationals or persons committing political offenses may be legitimate reasons for resorting to irregular rendition. Since the United States has determined that abduction is a useful tool for law enforcement in certain circumstances, it could add legitimacy to such forms of rendition by creating a process through which such cases could be analyzed and approved. By creating some type of oversight committee to handle "extraordinary" cases which may require employing abduction or other forms of irregular rendition, the United States could add legitimacy to such actions and may prevent other nations from protesting the seizures. By merely relying on the Justice Department to determine which cases of irregular rendition are tolerable, the United States is depriving other branches of government a role in approving such actions which might prevent the further abuse of such policies. As some U.S. courts have demonstrated, these renditions were not only in violation of treaty agreements but were also conducted based on poor judgement of the situation and did not constitute "extraordinary" circumstances.

If the law enforcement agencies such as the DEA or FBI believe that irregular abduction is necessary and achievable, they could submit their evidence to a committee composed of various persons in the executive branch with significant interests in either the fugitive or the asylum country. Congress could either form such a committee or be represented appropriately. Supervision by the legislative branch would be ideal since its role is to formulate such policy and it is held directly accountable for such policy initiatives. The committee could then determine whether or not probable cause is satisfactorily established and if the reasoning behind the abduction is legitimate, based on evidence of the asylum country's unwillingness to cooperate and the lack of treaties or other legal options. Only offenses which constitute a severe and direct threat to the United States would be considered and this could

be balanced against the potential effect irregular rendition might have on U.S. political and economic interests. In addition, a judicial review of the facts pertaining to the case could be conducted to prevent future problems when the defendant may be brought before the court. If the judicial review board and committee concur that such action is appropriate, approval could be given to the agency involved and the fugitive apprehended.

By creating an oversight committee with all three branches of the government involved, there is less of a chance that there will be serious miscarriages of justice. While such action might be in violation of international law, such procedures may be recognized as lending legitimacy to irregular rendition and in certain cases may be tolerated or adopted by other members of the international community. Clearly, irregular rendition and abduction should not be conducted against countries with whom the United States does have extradition treaties and should not be necessary even when no treaty exists but the United States maintains good relations with the asylum government. While irregular rendition might be justified in the apprehension of international terrorists, the fact that the United States not only has good relations with Latin America but extradition agreements which encompass narcotics offences would probably bar the use of irregular rendition without the acquiescence of asylum governments in cases of drug trafficking.

The Effect on Universal Jurisdiction

Adoption of universal jurisdiction in drug trafficking offenses will not change the opinion of the international community that illegal abductions should not be tolerated although it may be willing in the future to recognized such actions if they are conducted in a formal manner with proper approval and oversight. Universal jurisdiction primarily affects the ability of the United States to file extradition requests when suspects are apprehended by other countries but the United States has already established a nexus between itself and drug traffickers based on its status as the

largest consumer of narcotic drugs, so the adoption of universal jurisdiction will have little effect on its ability to make such claims. On the other hand, the United States may interpret universal jurisdiction as allowing them the right to either seize fugitives abroad or refuse their return over the protests of the asylum countries. The United Nations has, however, clearly stated that under no circumstances will extraterritorial abduction be condoned, even in crimes of a universal nature as was the case in the abduction of Adolph Eichmann by Israel.[99]

The Eichmann case also illustrates the fact that not only can a country refuse to return a fugitive obtained in an illegal manner but if the crimes are indeed classified under universal jurisdiction and generally recognized by the international community as such, nations may be willing to only protest the violation of their territory and not necessarily request the return of the fugitive. Tolerance or acquiescence of irregular rendition might be indicative of a nation's recognition that such crimes are of a universal nature, but drug trafficking offenses have not yet gained this international acceptance. Irregular rendition of drug traffickers has been used primarily to circumvent the barriers imposed by U.S. extradition treaties with Latin American nations rather than based on international agreement that these individuals constitute a threat to all nations.

If, in the future, Latin American countries may determine that narcotics offenses are indeed devastating to the safety and security of their countries and the international community, they may not protest as vigorously the irregular rendition or demand the return of persons guilty of such offenses. Another indication of support for universal jurisdiction might be the willingness of nations like Colombia to revoke laws barring the extradition of nationals for drug offenses. In the meantime, Latin America has clearly not recognized drug trafficking as a crime requiring universal jurisdiction and has not indicated any intention to forego protests against the use of abduction in its territory or demand the return of the persons seized

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[99]See 15 U.N. Security Council Resolution (868th mtg) 1, U.N. Doc. s/p.v. 868 (1960). Grassie, "Federally Sponsored International Kidnapping," p. 1214.

in such a manner. Further use of extraterritorial abduction by the United States will only strain relations with Latin American countries and may result in less cooperation in other areas of mutual interest, including drug eradication and interdiction.

PART FIVE

CONCLUSIONS ON UNIVERSAL JURISDICTION IN DRUG OFFENSES AND RECOMMENDATIONS FOR U.S. DRUG POLICY

Section I

The Inability of Narcotics Offenses To Be Recognized As Universal Crimes

Drug Trafficking is Not Equally Threatening to All Nations

A basic requirement for universal jurisdiction is that the threat posed by the crime could affect all nations and their citizens. The decision of the U.S. government to vigorously pursue pirates, and their refusal to pay the customary ransoms for the return of their property and citizens marked U.S. recognition of the universal jurisdiction concept and has since been upheld in Supreme Court decisions. This allowed the United States to seize suspects, regardless of their nationality or the fact that they might be in international waters and prosecute them before U.S. courts. Not only were acts of piracy indiscriminate in their choice of victims, but apprehending the offenders was also particularly difficult since they were rarely found within U.S. territory. Piracy, being the first crime classified as requiring universal jurisdiction has set a basic standard by which other crimes have been compared and adopted as constituting a direct threat to the livelihood of all nations and requiring an expanded interpretation of jurisdiction to prevent criminals from evading prosecution.

Universal jurisdiction has no requirements for double criminality, and instead proposes that certain crimes constitute such a universal threat that the need for double criminality can not prevent an arrest from taking place. A universal crime also implies that all nations have a vital interest in seeing these criminals prosecuted and incarcerated, so that it is unlikely that other states will challenge the apprehension of a suspect or attempt to offer him protection provided by the domestic laws of his country. Any nation could therefore claim the right to apprehend and prosecute these

persons without necessarily having a direct relation to the crime itself or any other jurisdictional claim. Nations which choose not to prosecute perpetrators of universal crimes are expected to turn them over to authorities who are both willing and able to handle such cases. In the case of piracy and later slave trading, any nation able to arrest these fugitives was given the responsibility of seeing that prosecution and incarceration occurred.

After World War II, the list of universal crimes was expanded to include certain war crimes and genocide, both of which could be considered of vital interest to all nations. Hijacking has been formally included as a universal crimes, although other aspects of terrorism such as bombings and kidnapping have not received the complete support from the international community as these crimes can also be interpreted as stemming from political causes, justifying the political offense exception. In these types of crimes, even U.S. policy illustrates the difficulty in delineating which crimes constitute terrorism and which might be considered legitimate political offenses. While the United States has vigorously pursued Arabs suspected of involvement in attacks against U.S. citizens, it has turned down requests by Great Britain to extradite members of the Irish Republican Army (IRA) whose crimes may in fact be quite similar to those carried out by Middle Eastern nationalists.

The trend in universal jurisdiction is to also include narcotics offenses among those crimes which affect all nations, and the United States has continuously pushed for measures in international agreements such as barring nations from invoking laws preventing extradition based on nationality. While many of the factors which are essential to claims for universal jurisdiction are present in drug trafficking offenses, there are several obstacles to applying this type of jurisdiction. First, the unwillingness of nations to extradite their citizens for narcotics offenses indicates that these crimes are still viewed as national rather than international problems. Second, the fact that willing consumers continue to fuel the demand for drugs makes it difficult to argue that they are victims of drug trafficking. And third, the negative consequences of drug trafficking are primarily a U.S. and European

problem which precludes other nations from adopting either an aggressive stance on drug policy or universal jurisdiction although both Southeast Asian and Latin American countries have also begun to experience growing problems with addiction. Except in cases of questionable acts of terrorism which might be interpreted as political offenses, nations have almost always agreed that the need to prosecute the offenders guilty of universal crimes outweighs legislation which would give the defendant the basic protections entitled to him by virtue of his nationality.

