EXPLORING THE POLITICS AND LAW OF EXTRADITION IN INTERNATIONAL RELATIONS[*]

Abstract

The paper examines the place of extradition in international relations as a component of the international criminal justice system. It adopts the doctrinal approach by comparing and analyzing statutory provisions and treaties as they relate to the law and politics of extradition. The paper found that despite the existence of treaties, extradition practices in international relations are fraught with politics of national interest as against a sincere desire to facilitate the wheel of the international criminal justice system, which main objective is the ensuring of adequate and deserving punishment for offenders of any country of origin/residence, no matter which country they may have fled to. It was also found that most third world countries hardly get their extradition requests to advanced countries granted as a result of (i) their perceived weak criminal justice institutions which the advanced countries often believe cannot guarantee justice for fugitive offenders; and (ii) the superiority complex of the advanced countries. Consequently, the third world countries often resort to extra-ordinary rendition out of frustration which in itself constitute an act of international terrorism. The advanced western countries on the other hand have always been reluctant to surrender fugitive criminals for trial or punishment in third world countries.

Keywords: 'Extradition', 'Law', 'Politics', 'Criminal Justice', 'International Relations'.

Introduction

One of the high points of modern social organization is the emergence of Sovereign Nation States. A major feature of sovereignty is the freedom from interference in the affairs of one Sovereign State by another Sovereign State. Waltz has rightly pointed out that the international system of law and order is an anarchic system because of the absence of any sovereign body which governs the interactions between autonomous nation states that is clothed with competence to play the role of an enforcement agency.[1] Much of the law enforcement mechanism of the United Nations and other international bodies are persuasive rather than coercive. This is in the sense that unlike in domestic societies where a citizen can theoretically rely on law enforcement agencies to protect their persons and property, a state whose territory is violated may not have recourse to any known enforcement institution that can immediately restore its territory to its status quo. Thus where a

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[1] K Waltz ; *Realism and International Politics*, (United Kingdom: , Google Books. 2008), pp 34-56.

state is invaded by another state, the invaded state cannot be too sure of where to run to for help. As a consequence, nation states in pursuit of their self-interest can use power in its various forms to impose their will on other states even in breach of international agreements and treaties. This method of acquisition of territory and interference though not popular, having being outlawed theoretically in international relations by the United Nations, still happen here and there. International relations is therefore dynamic and examines the relationship of states with each other and with international organizations and certain sub-national entities (e.g. bureaucracies, political parties and interest groups.[2]

The major thrust of international relations as it flourished in the United States was how to find an effective way of moderating relationships between Sovereign States so as not to allow the pursuit of their national interests degenerate into wars and conflicts that are capable of wiping out mankind from existence on earth which will in turn negate the entire principles upon which the international criminal justice system is founded.

One area of concern in the interaction between nations today is how to return fugitives fleeing from the law to sojourn in another autonomous Sovereign Nation State, back to their countries of origin/residence, where they committed offences, to face trial or/and punishment. Certainly, the country of origin or residence of the fugitive where the crime was committed cannot exercise criminal jurisdiction over him while he is in the custody of the state where he has fled to as this will tantamount to a breach of sovereignty of the host state. In order to bring the fugitive to justice, the host country must surrender the fugitive to his country of origin/residence. It is the reality of this situation that has given rise to the principle of extradition in international relations, law and diplomacy.

History and Origin of Extradition

Historically, the practice of extradition dates back to the 13th century when an Egyptian Pharaoh, Ramesses II, negotiated an extradition treaty with Hattusili III, a Hittite king.[3] The practice evolved over the years and has developed into well-articulated regulations that are part of the municipal laws of many countries today. Extradition has been defined as the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged or the return of a fugitive for justice, regardless of his/her consent, by the authorities where the fugitive is found.[4] In a situation where a fugitive is forcefully taken from the country where he has taken refuge without the observance of the due process of extraditions, an extraordinary rendition is said to have occurred. Extraordinary rendition refers to the capture, abduction or kidnap of a fugitive by a country seeking his trial or punishment without a recourse to the extradition laws of the country where the fugitive is found or the procedures recognized by international law. This process is of course outlawed in international law but still happens from time to time.

It is important at this juncture to differentiate international extradition from interstate extradition. International extradition involves extradition from one country to the other while interstate extradition is the situation where a fugitive is sent from one State within a country where he is found to the requesting State in that same country. This is usually upon the demand of the

[2] Mc Cleland, 1967 in Encyclopedia Britannica, www.britannica.com).
[3] Amazon.com, 2020, Webster's New World College Dictionary).
[4] B A Garner (ed.), *Black's Law Dictionary*(Minnesota: St Paul, 2007) p.623.

government of such a requesting state. The latter practice is commonplace in truly federating nations such as the United States of America where the police authority of each state is autonomous. The procedure for this kind of extradition is clearly spelt out in the Constitution of the United States. In Nigeria, there is one central police force under the 1999 Constitution vested with powers to arrest offenders in any part of the country for trial in the court of any State that has jurisdiction to try the alleged crime.[5] There is no extradition request or order required for such arrests or prosecution.

Extradition must also at this point be distinguished from deportation. Deportation is the process where a competent authority requires a person to leave a territory and prohibits him from returning to it.[6] There are various extradition treaties in place between countries of the world which are most times, observed in the breach as a result of political and quasi ethical factors. The signatories to extradition agreements do not religiously grant requests for extradition where granting such requests will not be in their national interest. In other cases, countries that have no extradition treaties with each other could willingly surrender fugitives for trial or to serve punishment when they have been convicted if they find it politically expedient to do so.

The Law of Extradition

In strict legal parlance, the term extradition denotes the process, under treaty, or on the basis of reciprocity, where one State surrenders to another state at its request, a person, accused or convicted of a criminal offence, committed against the law of the requesting state having jurisdiction over the extraditable person.[7] The jurisprudential justification for extradition includes the following:

> (a) It is in the interest of the global criminal justice system not to allow offenders who have committed heinous crimes to go unpunished;
> (b) there will be sufficient evidence in the country where the offence was committed to bring the offender to justice.[10]

The practice of extradition developed rapidly in the 19th century through the use of bilateral and multilateral treaties. As has been pointed out, there is no existing right to extradite a fugitive. A Sovereign State is not under any compulsion under international law to surrender a fugitive criminal to another Sovereign State. The right must derive as an obligation, either from an existing bilateral or multilateral treaty or on the basis of reciprocity and common understanding between two countries. Sometimes, the trial and punishment of fugitive offenders can be achieved through deportation of the fugitive to the state where he is to stand trial or face punishment.

In the United Kingdom, extradition is governed by the United Kingdom's Extradition Act of 1989. The process of extradition in Nigeria on the other hand is regulated by the Nigerian Extradition Act.[11] Some principles are however common to most municipal laws that regulate extradition. These common principles are as follows:

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[5] Constitution of the Federal Republic of Nigeria 1999, section 214.
[6] K Momodu, 'Extradition of fugitives by Nigeria', in *International and Comparative Law*, 1986
[7] T Hillier, *Sourcebook on Public International Law,* (USA: Google Books, (1998).
[10] *ibid*
[11] Cap E25, Laws of the Federation of Nigeria, 2004.

i) There must be an extraditable person;
ii) There must be an extraditable crime.

Extraditable crimes are usually listed in the extradition agreements entered into between countries. Political crimes, military offences and religious offences are usually not extraditable. However, the Nigerian Extradition Act listed offences punishable under military law as extraditable offences. The definition of an "extraditable offence" has been the subject of much controversy. There are a number of arguments in specific cases as to the extent to which acts of terrorism can constitute political crimes that are not extraditable. For instance, instigating violence in the course of political agitations have in some cases been classified as terrorism rather than offences of mere political character Another common ground is that of mutual criminality, i.e. the act constituting an extraditable offence must be classified as a crime in both the requesting and the surrendering state. Further, it is a general principle of the law of extradition that an offender should not be tried by the requesting state for any offence other than the one for which he is extradited.

Salient portions of sections 1-3 of the Nigerian Extradition Act, Laws of the Federation of Nigeria, 2004, that are of relevance to this discuss are hereunder reproduced:

1.Power to apply the Act by Order

a) Where a treaty or other arrangement (in this Act referred to as an extradition agreement) has been made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment, the President may by order published in the Federal Gazette apply this Act to that country…

2. Application to common wealth countries

a) Subject to provisions of this section, this Act shall apply to every separate country within the commonwealth.

b) If it appears to the President that the law of a country to which this Act applies by virtue of Subsection (a) no longer contain provisions substantially equivalent to the provisions of this Act, as it applies to the countries within the commonwealth, the president may by order published in the Federal Gazette direct that this Act shall apply in relation to that country with such modifications (whether by way of addition, alteration or omission) as may be specified in the order, and where an order under this subsection is in force with respect to any country, this Act shall have effect in relation to that country with modifications specified in the order …

3. Restriction on surrender of fugitives

(a) A fugitive criminal shall not be surrendered if the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of apolitical character.