As was demonstrated in the case involving the abduction of Adolph Eichmann, Argentina did not challenge the jurisdictional rights of Israel to try the defendant, merely the intrusion into its sovereign territory to gain custody over him. Based on these types of cases, drug offenses clearly do not enjoy such disdain that nations will not challenge the extraterritorial arrests or jurisdictional claims of other nations. The fact that Mexico and Colombia have steadfastly refused to extradite their nationals and have challenged U.S. claims of jurisdiction, makes it impossible to apply universal jurisdiction. In addition, since most of Latin America and many other nations have similar policies and their extradition treaties do not provide for any exceptions, universal jurisdiction in drug offenses does not yet have the international support to justify its use.

The second factor which makes universal jurisdiction inapplicable to narcotics trafficking is that the primary effect of drug abuse is felt only in the relatively small number of consumer countries. While the Reagan and Bush administrations have claimed that narcotics traffic constitutes a direct threat to the national security of the United States, no other countries have come to this conclusion regarding their own security. The increasing problems of addiction in Southeast Asia and Latin America may however encourage these countries to regard drug trafficking as a serious threat to their own development and stability and lead to more cooperation in international drug enforcement. Unlike all the universal crimes, drug trafficking does not directly affect innocent victims. There is no doubt that the affects of drug addiction do take a large toll on the United States and that it is a disruptive social force that has long-

term consequences for both the users and their families however the problem is exaggerated by the fact that the United States has continuously rejected implementing the types of programs which would help those addicted and reduce the demand for drugs entering the country.

The most common complaint lodged against the United States by the drug producing countries has been the fact that despite two and a half decades of concerted efforts and millions of dollars intended to diminish the supply, narcotics production is at an all time high because the United States has done very little to reduce demand for drugs within its own borders. As long as lucrative drug markets exist, estimated at 150 billion dollars a year in the United States alone, efforts at eradication, interdiction or crop substitution will have little success. U.S. policy has always focused on reducing the supply at the source countries, and while efforts to prevent drug abuse through education have regained momentum in the last ten years, they do not address the current problems of demand or the need for more extensive investment in treatment and rehabilitation programs for those unable to afford such services in the private sector. Failure to stem the drug trade appears to be a result of to control the demand for drugs within the United States and the inability of U.S. policy and funds to realistically discourage other countries from participating in the business of drug smuggling.

Drug trafficking is therefore more akin to slave trading in that it does represent a financial enterprise, employing large numbers of people and conducted like other businesses, devoid of any political motivations. Attempts to ban slave trading were initiated by only a few nations and their determination to include it as a universal crime was met with considerable opposition by the nations actively involved in the business, but later gained more acceptance and developed into a universally accepted "crime against humanity". But drug trafficking does not directly affect the security of other persons nor is it a crime perpetrated against innocent victims in an arbitrary manner. The effects of drug trafficking could be argued are similar to genocide in that it may directly destroy the lives of drug addicts of whom a large number are poor Afro-Americans but the fact

that those abusers have deliberately chosen to engage in dangerous behavior does not necessarily make the traffickers guilty for the destruction brought on by their habits.

The drug producing countries too, have begun to experience problems with addiction and rampant violence as various smuggling groups have tried to secure their control over markets, but the initially lucrative benefits of the illicit trade in narcotics has tended to overwhelm the drawbacks. Not only has it provided incomes for those involved directly in the cultivation, but it has spawned other businesses, fostered a middle class in nations where opportunities are limited and bolstered the economies of countries which are dependent on an unpredictable international market for their legitimate exports. As long as the markets for illicit narcotics keeps the prices for production up, few peasant farmers have incentive to try substitute crops, which may be difficult to market and may never bring the financial returns of coca or opium. The governments of Colombia, Mexico, and Bolivia all maintain eradication programs and have officially encouraged crop substitution but are overwhelmed by the magnitude of production and have indirectly tolerated the drug trade because it does provide income and employment to persons frequently overlooked in national development plans.

Punishment for Drug Offenses

Also indicative of the lack of international agreement on universal jurisdiction, the lack of symmetrical punitive measures for narcotics offenses. While the United States has been able to impose sentences based on conspiracy convictions of upwards of one hundred years, the death penalty and no possibility of parole, many Latin American countries have not enacted such drastic measures. Colombian and Mexican laws both place limits on the maximum terms of incarceration, although multiple convictions can bring the number closer to the terms imposed by the United States. The Colombian government has attempted to contend with the failure of extradition

by negotiating the surrender of various drug lords, which has limited their period of incarceration, protected them against forfeiture of their assets and allowed them to serve their sentences in relatively comfortable conditions. The threat of conviction in the United States did clearly distress the Colombian traffickers who succeeded in their efforts to cancel the extradition treaty with the United States, and their conditional surrenders have not only allowed them to control the circumstances of their arrest but prevented them from facing prosecution for similar charges in the United States. With the exception of the highly publicized drug kingpin cases, such as the judgment handed down against Caro-Quintero, sentences for drug trafficking are rarely as severe as what might be imposed in the United States, demonstrating the lack of consensus on the actual danger posed by drug trafficking.

Attempting to classify drug offenses under universal jurisdiction by the consumer countries may lead other nations to follow such examples, but in view of Latin America's opposition to the extradition of nationals, application of such a policy will tend to be unilateral on the part of the United States and sure to create conflict in its relations with the drug producing countries. It is much easier to invoke basic agreement on universal values such as the offensiveness of the drug trade and the negative impact it has on drug consumers, but applying universal jurisdiction will be much more difficult. When the drug producing nations can agree that the traffic in narcotics does directly effect their citizens, they will actively seek their prosecution, enact more severe penalties against convicted traffickers, and limit their laws preventing the extradition of nationals.

Section II

The Limited Effect of Universal Jurisdiction on U.S. Narcotics Cases

Sufficient Grounds for Jurisdiction Already Exist

The all encompassing aspect of universal jurisdiction has led the United States to suggest that it might significantly aid drug enforcement and improve its ability to apprehend and prosecute fugitives wanted for drug trafficking offenses. But because the United States is the primary consumer of illicit drugs and the final destination point for at least 80% of narcotics coming out of South America, the United States can already assert jurisdiction based on the principle of objective territoriality. Even in the rare cases where a clear nexus between the United States and the drug offense does not exist or is difficult to demonstrate, the United States has relied on the protective principle to legitimately cover such gaps. Universal jurisdiction would therefore, have little effect on U.S. drug enforcement efforts.

On the other hand, the United States may view universal jurisdiction as allowing other nations to prosecute drug traffickers although the only two countries which might have legitimate jurisdictional claims would be the United States and the country in which the fugitive is a citizen. While this would relieve the United States of the pressure to assert jurisdiction in all drug trafficking offenses to ensure that prosecution occurs, other nations have not demonstrated the desire to take on such responsibility. Countries such as Switzerland and Spain which have apprehended major traffickers have relied on extradition to countries with legitimate jurisdictional claims and this would probably be the tendency even if universal jurisdiction were an accepted practice. In relation to the Latin American countries, universal jurisdiction may create more

problems for the United States than it currently experiences or anticipates. Assuming that some Latin American countries willingly accepted this form of jurisdiction, they could seize non-nationals within their country, assert jurisdiction and prosecute accordingly. From the viewpoint of the United States, conviction would be uncertain, the sentences imposed would be less severe, and the trials would probably create tension between the country asserting jurisdiction and its neighbors. In addition, Latin American countries could usually rely on other forms of jurisdiction if they were intent on prosecuting drug traffickers, without resorting to universal jurisdiction.