(b) A fugitive criminal shall not be surrendered if it appears to the Attorney-General or a court dealing with the case-

(i)that the request for his surrender although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing him on account of his race, religion nationality or political opinion or was not otherwise made in good faith or the interest of justice; or

(ii)that if surrounded, he is likely to be prejudiced at his trial or to be punished, detained or restricted in his personal capacity, by religion, nationality or political opinions.

Subsections C to I, of section 3 of the Nigerian Extradition Act make further exceptions to the surrender and extradition of fugitive criminals. The Act provides in section 3 for its application to citizens of all commonwealth countries but further restricts this open door application in case of commonwealth countries who have modified their own extradition laws. For such countries, The Nigerian Extradition Act shall apply with such modifications, alterations or amendments that may have been introduced into the municipal extradition laws of those countries. This is in line with the doctrine of reciprocity in international law.

Sections 6-8 of the Act clearly lays down the procedure for the request for the surrender of a fugitive criminal and the power of the Attorney – General and the Magistrate with respect to such requests. It is quite clear from the foregoing sections of the Nigerian Extradition Act that fugitive criminals can only be extradited from Nigeria upon the request of a country with which it has a bilateral treaty on extradition. Second, fugitive criminals who commit crimes in common wealth countries can be extradited back to those countries under the Act upon the request of the government of the countries where the crimes were committed. This latter provision operates in the form of a multilateral treaty amongst common wealth countries.

Noteworthy, is the fact that fugitive criminals cannot be extradited for offences of a political character or on account of their race, religion or political opinion. They may not also be extradited where there is no guarantee of a fair trial for them or where it will not be in the interest of justice *(ex debitio justicie)* to extradite them. The guiding principle in the operation of the Nigerian Extradition Act is reciprocity in line with the realist theory of international relations. The Act is expected to only apply with respect to requesting countries that have provisions in their municipal laws that are *impari materia* with what is contained in the Nigerian Extradition Act.

The Politics of Extradition

Nigeria has signed extradition treaties with several countries of the world prominent amongst which are the United States of America, South Africa, Liberia and The United Kingdom. Nigeria's Extradition Treaty with the United States was signed by the colonial government on behalf of the Nigerian people on the 22nd of December, 1931 and entered into force on 24th June, 1935. Since the commencement of this treaty, Nigeria has extradited several fugitive criminals to the United States but there is no public record showing the extradition of any United States citizen or resident to face trial or punishment in Nigeria. Does this mean that Americans have not committed crimes in Nigeria for which they could be extradited to Nigeria? The answer may be found in the socio-

economic theory of the relationship between the centre and the periphery. Most requests for extradition of fugitive criminals to Nigeria are usually turned down on the basis of lack of assurance that the fugitive will be given a fair trial here in Nigeria or that the offences for which Nigeria is requesting the extradition of the fugitive criminals are of a political character. Unfortunately, this is not always the case. Some politicians who have looted the Nigerian treasury often use this cover of this misgivings by the advanced countries to escape extradition back to Nigeria to face the Economic and Financial Crimes Commission (EFCC).

Extradition between the UK and Nigeria is governed by a multi-lateral treaty known as the "*The London Scheme of Extradition within the commonwealth.*[10] In the London Scheme of Extradition within the Commonwealth, a major requirement for the grant of an extradition request is that a prima facie case must be established against the fugitive criminal. This is in consonance with the intendment of sections 6-12 of the Nigerian Extradition Act. Further, conditions of detention or prison must not be detrimental to the protection of human rights. It also provides that extradited fugitive offenders must not be subjected to torture or any form of inhuman treatment.

In December, 2019, Nigeria requested the return of One Mr. Ogunnowo, a man charged with offences arising out of a series of purported sham marriages.[11] This was the second time that Nigeria had made a request to the United Kingdom for extradition of a fugitive criminal and the first time such a request was brought before a United Kingdom court. The Westminster Magistrate Court rejected the request for not establishing a prima-facie case. According to the court, no extradition offence was disclosed. Further, the court took evidence and accepted the notice of torture and maltreatment in Nigerian prisons contained in the evidence advanced before it. According to D.J. Fleming of the Westminster Magistrate Court:

> *I could not countenance sending RP to a Nigerian Prison in the absence of assurance in the terms indicated above. Lest I be criticized for failing to set out in this judgment the details I have read concerning the treatment of prisoners in Nigeria, all I urge is that the open source bundle of materials be read. The sources of that material are not fly by night. They include the UN Special Rapporteur on torture, Amnesty International; The US State Department, UNDOC; Human Rights Watch and the British High Commission in Nigeria.*[12]

Most of these reports unanimously captured the deplorable and human degrading conditions of the Nigerian Prisons now christened "Nigerian Correctional Services". Mr. Ogunnowo was released for the failure of the Nigerian authorities to establish a prima facie case against him and their inability to assure the court that he will not be tortured in Nigeria under the callous prison system. It is submitted that the theory of centre-periphery may not hold here. The release of Mr. Ogunnowo was in accordance with internationally recognized principles of human right law.