Being the only active pursuer of major drug traffickers has placed an enormous responsibility on the United States to ensure that once suspects are apprehended, swift and severe punishment is carried out. Universal jurisdiction would obligate more nations to assume an active role in combatting the drug trade even though the drug trade may have little effect on their country. Besides the United States, very few countries have demonstrated any desire to assert extraterritorial jurisdiction in drug offenses or indicated that they would support universal jurisdiction to prosecute drug traffickers when no other connection between themselves and the crime exists. The United States may believe that by unilaterally applying universal jurisdiction in the few cases where its could be used, other countries may adopt it and prosecute drug traffickers found within their territory, although it is more likely that other countries will rely on extradition to ensure prosecution. The cost of prosecuting drug offenses under universal jurisdiction may be prohibitive to some nations, since the prosecution would be forced to obtain evidence and witnesses abroad in order to guarantee conviction.

Universal Jurisdiction Does Not Tolerate Irregular Rendition

Implicit in the desire by the United States to apply universal jurisdiction is the belief that this might limit challenges to abduction or irregular rendition. The Eichmann case indicates that

international law will not condone either practice without the acquiescence of the asylum state even in the case of universal crimes. If drug trafficking were recognized internationally as having a universal effect, nations might not demand the return of fugitives seized by irregular rendition but they could still protest the violation of their territory, sovereignty or extradition treaties. Unilateral application of the universality principle will not prevent challenges to U.S. jurisdiction, however, and it is not likely that the United States can remedy the situation with anything other than the return of the person in question if indeed his position before the court is in violation of bilateral treaties to which the United States is a party.

Bilateral agreements do not contain the recognition that drug offenses are of universal or even bilateral importance as to merit amending their laws barring the extradition of nationals. When extradition treaties begin to contain provisions similar to those found in the 1979 extradition treaty with Colombia which allowed for extradition in certain cases, the United States could interpret such progress as a signal that the concept of universal jurisdiction is gaining more support. As long as extradition is an available option, the need to resort to irregular rendition is diminished, and even if irregular rendition did occur, countries might be less likely to object to the manner by which fugitives were obtained. Modifying the process of irregular rendition, so as to obtain the approval of all branches of government before attempts are made to retrieve fugitives, would probably be a more efficient route than relying on the universality principle to deter countries from registering diplomatic protests and seeking the return of their citizens. Overall, universal jurisdiction will not justify irregular rendition conducted without the acquiescence of the asylum state

The application of universal jurisdiction might be effective if it was recognized by the community of nations and there existed a wide spread commitment to drug control. The drug producing countries would not only have to continue their programs of eradication but also demonstrate that their law enforcement and justice systems are capable of apprehending and prosecuting the fugitives so that

universal jurisdiction is unnecessary except in extraordinary cases. Universal jurisdiction, like irregular rendition, is used when other methods fail to apply to an unusual situation, and both are likely to offend asylum countries if they are resorted to without justification or proper authority. Since the United States has indicated a continued commitment to drug control in South America, it would presumably attempt to use universal jurisdiction to recover fugitives that national justice systems have failed to prosecute. Any action in Latin America, however, be it the unilateral application of universal jurisdiction or illegal rendition will have a negative impact on relations between the United States and these countries and jeopardize drug enforcement efforts and possibly other aspects of foreign relations.

Ultimately, the question is whether universal jurisdiction and the ability of other nations to apprehend and prosecute drug traffickers will decrease the flow of drugs and deter traffickers. The prosecution of the few drug kingpins extradited over the last decade has had practically no effect on the amount of cocaine being brought into the United States. Even the conditional surrender of the major traffickers such as Pablo Escobar and the Gachas brothers in Colombia has not necessarily prevented the traffickers from continuing their business and others have stepped in to fill the transportation and distribution gaps left by those traffickers imprisoned in the United States. The removal of Noriega may have made trafficking through Panama less secure but the scarcity of funds to support drug enforcement allows Panama to remain a viable transit country. Simply prosecuting traffickers has neither reduced narcotics traffic in Latin America nor has it deterred other traffickers from expanding their own organizations to take the place of the few which are prosecuted and unable to continue operating their networks. Without the full commitment of the drug producing nations to contribute meaningfully to drug enforcement and enact appropriate legislation to discourage drug trafficking, attempts to include drug crimes under universal jurisdiction will not lead to significant reductions in drug production or smuggling. The risk of applying universal jurisdiction in Latin America and damaging bilateral

relations outweighs the limited benefits gained from prosecuting a fugitive, whose conviction will do little to relieve the narcotics problem in the United States.

Section III

Problems Posed By U.S. Assertions of Extraterritorial Jurisdiction

The Effect of Extraterritorial Jurisdiction on Latin America

The problems encountered by the United States in its relations with Colombia illustrate the drawbacks to the U.S. practice of claiming extraterritorial jurisdiction in drug trafficking offenses. First, the issue of extraditing nationals created considerable internal pressure and spawned a series of assassinations and other terrorists acts which immobilized the country's judicial system. Second, the implementation of the 1979 extradition treaty placed the United States in the position of being able to exert pressure and criticism to encourage compliance that ultimately created resentment against the United States, the treaty and the willingness of the executive branch to conform to U.S. demands for extradition. Even though the United States can tolerate setbacks to its drug enforcement goals, the long term impact of increased resentment over American interference may be more difficult to counter and may make Colombian officials more reluctant to engage in other joint ventures with the United States. The threat of extradition was effective in that in proved to be a major factor in the decision of various drug lords to negotiate their surrender to national law enforcement officials and forced the Colombian government to rely on its own justice system to handle the problems without interference or the perception of interference from the United States.

U.S pressure also indirectly encouraged the Colombian government to resort to normally unacceptable means of regaining control over the situation by employing the military to assume police duties and invoking state of siege powers to place the country under martial law, neither of which are conducive to the long term

stability and development of Colombia. The long term effect of these measures on the Colombian population may increase political opposition to the U.S.-backed drug war, broaden the appeal of the various guerilla movements, and may prevent the government from focusing on problems other than narcotics. Use of state of siege powers, as put forth in Decree 1860 to bypass the judiciary, undermines the authority of the judicial system to cope with issues of particular importance and deprived it of its functional role in Colombian government. While state-of-siege powers are a legal tool of the executive in Colombia, the decision to resort to such action indirectly encourages future governments to rely on these powers any time they encounter opposition to their policies. The complicity of the United States in encouraging the Colombian government to resort to irregular means of arranging extradition is indicative of the short-sightedness of U.S. policy and its lack of concern for the deteriorating effect this pressure had on the Colombian government and population as a whole.

Compared to other Latin American governments, Colombia has established a relatively stable democracy and has been able to prevent its military from playing a dominant role in the political system, but the increased use of executive powers could threaten Colombia's democratic institutions and the progress it has made in the last twenty years. The use of extraterritorial jurisdiction compounded the problems faced by the Colombian government in its efforts to comply with the U.S. drug war. The final result of this experiment with extradition produced a new government which was not only unreceptive to U.S. requests for the extradition of its nationals but unwilling to subvert the judicial process by continuing to use state of siege powers or Decree 1860. Instead, the Gaviria government has negotiated the surrender of the drug lords and has restored authority to the Colombian justice system to handle these cases. The practical effect of extraterritorial jurisdiction has been increased resentment of U.S. pressure, stirred up internal opposition, and eliminated extradition as a feasible policy option in Colombia.

Encouraging Illegal Rendition and Political Targeting

Extraterritorial jurisdiction has also promoted the acceptability of irregular rendition as a useful tool to circumvent barriers to extradition. The assertion of extraterritorial jurisdiction over aliens and the implication put forth in the Barr Report that irregular rendition and abduction may be used to overcome the unwillingness of foreign governments to either comply with U.S. requests for extradition increases the likelihood that the United States will resort to such actions in the future. By broadly expanding its jurisdiction over drug offenses, drug enforcement agencies are indirectly encouraged to pursue alternatives to extradition even if they are unable to sustain such claims in later court proceedings. Irregular rendition as a substitute for extradition or to overcome laws barring the extradition of nationals is clearly offensive to the nations whose citizens have been subject to such seizures and the fact that the United States has knowingly violated treaties which forbid such rendition makes the practice even more unacceptable.

In addition, the chance that such methods as abduction, deportation or even military invasion can be used to arbitrarily target the political enemies of the state sets a dangerous precedent for the world community, and might encourage the United States to pursue such policies if it believes that these actions will generate no direct political repercussions. Whether or not the allegations against Noriega are proven, the United States believed that the violation of Panama's sovereignty and the international agreements to which it was party did not bar them from resorting to military force if the crimes for which he was sought could be justified as a threat to national security. This expanded definition of national security could now encompass a variety of acts committed by foreign governments or their leaders and the success of the Panamanian invasion in recovering Noriega for prosecution may stimulate similar action under more questionable circumstances. In addition, the U.S. position as a world power prevents the United Nations and its members from exercising any sanctions or other forms of recourse against such

violations. With no incentive to abide by international law, not only could the United States justify future extraterritorial excursions as threats to national security but other nations could adopt a similar posture, which undermines the development of international cooperation and international law.

The Effect of Extraterritorial Arrests on the U.S. Judicial System

A side-effect of asserting extraterritorial jurisdiction is a renewed interest in the rights foreign defendants may be entitled to under the constitution. As the United States becomes more concerned with convicting major traffickers, it has also begun to limit their rights before the courts and has overlooked infringements on the due process procedure before the defendant reaches the United States. While the European countries have been moving towards implementing international doctrines on human rights in their own inter-continental affairs, U.S. policy has not only failed to recognize such rights in the case of foreign defendants but it has sought to limit the protections afforded the individual in such proceedings. The importance attached to prosecuting traffickers has in effect led to a gradual deterioration of the defendant's rights before the courts and although some courts have divested themselves of jurisdiction because of the irregular circumstances of rendition, few courts have disputed the manner in which evidence is obtained abroad or the credibility of witnesses employed by the prosecution. Extraordinary circumstances may indeed justify limitations on the rights of a defendant and tolerate allegations of torture and abduction, but the ultimate effect may increase the likelihood that the U.S. courts will adopt a similar position of limiting the rights of American citizens accused of drug trafficking offenses in U.S. courts..

Section IV

Recommendations For U.S. Narcotics Control Policy

The Importance of Multinational Treaties

The recognition of the need for international cooperation in drug trafficking offenses and the progress that has been made in gaining consensus on the measures necessary to combat narcotics smuggling has been a significant achievement for the United States and it will undoubtedly influence the direction of drug enforcement in the future. Each new international agreement has demonstrated increased awareness of the problems posed by drug traffickers and has shown a gradual progression towards more concerted efforts to eliminate the both supply and demand. The 1988 Vienna Convention illustrates a more practical approach adopted by the international community as to the measures which nations should employ to reduce the traffic in narcotics as well as the important impact of U.S. drug policy initiatives on the basic guidelines for effective drug control. With the exception of only a few countries, (Afghanistan, Lebanon, Iran, Syria, and Laos) the United States has developed extensive ties with the drug producing nations and has provided the financial backing and incentive to encourage them to implement effective eradication and interdiction programs.

The acceptance of such practices as confiscation and forfeiture of illegally gained assets, the changes in banking secrecy laws, and the recognition of conspiracy as an essential element of narcotics offenses are all a result of an aggressive U.S. policy on drug enforcement and a renewed emphasis on targeting the ringleaders of narcotics operations. Particularly in the area of narcotics conspiracies, there has been reluctant but gradual recognition that the nations most affected by the drug trade can claim extraterritorial jurisdiction over such offenses. Specifically those

few nations whose drug consumers have generated a host of other social problems, have the right to claim jurisdiction over the foreign traffickers, whether or not extradition is an option. In addition, the U.S. decision to carefully monitor the international market for chemicals used in the processing of cocaine and heroin has also been recognized worldwide as a necessary part of the overall drug strategy and encouraged nations to take more responsibility for their indirect involvement in the drug trade.

While the United States has continuously emphasized extradition as the most important element of international cooperation, in practice, extradition has tended to strain relations between the United States and Latin America. Since most countries have not been willing to comply with U.S. requests to extradite nationals, this has become a point of contention and sometimes forced the United States to resort to irregular means of rendition to circumvent this restriction. Even when countries have agreed to extradite their nationals, this has generally provoked internal problems, even if the policy had been incorporated into domestic law, as was the case in Colombia. Although mandatory extradition has been recognized and agreed to in the most recent multilateral agreement, many nations have not yet determined that drug offenses may merit altering their domestic laws preventing the extradition of nationals to accommodate extraterritorial claims of jurisdiction. International treaties and conventions have established the groundwork for cooperative drug enforcement policy and have established the basic tenets of appropriate action, but have no ability to force nations to comply with such agreements when they encompass broad or idealistic notions of universal cooperation on an industry whose financial impact is considerable. Including provisions on the extradition of nationals will still be resisted in the international forum, but it is likely that nations may change their minds as the negative affect of the drug trade begins to impact their citizens or their political and social institutions.

The adoption of less controversial methods of combatting the drug trade may in the long run be more effective than extraditing nationals to face trial abroad. Encouraging nations to implement

practical measures such as opening banking records, tracing chemicals, and seizing assets of known traffickers facilitates international efforts at narcotics control even though it will not succeed in eliminating or reducing traffic significantly. On the other hand, the current policies of eradication and prosecuting the drug kingpins have not been able to achieve those goals either. The United States needs to be supportive as Latin America builds up its commitment to the drug war and slowly overcomes a variety of other problems such as poverty, corruption and unemployment, which sabotage drug eradication and interdiction programs. The multinational agreements set the basic goals of the international community and while nations such as the United States can immediately afford to implement and go beyond such guidelines, the drug producing countries have to be allowed time to gradually adopt these proposals without being subject to criticism or sanctions by the United States for apparent noncompliance. If the United States hopes to achieve international support on future narcotics agreements it needs to be more objective as to what can be realistically expected from nations entangled in the business of narcotics. Clearly, all nations can agree to the most basic measures necessary to combat drug traffickers but actual implementation is much more difficult in countries beset by corruption throughout the government.

Bilateral agreements can be used to specify exactly what behavior is expected from each nation in regards to extradition and drug control, but multilateral treaties should concentrate on standardizing the basic guidelines for cooperation. These should include common agreement on what constitutes an extraditable offense, even if domestic laws do not allow for the extradition of nationals. Fiscal offenses related to drug trafficking should be included, there must be further standardization to eliminate problems regarding double criminality in narcotics cases which involve conspiracy charges, and strict requirements for evidence should be relaxed so as not to prevent extraditions. In addition, the United Nations should encourage the recognition of the need for extraterritorial jurisdiction to ensure that drug law violators are punished and are

not afforded a safe haven, but not simply to bypass uncooperative or corrupt judiciaries.

Less Emphasis on the Extradition of Nationals

Based on the opposition encountered in the attempts to extradite nationals in Colombia, and the general unwillingness of other nations to subject their citizens to extradition, the United States is rather limited in options other than illegal rendition and the risks that entails. The United States can continue to press its case for extradition in drug offenses with Latin American countries but the prospects for sudden changes in policy are limited, particularly after witnessing the reaction to extradition in Colombia. In cases where countries might be willing to amend their treaties to accommodate extradition in drug offenses, the United States should also refrain from placing pressure on the judicial and executive branches of governments who may be attempting to implement an unpopular policy. Ultimately, it is more important to retain the integrity of the national judiciaries so that they can act as the main deterrent to narcotics trafficking, even if there may be periods when the judicial process appears to be corrupted or immobilized. Interference by the United States complicates the process and may contribute to the further deterioration of the court system. While extraterritorial jurisdiction and extradition seemed like the ideal solution to the problems posed by drug traffickers, the issue of extraditing nationals has still not gained full acceptance and is not a particularly useful tool for drug enforcement, at least in Latin America. It is possible that an international tribunal could be designed to prosecute drug offenses, devoid of any national prejudices, which might encourages some nations to submit cases to authorities other than the United States, but the issue of subjecting nationals to such a forum would still limit compliance particularly among the drug producing countries.