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[10] London Scheme of Extradition within the Commonwealth is applicable as a multilateral treaty amongst countries that are members of the Commonwealth of Nations.

[11] Lexology.com (2020), available at www.lexology.com, accessed 12 August 2021.

[12] Lexology.com (2020), available at www.lexology.com, accessed 12 August 2021.

Nigeria has also signed extradition treaties in 1984 with Benin, Togo and Ghana. These treaties have also excluded political offences from their ambit of extraditable offences.

The Nnamdi Kanu and Igboho Imbroglio

In the light of the forgoing discussion on the law and politics of extradition, this paper will now examine the forceful return to Nigeria of Mazi Nnamdi Kanu from Kenya. According to the Attorney General of the Federation and Minister for Justice Mr. Malami, Mazi Nnamdi Kanu was arrested as a result of the collaborative efforts between Nigerian and Kenyan Security Agencies and forcefully brought back to Nigeria to continue with his trial. The Kenyan authorities have denied any involvement in the entire saga. Nevertheless, the Government of Kenya is actually the principal culprit in the whole episode because of the involvement of their security agencies. This may appear credible because the younger brother of Mazi Nnamdi Kanu has stated clearly that the Kenyan security officers detained and tortured his brother before handing him over to Nigerian Security Operatives.

The two major issues that arise from the entire episode are with respect to the nationality of Mazi Nnamdi Kanu upon which he was arrested since he travelled to Kenya with a British Passport, and the legality of his extradition to Nigeria. On Mazi Nnamdi Kanu's nationality, Section 28 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides as follows:

> *(1)Subject to the other provisions of this section, a person shall forfeit his Nigerian citizenship if not being a Nigerian citizen by birth, he acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth.*[12]

The legal implication of the above provision is that a Nigerian citizen by birth is free and fully entitled to acquire the citizenship of any other country without losing his Nigerian citizenship. Thus, dual citizenship status for Nigerian citizens by birth is recognized and entrenched in the 1999 Nigerian Constitution. Accordingly, a Nigerian citizen by birth who is also a British citizen by birth can acquire further citizenship of other countries without losing his/her Nigerian citizenship. Mazi Nnamdi Kanu is a Nigerian citizen by birth. If he has a pending criminal trial, the Nigerian Government is entitled to request for his extradition back to Nigeria in order to answer for allegations of crime made against him by the Nigerian Government. Assuming that he is not even a Nigerian citizen but a British citizen, the Nigerian government could still request from the Kenyan Government for his extradition to Nigeria under the London Scheme for Extradition within the Commonwealth, a multilateral treaty to which both Nigeria and Kenya are signatories. Nigeria does not however have any bilateral treaty with Kenya on extradition of fugitives.

The London Scheme in question forbids the granting of an extradition request without the establishment of a prima facie case against the alleged fugitive and an assurance that the extradited person shall be given a fair trial and shall also not be subjected to torture or kept in deplorable prison or detention facilities. The extradition must not also be for an offence of a political character such as the agitation for self-determination that is being championed by Kanu's Independent Peoples of Biafra (IPOB). It is respectfully submitted that any request for Kanu's extradition to Nigeria from Kenya would not have passed any of the above tests and would suffer the same fate

[12] Constitution of the Federal Republic of Nigeria 1999, section 28.

as that of Mr. Ogunnowo already discussed assuming any such request from the Nigerian Government was made to the Kenyan Government.

There is however no record that there was any such request made to the Kenyan authorities by the Nigerian Government. Kenya has denied receiving any such request from the Nigerian Government or having any hands in the capture and return of Mazi Nnamdi Kanu to Nigeria. Assuming without conceding that the allegations of terrorism against him by the Nigerian Government does not fall within offences of a political character which are non-extraditable, there are no assurances for fair trial and acceptable detention pending trial. What Nigeria did in Kanu's case was simply a case of abduction and kidnap in a foreign land which is classified as international terrorism. Much as one may not fully agree with the approach to the agitation, the Nigerian officials who conducted the kidnap may have a case of international terrorism to answer for at the International Criminal Court at The Hague.