Formalizing Aspects of Irregular Rendition

If extradition is not an option in Latin America and the United States is determined to pursue the traffickers which remain at large, the process of illegal rendition should be modified to include judicial and legislative oversight to prevent abuse, endangering bilateral relations, and unnecessary violations of U.S. treaties and international law. While government sponsored abduction may be easier to rationalize in the cases of terrorism, where protests against such seizures will be limited, its use against Latin American drug lords would not go unchallenged. Not only would such acts be in violation of U.S. treaties and international law, but challenges to seizures would be supported by U.S. courts. Extraterritorial abduction in violation of bilateral agreements, whether performed by U.S. agents or private individuals such as bounty hunters, is sufficient reason for courts to divest themselves of jurisdiction. Rendition which results from the acquiescence of proper authorities in the asylum state is still permissible before U.S. courts, does not jeopardize jurisdictional claims and may be the most efficient manner by which to obtain fugitives when extradition is not an option. As long as deportation and irregular rendition occur for the mutual interest of both states and without undue pressure to comply with U.S. policy, such acts should be considered as a legal tools in the drug war. But if irregular rendition is performed to bypass the rights of the defendant or to avoid uncertainty in subsequent hearings, the United States should consider whether or not such action is justified. Recognition of the basic elements of the doctrines on human rights would prevent foreign defendants from being brought before U.S. courts under questionable circumstances without proper hearings and establish a precedent to protect their own citizens from being denied such rights by other countries. In view of the developments in human rights, the United States should establish a progressive position on the issue of individual rights, including recognition that the individual should be able to challenge his standing before the courts on jurisdictional grounds without relying on a formal protest from his government.

Redesigning Narcotics Control Programs

The obvious failure of the U.S. drug strategy to make a significant dent in either the supply or demand should indicate that the United States needs to reconsider its policies and perhaps attempt more unorthodox methods of reducing the narcotics traffic into the United States. The most important achievement for the United States in international narcotics control has been the willingness of nations to comply with U.S. drug policy, even though the United States may perceive that cooperation to be limited and ineffective. By reaching consensus among the drug producing nations that they must implement eradication and interdiction programs despite the financially beneficial impact of the drug trade on their countries, demonstrates that the United States has had some success in its efforts to inform and warn the international community of the threat drugs pose to their nations. Most of these countries rely heavily on U.S. or international funding to back these programs which gives the United States some voice in the types of programs and the manner in which they are implemented. Therefore, the United States should examine its policy over the last two decades and try to avoid the pitfalls that have occurred in its relations with the narcotics producing countries.

For its part, the United States must refrain from intruding on the internal affairs of these countries even though it may indirectly effect drug enforcement efforts. In the case with Colombia, pressure by the United States to circumvent the decisions of the Supreme Court constituted non-recognition of their authority to render such a decision and resulted in policies which eliminated the option of extradition and weakened the commitment of the government to make similar concessions in the future. The investigation and subsequent trials of Mexican nationals involved in the murder of Camarena also illustrates U.S. interference in the internal affairs of the Mexican government. This created political tension between the two nations and decreased the chance that Mexico will request U.S. assistance in future drug investigations if it believes that the United States might attempt to adopt a more dominant role. In addition, the United

States needs to avoid taking unilateral initiatives without consulting with the countries to be affected by such policies, such as in cases of irregular rendition.

Second, the United States needs to allow these countries to develop their own programs of drug enforcement and allow their criminal justice systems to cope with the problems of influence and corruption caused by the traffickers, even if it appears to be in disarray. Drug enforcement efforts abroad will only be successful when the national government can commit itself to effective measures of enforcement and the judicial system is willing and able to successfully convict those fugitives brought before it. The United States can not rely on its pressure to force governments to comply with international or bilateral drug enforcement policies. Real results will only be achieved when national governments are capable of taking the initiative and developing strategies which are tailor made to their situation rather than those developed by the United States that may incorporate its own prejudices as to the proper method of dealing with fugitives, guerilla groups or law enforcement. Self-reliance should be encouraged and more efforts made to remove the United States from having to be the prime motivator and enforcer of international drug policy by emphasizing Latin American cooperation and coordination on narcotics control since the links between the countries are extensive.

Third, the United States should not encourage governments to use their militaries to impose martial law, or pressure the executive to invoke unusual powers to aid narcotics investigations. The decision to resort to such drastic measures must remain the sole prerogative of the country's leaders and pressure by the United States could easily be misconstrued and interpreted as attempts to undermine developments in democracy. The United States should also limit the use of its military in drug raids, as were conducted in Bolivia. While the primary intention of employing the U.S. military in drug enforcement abroad may be to demonstrate a show of force to the traffickers, they have rarely been successful in either capturing known traffickers or preventing farmers and processors from returning to their fields and continuing production. The presence of the U.S.

military, even though they may only be there to support national anti-narcotics units, provokes anti-American hostility and frequently protests against the government for its willingness to use U.S. troops against its nationals. Another factor to be considered, is that the use of the U.S. military in Latin America or other drug producing nations might result in an attack against American forces which would allow the United States to once again assert its rights to be actively involved in the investigations and ensure that prosecution is carried out against all those involved.

Every year the number of hectares eradicated increases but it appears to make no significant dent in the actual amounts ending up in the United States. Eradication programs have essentially failed to reduce the supply coming out of any of the South American countries and will never succeed in eliminating the production of narcotics completely. Aid programs should instead begin to focus more on creating alternative industries and employment to lure the lower and middle echelon members away from the drug trade into more legitimate businesses which can offer comparable opportunity and income. If the bulk of foreign assistance for narcotics control were directed at development initiatives rather than eradication, the drug producing countries might be able to wean their population off the financial benefits of the drug trade. People will still be attracted to the drug industry, but a combination of more sure and severe penalties for drug offenses plus viable opportunities outside of the drug business may decrease the number of persons who have turned to the drug trade when other legitimate industries collapsed.

Finally, the United States must make dramatic efforts to reduce the demand for illicit narcotics within its own borders. Until the drug demand is curtailed, no amount of money or eradication efforts will prevent traffickers from supplying these needs. If the United States continues to assert that drug trafficking and drug use are a national security threat, then it should be willing to apply sanctions against drug users as stringently as it has pursued the drug traffickers. To reduce demand significantly, the United States has basically two options. First, it can increase the penalties for drug use to such an extent that the certainty of severe punishment

will discourage users. Drug offenses involving use and possession of small amounts of narcotics only occasionally result in prison terms and prisons already overburdened with inmates are more likely to process the users through the systems as quickly as possible. In general the use of drug testing and the threat of losing one's job and assets has proven to be successful in decreasing drug use among the middle class but the most difficult group of drug users to reach are those who have little opportunity, no jobs or any assets which might be used as leverage against them. Only by enacting the most severe measure would this group be compelled to quit drugs, and only after the government carried through on its threats. The drawback to incarcerating users is that is does not necessarily cure their drug habit. The second option would be to develop adequate treatment facilities to accommodate all those who desire treatment. Not only is this the more humane approach to dealing with the problem of addiction but it also can claim direct success in treating addicts and providing support systems which might prevent them from engaging in such behavior in the future. Both these options are expensive, less dramatic than massive eradication programs but ultimately more effective in reducing drug traffic.

BIBLIOGRAPHY

Books

Bassiouni, M. Cherif. International Extradition and World Public Order. Dobbs Ferry, New York: Oceana Publications, 1974.

Bush, George. Public Papers of the United States, 1989, Volume II. Washington D.C.: U.S. Government Printing Office, 1990.

Christenson, Ron. Political Trials: Gordian Knots in the Law. New Brunswick: Transaction Books, 1986.

Cloyd, Jerald. Drugs and Information Control: The Role of Men and Manipulation in the Control of Drug Trafficking. Westport, Connecticut: Greenwood Press, 1982.

Cockburn, Leslie. Out of Control: The Story of the Reagan Administration's Secret War in Nicaragua, Arms Pipeline and the Contra-Drug Connection. New York : Atlantic Monthly Press, 1987.

Cuban American National Foundation. Castro and the Narcotics Connection: Special Report. Washington D.C., 1983.

Eddy, Paul, Hugo Sabogal and Sara Walden. The Cocaine Wars. New York: W.W. Norton & Co., 1988.

Epstein, Edward Jay. Agency of Fear: Opiates and Political Power in America. New York: G.P. Putnam and Sons, 1977.

Goodwin-Gill, Guy. International Law and the Movement of Persons Between States. Oxford: Clarendon Press, 1978.

Hamowy, Ronald, editor. Dealing With Drugs: Consequences of Government Control. Lexington, Massachusetts: Lexington Books, 1987.

Langguth, A.J. Hidden Terrors. New York: Pantheon Books, 1978.

Lummis, John, Editor in Chief. Transnational Aspects of Criminal Procedure : Michigan Yearbook of International Legal Studies,1983. New York: Clark Boardman Company Ltd., 1983.

Lupsha, Peter and Kip Schlegel, The Political Economy of Drug Trafficking: The Herrerra Organization (Mexico and the United States). Albuquerque: University of New Mexico, November 1980.

Lyman, Michael. Practical Drug Enforcement: Procedures and Administration. New York: Elsevier, 1989.

Morales, Edmundo. Cocaine: White Gold Rush in Peru. Tucson: The University of Arizona Press, 1989.

Musto, David, M.D. The American Disease: Origins of Narcotic Control. New York: Oxford University Press, 1987.

Rachal, Patricia. Federal Narcotic Enforcement: Reorganization and Reform. Boston: Auburn House Publishing Company, 1982.

Reagan, Ronald. Public Papers of the United States 1986, Volume I. Washington D.C.: U.S. Government Printing Office, 1989.

Shannon, Elaine. Desperados: Latin Drug Lords, US Lawmen, and the War America Can't Win. New York: Viking Books, 1988.

Shearer, I.A.. Extradition in International Law. Dobbs Ferry, New York: Oceana Publications Inc., 1971.

Turk, Austin. Political Criminality and Defense of Authority. London: Sage Publications, 1982.

United Nations Publication. Extradition for Drug-Related Offenses: A Study of Existing Extradition Practices and Suggested Guidelines for Use in Concluding Extradition Treaties. New York: United Nations UNIES, 1985.

Von Glahn, Gerhard. Law Among Nations: An Introduction to Public International Law, 4th Edition. New York: Macmillan Publishing Company, Inc., 1981.

Walker, William. Drug Control in the Americas, Revised Edition, Albuquerque: University of New Mexico Press,1989.

Wilson, James. The Investigators: Managing FBI and Narcotics Agents. New York: Basic Books, 1978.

Congressional Hearings

U.S. Congress. Senate. Committee on Foreign Relations. Extradition Treaty with the Republic of Colombia, Executive Report No. 97-34, 97th Congress, First Session, November 20, 1981.

U.S. Congress. Senate. Committee on Foreign Relations.Mutual Legal Assistance Treaty with the Republic of Colombia, Executive Report No. 97-35. 97th Congress, First Session, November 20, 1981.

U.S. Congress. House. Select Committee on Narcotics Abuse and Control. International Narcotics Policy. 98th Congress, First Session, December 13, 1983.

National Criminal Justice Association. National Criminal Justice Association Legislative Report: Accomplishments of the 98th Congress, Second Session. Rockville, Maryland, 1983.

President's Commission on Organized Crime. Statement of the Honorable William French Smith, Attorney General of the United States. October 23, 1984.

U.S. Congress. House. Committee on Foreign Affairs. U.S. Narcotics Control Programs Overseas: An Assessment. Report of a Staff Study Mission to Southeast Asia, South America, Central America and the Caribbean (August 1984-January 1985). 99th Congress, First Session, February 22, 1985.

U.S. Congress. Senate. Caucus on International Narcotics Control. Statement of Charles W. Blau, Associate Deputy Attorney General Concerning Compliance with Multilateral and Bilateral Narcotics Control Treaties and Agreement. June 24, 1986.

U.S. Congress. House. Committee on Foreign Affairs.The Worldwide Drug Situation and International Narcotic Control Program. 100th Congress, First Session, March 5, 1987.

U.S. Congress. House. Committee on Foreign Affairs. Role of Latin American Narcotics Control Issues. 100th Congress, First Session, March 18, 1987.

U.S. Congress. House. Select Committee on Narcotics Abuse and Control. Colombian Drug Trafficking and Control. 100th Congress, First Session, May 6, 1987.

U.S. Congress. House. Committee on Foreign Affairs.The Role of Intelligence in International Narcotic Control. 100th Congress, First Session, May 7, 1987.

U.S. Congress. Senate. Caucus on International Narcotics Control.Drug Trafficking: The Escalating Crisis on the Southwest Border. 100th Congress, First Session, August 18, 1987.

U.S. Congress. House. Subcommittee on Western Hemisphere Affairs of the Committee on Foreign Affairs. Presidential Certifications Regarding International Narcotics Control. 100th Congress, Second Session, March 29 and April 13, 1988.

U.S. Congress. Senate. Subcommittee on Terrorism, Narcotics and International Communications of the Committee on Foreign Relations. Drugs, Law Enforcement and Foreign Policy: the Cartel, Haiti and Central America, Part III. 100th Congress, Second Session, April 4-7, 1988.

U.S. Congress. Senate. Subcommittee on Terrorism, Narcotics and International Communications of the Committee on Foreign Relations. Drugs, Law Enforcement and Foreign Policy: Panama, Part II. 100th Congress, Second Session, February 8-11, 1988.

Communication from the President of the United States. Narcotics Control Certification for Panama. Washington D.C.: U.S. Government Printing Office, January 29, 1990).

Treaties

Colombia: Ministry of Justice. "Supreme Court Decision of Law Concerning the Extradition Treaty between Colombia and the United States," 25 June 1987. International Legal Materials Vol. 27, 492.

Kavass, I.I., and A. Sprudzs, compilers. Extradition Laws and Treaties of the United States Vol. I and II. Buffalo, New York: William S. Hein amd Co., 1979.

U.S. Department of State. "Convention on the Suppression of Abuse of Opium and Other Drugs," 23 January 1912. 38 Stat. 1912: Treaty Series 612. Multilateral Agreements 1776-1917, 855.

U.S. Department of State. "Extradition Treaty (Inter-American)," 26 December 1933. 49 Stat. 3111; Treaty series 882. Multilateral Agreements 1931-1945, 152.

U.S. Department of State. "Extradition Treaty Between the United States of America and the United Mexican States," 4 May 1978. TIAS no. 9656. Treaties and Other International Agreement of the United States, Vol. 31, 5061.

U.S. Department of State. "Limiting Manufacture and Regulating Distribution of Narcotic Drugs," 13 July 1931. 48 Stat. 1543; Treaty Series 863. Multilateral Agreements 1931-1945, 1.

U.S. Department of State. "Treaty Between the United States of America and the Republic of Panama, Providing for the Extradition of Criminals," 25 May 1904. 34 Stat. 2851; Treaty Series 445. Treaties and Other International Agreements of the United States of America 1776-1949, Vol. 10, 673.

United Nations. "Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," 20 December 1988. International Legal Materials, Vol. 28, 493.

United Nations. "Protocol Amending the Single Convention of Narcotic Drugs, 1961," 25 March 1972. TIAS no. 8118. United States Treaties and Other International Agreements, Vol. 26, 1442.

United Nations. "Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International, and Wholesale Trade in, and Use of Opium," 23 June 1953. TIAS no. 5273. United States Treaties and Other International Agreements, Vol.14, 12.

United Nations. "Single Convention on Narcotic Drugs, 1961," 30 March 1961. TIAS no. 6298. United States Treaties and Other International Agreements, Vol. 18, 1408.

Journals

"IDL Interview: Cherif Bassiouni Discusses International Extradition Law and the Role of the Attorney in Drug Related Extradition Proceedings." Inside Drug Law 2, no. 7, (September, 1985): 1-5.

"Latin American Leaders Meet in Acapulco." Narcotics Control Digest (December 21, 1988): 9.

"Liberal Interpretation of Extradition Treaties." Trial 21 (January 1985): 58-63.

"Major Contemporary Issues in Extradition Law: A Panel Convened by Moderator, M. Cherif Bassiouni." American Society of International Law (1990): 389-407.