The Nigerian government may however douse the fire of international tension the matter is generating by compromising Kanu's case through granting him pardon and seeking an amicable out of court settlement as part of international diplomacy. What was carried out by the Nigerian government in Kanu;s case is "extraordinary rendition", which is a total violation of international law and is in fact an act of international terrorism.

In the case of Chief Sunday Adeyemo (alias Sunday Igboho), the Nigerian government is requesting for his extradition from the Beninoise government under the 1984 Extradition treaty it has with Benin Republic. This request may also not be granted because the aforesaid treaty excludes political offences from the ambit of its application. Igboho is fighting for an Independent Yoruba nation. What should however be in issue, is whether his method does not by itself constitute terrorism. The right to self-determination is internationally recognized by the United Nation's Declaration on Human Rights (UNDHR). It is also apt to remember that political offences are not extraditable offences under both the London Scheme for Extradition within the Commonwealth and the 1984 Extradition Treaty between Nigeria, Benin, Togo and Ghana. The Benin Republic authorities may have however cleverly chosen to try Mr. Igboho for sundry offences in order to assuage Nigeria's ego and avoid the whirlwind that will result from a fall out with the Nigerian authorities, while at the same time endevouring to avoid a breach of the international law on extradition. Being fully aware that the extradition of Sunday Igboho to Nigeria under the 1984 Treaty may not be possible under the terms of the 1984 treaty, they have decided to keep and try him in Benin Republic. This is also a right approach to international diplomacy on the matter. Benin Republic will certainly not extradite him to Nigeria. According to reports, he is standing trial for forgery of a Beninoise Passport with which he tried to emigrate to the Federal Republic of Germany.

Conclusion

Extradition of criminal fugitives is a prominent feature in the interactions between sovereign nation states. Historically, the practice of extradition predated the emergence of modern sovereign states as we know them today. There are existing bilateral and multilateral treaties between nations of the world on the practice of extradition of criminal fugitives. However, many of these treaties exclude offences of a political character from their definition of extraditable offence. The consequence is that requests for extradition in cases such as that of Nnamdi Kanu and Sunday

Adeyemo are not usually granted as this will violate a critical principle of extradition treaties, i.e, that offences of a political character are non-extraditable.

Furthermore, in a request for extradition, the extraditing country must establish a prima facie case against the fugitive offender sought to be extradited before it can be granted. There must also be evidence that the requesting country has a stable judicial system that can guarantees fair trial and which does not allow for the detention and torture of suspects in prison facilities. The prison/correctional facilities

Notwithstanding the above clear legal stipulations, extradition as a practice is also plagued with the global politics of superiority and inferiority amongst the nations of the world. This explains why since 1935 when Nigeria signed an extradition treaty with the United States of America, no fugitive criminal from that country has ever been extradited to Nigeria for trial or punishment. conversely; Nigeria has consistently honoured the requests of the American Government for the extradition of fugitives under this Extradition Treaty.

On the other hand, the absence of viable democratic institutions such as an independent judiciary, a reformative prison system and the existence of government that operates under the rule of law in most third world countries have hindered the granting of requests for extradition of fugitives' offenders form the advanced countries to such third world countries. This is mainly the reason why a country like Nigeria could resort to extraordinary rendition to return persons it purports to be fugitives.

Another problem is that most third world governments who are intolerant of opposing views would usually want to hide under the cover of extradition treaties to request for the repatriation of their political opponents for persecution.

Recommendations

To achieve the jurisprudential objectives of extradition which is to ensure that offenders are punished, the following recommendations are hereby made:

1.The processes and procedures for extradition should be devoid of politics. It should be used as a purely legal process for bringing fugitive offenders back to the countries where they committed such crimes to answer for their crimes rather than a window for dealing with political opponents by the government in power.

2.The third world countries must as a matter of urgency work on their institutions so as to ensure fair trials and civilized treatment of fugitive offenders when the requests for their extradition are granted.

3.The governments in developing countries must be able to clearly distinguish opposing political views from crimes so as not truncate the international criminal justice system which the principle of extradition is meant to serve.

4.The advanced countries should also stop playing the superiority game and be willing to surrender common criminals for trial and punishment to requesting countries where the crimes were committed. Umaru Dikko for instance was a common criminal. There was no justification

for the refusal of his extradition to Nigeria by the U.K government. to face trial for his acts of looting. This was what compelled the Buhari military junta to attempt his failed extra ordinary rendition by smuggling him into Nigeria in a crate.

5.The United Nations (UN) should sanction countries who engage in extraordinary renditions as well as those who unreasonably refuse to surrender fugitives upon deserving extradition requests or where the requesting country has met the conditions for the grant of an extradition request.