"The Development of the International Law of Extradition." St. Louis University Law Journal, (Fall 1984): 33-40.

Abramovsky, Abraham. "Extraterritorial Abductions: America's 'Catch and Snatch' Policy Runs Amok." Virginia Journal of International Law 31 (Winter 1991): 151-210.

Abramovsky, Abraham and Steven J. Eagle. "U.S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition?" Oregon Law Review 57 (1977): 51-93.

Bagley, Bruce. "Colombia and the War on Drug." Foreign Affairs 67 (Fall 1988): 70-92.

Barnett, J. Richard. " Extradition Treaty Improvements to Combat Drug Trafficking." Georgia Journal of International and Comparative Law (Summer 1985): 285-315.

Bassiouni, M.C.. "The International Narcotics Control System: A Proposal." St. John's Law Review 46 (1972): 713-763.

Bernholz, Steven, Martin Bernholtz, and G. Nicholas Herman. "International Extradition in Drug Cases." North Carolina Journal of International Law and Commercial Regulation (Spring 1985): 353-382.

Blakesley, Christopher. "A Conceptual Framework for Extradition and Jurisdiction Over Extraterritorial Crimes." Utah Law Review (1984):685-761.

Carbranes, Jose. "International Law and Control of Drug Traffic." International Lawyer 7, no. 4 (1973): 761-769.

Downing, Richard. "The Domestic and International Legal Implications of the Abduction of Criminals from Foreign Soil." Stanford Journal of International Law 26 (1990): 573-599.

Evans, Alona. "Acquisition of Custody Over the International Fugitive Offender -- Alternatives to Extradition: A Survey of United States Practice." The British Yearbook of International Law (1964): 77-100.

Grassie, Yvonne. "Federally Sponsored International Kidnapping: An Acceptable Alternative to Extradition?" Washington University Law Quarterly 64, 1986: 1205-1217

Kendall, R.E.. "International Co-operation, Extraterritorial Enquires, Extradition and Exchange of Fugitives, Exchange of Information." Police Studies 11, no.1 (Spring 1988): 18-31.

Kester, John. "Some Myths of United States Extradition Law." The Georgetown Law Journal 76, no. 4: 1441-1493.

Lewis, Clare. "Unlawful Arrest: A Bar to the Jurisdiction of the Court or Mala Captus Bene Detentus? Sidney Jaffe: A Case in Point." Criminal Law Quarterly 28, June 1986: 341-369.

Nadelmann, Ethan. "Negotiations in Criminal Law Assistance Treaties." The American Journal of Comparative Law 33, no. 3 (Summer 1985): 467-504.

Pontoni, Michael. "Authority of the United States to Extraterritorially Apprehend and Lawfully Prosecute International Drug Traffickers and Other Fugitives." California Western International Law Journal no. 21, (1990-1991): 215-243.

Sharkey, Jacqueline. " The Contra-Drug Trade Off: The U.S. Government Compromised Its War on Drugs When Support for the Contras was at Stake." Common Cause (September-October 1988):25-31.

Sherman, Mark Andrew. "United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia." Nova Law Review 15 (Spring 1991): 661-701.

Sipple, Martin. "The Wild, Wild, Western Hemisphere: Due Process and Treaty Limitations on the Power of United States Courts to Try Foreign Nationals Abducted Abroad by Government Agents." Washington University Law Quarterly 68 (1990): 1047-1069.

Snow, Thomas. "International Extradition: Guidelines for the Practitioner." Trial 22 (1986): 56-58

Warbrick, Colin. " Irregular Extradition." Public Law 83 (Summer 1983): 269-278.

Warbrick, Colin and A. V. Lowe. "Current Legal Developments: Extraterritorial Jurisdiction and Extradition. " The International and Comparative Law Quarterly (April 1987): 398-410.

Warbrick, Colin. "The Criminal Justice Act 1988: The New Law on Extradition." The Criminal Law Review (January 1989): 4-14.

Warner, John. "The International Aspects of Combatting the Drug Traffic." The Police Chief 52 (March 1985):96-103.

Westrate, David. "How are Drug Trafficking and Terrorism Related?" Narcotics Control Digest 15, no. 11 (May 29, 1985): 1-4.

Woltring, Herman. "Extradition Law." Law Institute Journal 61 (Spring 1987): 919-922.

Articles

"Certification for Narcotics Source and Transit Countries." State Department Bulletin, May 1989, no. 2146, 68-71.

"Coke Law." The Economist 29 August 1987, pg 35-36.

"Colombia Signs Peace Agreement with Guerillas." Austin American-Statesman, 28 September 1989, A4.

"Defense: Attorney Advising Noriega was Secret Agent." Austin American-Statesman, 5 September 1991, A13.

"Drug Activity May Be Rising in Panama." Austin American-Statesman, 23 July 1991, A6.

"Emergency Package for Colombia's Drug Fight." State Department Bulletin, October 1989, no. 2151, 47.

"Former Pilot, Medellin Liaison Testifies Noriega Wanted Drug Cash, Deniability." The Houston Post, 27 September 1991, A14.

"International Narcotics Control Strategy Report." State Department Bulletin, April 1987, no. 2121, 52-53.

"Iran Bill Allows Arrest of Americans Who Offend Nation." Los Angeles Times, 1 November 1989, A7.

"Meese Denies U.S. Prosecutors Plan Drive Against Drug Users." Los Angeles Times, 6 April 1985, A5.

"President Gives Plan to Combat Drug Networks." The New York Times, 15 October 1982, A1,21.

"Prime Suspect in Murder of U.S. Drug Agent is Extradited to Mexico." Los Angeles Times, 16 April 1985, A5.

"Tables Turned in Drug Raid." The Houston Post, 11 October 1986, 14A.

"The Billionaires." Forbes, 25 July 1988, 126-127.

"The Billionaires." Forbes, 22 July 1991, 114-115.

"The War Among the Guerillas." The Economist, 10 October 1987, 44.

"Top Colombian Assassin Arrested in New York- Target Unclear." The Houston Post, 27 September 1991, A-2.

"Trial Opens in Death of Tortured Drug Agent." The New York Times, 31 July 1988, A25.

Abrams, Elliot. "Drug Wars: The New Alliance Against Traffickers and Terrorists." State Department Bulletin, April 1986, 89-91.

Abrams, Elliot. "FY 1988 Assistance Requests for Latin America and the Caribbean." State Department Bulletin, May 1987, no. 2122, 84-89.

Abrams, Elliot. "FY 1989 Assistance Requests for Latin America and the Caribbean." State Department Bulletin, October 1988, no. 2139, 72-81.

Bartz, Diane. "Colombia Takes Hit as Coffee Prices Plunge." In These Times, 11-17 October 1989, 5.

Berke, Richard. "Noriega Arraigned in Miami in a Drug-Trafficking Case; He Refuses to Enter a Plea." The New York Times, 5 January 1990, A1,10.

Bradley, Barbara. "New Drug Strategy Focuses on Cartels." The Christian Science Monitor, 26 April 1988, 1,12.

Brinkley, Joel. "U.S. Says Nations are not Destroying Drug Crops." The New York Times,25 September 1985, A3.

Cole, Richard. "Noriega's Lawyers Complain of Witness List Leak," Austin American-Statesman, 10 October 1991, A29.

Collett, Merrill. "Collision Course in Colombia: Traffickers Threaten Land Reform." The Christian Science Monitor, 24 January 1989, 3.

Collett, Merrill. "Battling for Power with Bullets and Ballots." The Christian Science Monitor, 16 May 1988, 9.

Collett, Merrill. "Colombia's Losing War with Drug Kings." The Christian Science Monitor, 13 May 1988, 9-10.

Collett, Merrill. "US Demolishes a Country, Not a Cartel." In These Times, 6-12 September 1989, 11.

Contrerasa, Joseph. " Anarchy in Colombia." Newsweek, 11 September 1989, 30-32.

Deming, Angus and Elaine Shannon. "Has Mexico Matched Up on Drugs?" Newsweek, 16 December 1985, 45-46.

DeMott, John S.. "Striking at the Source." Time, 28 July 1986, 12-14.

Engelberg, Stephen and Jeff Gerth. "U.S. Is Said to Weigh Abducting Terrorists Abroad for Trials Here." The New York Times, 19 January 1986, A1,9.

Evans, James and Jack Epstein. "It's Heads Up in Bolivia for Politics of Cocaine." In These Times, 3-9 May 1989, 8.

Garcia, Guillermo. "U.S., Mexico Face Drug Lord's Legacy of Mutual Mistrust." Austin American-Statesman, 18 November 1988, A1,11.

Germani, Clara. "In Bolivia, the Hard Reality of Coca." The Christian Science Monitor, 12 August 1988, 7,10.

Grier, Peter. "Congress, Pentagon Dispute Armed Forces' Role in Drug Fight." The Christian Science Monitor, 24 May 1988, 3.

Gwertzman, Bernard. "Schultz Backs 'Moderate Force' Against Terrorists." The New York Times, 14 March 1986, A8.

Ingwerson, Marshall. "Anti-Cocaine Push Escalates, but So Do Sales." The Christian Science Monitor, 7 January 1986, 1,7.

Iyer, Pico. "Fighting the Cocaine Wars." Time, 25 February 1985, 26-28.

Kawell, Jo An. "Sending in Army Could Drag U.S. Into Morass." In These Times, 25-31 October 1989, 11.

Kinzer. Stephen. " Nicaragua Backs Panama's Leaders." The New York Times, 26 June 1987, A6.

Kline, David. "How to Lose the Coke War." The Atlantic Monthly, May 1987, 22-27.

Levitsky, Melvyn. "Cuba and Narcotics Trafficking." State Department Bulletin, October 1989, no. 2151, 46-47.

Lewis, Neil. "U.S. Officials Clash at Hearing on Power to Seize Fugitives." The New York Times, 9 November 1989, A10.

Martz, Ron. "Using Death Penalty in Drug Cases Likely to Make Extradition Difficult." Austin American-Statesman, 17 October 1988, A6.

Matthews, Jay. "Defendant was Abducted in DEA Case, Judge Says." Washington Post, 11 August 1990, A3.

Meislin, Richard. "U.S. Agent's Body Firmly Identified." The New York Times, 8 March 1985, A3.

Meislin, Richard. "U.S. Says Abductors of Agent in Mexico Included Policeman." The New York Times, 16 March 1985, A1,2.

Meislin, Richard. "Mexico Drug Arrests: Tip of Iceberg." The New York Times, 30 April 1985, A3.

Miller, Majorie. "Mexico Asks U.S. to Extradite Doctor in Camarena Case." Los Angeles Times, 24 May 1990, A3,31.

Mitchell, Steve. "Neighborhood Bombing Kills Thousands of Civilians in Panama." Austin Peace and Justice News, February 1990, 3,8.

Moody, John. "A Day with the Chess Player." Time, 1 July 1991, 34-36.

Morganthau, Tom. "The Widening Drug War." Newsweek, 1 July 1991, 32-34.

Ostrow, Ronald. "FBI Gets OK for Overseas Arrests." Los Angeles Times, 13 October 1989, A1,10.

Ostrow, Ronald J. "Police Aid to Kidnap Gang Figure Charged." Los Angeles Times, 21 February 1985, A1.

Ostrow, Ronald and Paul Houston. "Camarena Case Suspect Caught in Costa Rica." Los Angeles Times, 18 March 1985, A8.

Ostrow, Ronald. "Baker Vows Full Talks Before FBI Uses Foreign Arrest Powers." Los Angeles Times, 14 October 1989, A10.

Poole, Claire. "Cocaine & Co.." Forbes, 22 July 1991,12.

Post, Tom. "10 Acres, Valley Vu: A Drug Lord's Jail." Newsweek, 1 July 1991, 34.

Reza, H.G., "U.S., Mexico Quash Money Laundering Ring Linked to Colombian Drug Lords." Los Angeles Times, 2 November 1989, B2.

Riding, Alan. "Colombian Effort Against drugs hits Dead End." The New York Times, 8 March 1987, A1,17.

Riding, Alan. "Church Says Noriega's Sole Guarantee Was for a Fair Trial in U.S." The New York Times, 5 January 1990, A10.

Rohter, Larry. " 'Criminal is Gone,' but Joy is Fleeting in Land He Ruled." The New York Times, 5 January 1990, A10.

Rosenthal, Andrew , Elaine Sciolino and David E. Pitt. "Vatican Issues an Ultimatum and General Takes a Walk." The New York Times, 5 January 1990, A1, 11.

Ross, Timothy. "Colombia's Muted Response to US Conviction of Drug King." The Christian Science Monitor, 23 May 1988, 12.

Ross, Michael. "Coup Leaders Gave Noriega Two Options." Los Angeles Times, 13 October 1989, A10.

Rupert, James. "Haitian Coup Attempt Fails." Austin American-Statesman, 3 April 1989, 2.

Sciolino, Elaine. "A Confidant Turns Against Noriega, But Why?" The New York Times, 11 February 1988, A6.

Shannon, Elaine. "The New Kings of Coke." Time, 1 July 1991, 28-33.

Shenon, Phillip. "Colombia Frees Drug Figure Provoking American Anger." The New York Times, 1 January 1988, A1,64.

Shenon, Phillip. "U.S. Says It Won't Return Mexican Doctor Linked to Drug Killing." The New York Times, 21 April 1988, 2.

Shenon, Phillip. "Colombian Held in Florida; Retaliation Fears Stir Alert." The New York Times, 6 February 1987, A10.

Specter, Arlen. "How to Make Terrorists Think Twice." The New York Times, 22 May 1986, A31.

Taylor, Clyde. "Link Between International Narcotics Traffic and Terrorism." State Department Bulletin, August 1985, no. 2101, 69-70.

Taylor, Clyde." FY 1985 Assistance Requests for Narcotics Control." State Department Bulletin, May 1984, no. 2086, 72-73.

Thomas, Jon. "FY 1986 Assistance Requests for Narcotics Control." State Department Bulletin, June 1985, no. 2099, 62-64.

Thomas, Jon. "Narcotics Control in Latin America." State Department Bulletin, April 1986, no. 2109, 77-80.

Thorton, Mary. "The Death of a Drug Informer." The Washington Post National Weekly Edition, 7 April 1986, 33.

Tobar, Hector. "Drug Lord Convicted in Camarena's 1985 Murder." Los Angeles Times, 13 December 1989, A3,32

Trainor, Bernard. "Panama Strongman Fights Back Against U.S." The New York Times, 4 January 1988, 6.

Treaster, Joseph. "In Bolivia, U.S. Pumps Money into the Cocaine War, but Victory is Elusive." The New York Times International, 11 June 1989, 10.

Weingarten, Steve. "Drug Agent Incident Fuels Mistrust on Mexican Border." Austin American-Statesman, 7 September 1986, A20.

Weinrub, Bernard. "President Offers Strategy for U.S. on Drug Control." The New York Times, 6 September 1989, A1.

Whitehead, John. "U.S. International Narcotic Control Programs and Policies." State Department Bulletin, October 1986, no. 2115, 37-41.

Wright, Robin. "U.S. OKs Covert Operations That May Kill Foreigners." Los Angeles Times, 14 October 1989, A1,10.

Wrobleski, Ann. "FY 1987 Assistance Requests for Narcotics Control." State Department Bulletin,August 1986, no. 2113, 72-74.

Wrobleski, Ann. "FY 1988 Assistance Requests for Narcotics Control." State Department Bulletin, June 1987, no. 2123, 723-76.

Wrobleski, Ann. " Presidential Certification of Narcotics Source Countries." State Department Bulletin, June 1988, no. 2135, 47-50.

Wrobleski, Ann. " Global Narcotic Cooperation and Presidential Certification." State Department Bulletin, October 1989, no. 2151, 48-51.

Zinser, Adolpho Aguilar. "A Volley at Mexico Won't Win the War Against Drugs." The Christian Science Monitor, 25 May 1988, 13.