One More Effect of NAFTA - A Multilateral Extradition Treaty?

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I. Introduction

“Shocking and unconscionable” is what a Quebec appellate judge has called a Michigan minimum sentencing law. The Quebec appellate court in *United States v. Jamieson* has declared that an American working at a restaurant in Quebec will not be extradited because extraditing the American would violate the tenets of Canada’s Charter of Rights and Freedoms. Faced with a similar situation in Mexico, although the suspect in question was not American, United States officials kidnapped a Mexican national.

Extradition will become an increasingly important issue since the United States, Mexico, and Canada, now linked economically through North American Free Trade Agreement (hereinafter “NAFTA”), share common borders. Although Canada and Mexico do not share a border, with the recent development of NAFTA, the absence of a unified extradition treaty for the NAFTA actors will prove to be troublesome. As a result of the multilateral NAFTA agreement, now may be the right time for a multilateral extradition treaty between the United States, Mexico, and Canada.

NAFTA is an economic agreement intended to create an expanded and secure market for goods and services produced in the United States, Mexico, and Canada. In particular, NAFTA proposes to “liberalize trade in goods and services and expand

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6. *Id* at 297.
investment opportunities in all three countries" and strengthen the cooperation between the three nations. The repercussions of NAFTA, however, are not limited to economic effects.

Much media attention and discussion have focused on the employment consequences resulting from the economic merger of the three nations. The cultural influence Mexico and Canada will now have on the United States is also a concern. Additionally, immigration issues have come into the spotlight regarding border control and new legislation. Further, Mexico changed its environmental laws in an attempt to appease many environmentalists concerned that U.S. companies will take their business to Mexico and escape tough U.S. environmental regulations. The criminal effects of NAFTA also have sparked debate. Therefore, while NAFTA's purpose is to ensure the prosperity of the U.S., Mexican, and Canadian economies, its effects are not limited to economic consequences.

One effect may be the presence of Mexican nationals in Canada. Illegal immigration is predicted to increase by 100% as a result of NAFTA. Consequently, as the number of illegal immi-

8. NAFTA, supra note 5, at 297.
14. Jorge G. Castaneda & Rafael Alarcon, Perspective on Free Trade: Workers Are a Commodity, Too, L.A. TIMES, Apr. 22, 1991, at B5. The prediction concerning increased illegal immigration is based upon a continued flow of Mexicans. A conservative estimate by a UCLA researcher predicts that 850,000 families working in Mexican agriculture will be displaced by the implementation of NAFTA. Id. As these workers are displaced it is likely that they will make their way into the United States and Canada. The expected increase in illegal
NAFTA grants increases and Mexicans make their way across national borders, it is likely that immigration effects will be felt in Canada.15

Illegal immigration will also affect many aspects of society. Indeed, welfare, crime, education, and the environment are likely to be affected by NAFTA's effect on illegal immigration.16 As NAFTA creates jobs for Mexicans and utilizes Mexican labor resources,17 there will be displaced Mexican workers seeking better lives past the borders of the maquiladoras.18

NAFTA fails to address the possibility that a displaced Mexican worker who either has been charged with or has committed a crime may enter Canada in search of economic opportunity. If this situation occurs, should the Mexican national who now lives in Canada be extradited or should this economic relationship created by NAFTA assume that a foreign national should be subject to the jurisdiction of the nation in which he or she is apprehended? Since no extradition agreement currently exists between Canada and Mexico, the international relationship between the two nations needs to be addressed by a written agreement. Further, the extradition history and policies between the United States and Mexico and the United States and Canada differ. Due to the multilateral economic relationship created by NAFTA, the existing bilateral extradition treaties are not viable. Part II of this Comment will discuss the history of the United

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15. The author does not claim that the potential scenario of Canadians entering Mexico will not become a problem. However, current immigration statistics indicate that it is more likely that Mexicans will continue to illegally enter Canada and the United States rather than Canadians illegally entering Mexico.

16. Nelson, supra note 11, at 987. The United States and Mexico share a 2,000 mile common border, a combined population of 300 million people and a flow of illegal immigrants in the millions. Id. Nonetheless, NAFTA does not address this vital issue.

17. It is reported that as of January 1, 1994, NAFTA has resulted in the loss of 170 jobs for Americans because these jobs have been relocated to Mexico. Klockow, supra note 9, at C7.

18. Maquiladoras are American-owned factories located just beyond the Mexico - U.S. border in Mexico. Maquiladoras & the Border Environment Prospects for Moving From Agreements to Solutions, 3 COLO. J. INT'L ENVTL. L. & POL'Y 683, 683 (1992). The workers are Mexicans who produce finished and partially-finished goods at a reduced duty on only the value added to the product manufactured in Mexico. Id. The goods are sent to the United States to be completed and sold. Id. The U.S. corporations use maquiladoras because the pollution standards are not as stringent and the labor costs are cheaper in Mexico. Id. Furthermore, the U.S. corporations do not have to abide by American labor regulations in Mexico. Id.
States - Canada and the United States - Mexico extradition treaties. This Part further examines recent extradition case law involving the existing treaties. Part III will then review other multilateral extradition treaties and their applicability to the NAFTA situation. This Part will specifically focus on the European Convention on Extradition and the Afro-Asian extradition treaty. Next, Part IV will compare the Mexican and Canadian extradition treaties focusing on the possible interrelationship between these two bilateral treaties. Finally, Part V will predict the success of a multilateral extradition treaty between the NAFTA nations.

II. History of Bilateral Extradition Treaties Involving the United States, Canada, and Mexico

Nations have sovereignty over their borders in order to control the flow of people into their territories.\textsuperscript{19} Further, under the principle of \textit{quidquid est in territorio est etiam de territorio}, a state has supreme authority over all individuals and property within its boundaries.\textsuperscript{20} However, treaties may be written by neighboring nations creating a relationship of compromise and understanding with respect to this flow of people.\textsuperscript{21} This relationship, if created through a written agreement such as a treaty, imposes legal obligations upon each nation.\textsuperscript{22} In particular, the purpose of an extradition treaty is to facilitate "the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender."\textsuperscript{23} Thus, when a national attempts to flee from the

\textsuperscript{19} SATYA DEVA BEDI, \textsc{Extradition in International Law and Practice} 27 (1968). This legal postulate is rooted in the Law of Nations. H.W. BRIGGS, \textsc{The Law of Nations} 413-17 (2d ed. 1953). However, sovereignty is limited to the absence of other agreements reached by the international parties. BEDI at 33.

\textsuperscript{20} \textit{Id.} at 28.

\textsuperscript{21} \textit{Id.} at 33.

\textsuperscript{22} \textit{Id.} at 33 (\textit{citing} H. Lauterpacht, International Law Commission, 1st Report).

\textsuperscript{23} Terlinda v. Ames, 184 U.S. 270, 289 (1902). \textit{See also} C.C. HYDE, \textsc{1 International Law Chiefly as Interpreted and Applied by the United States} 566 (1922). Another definition of an extradition treaty is: the surrender by ONE state to another of an individual who is found within the territory of the former, and is accused of having committed a crime within the territory of the latter; or who, having committed a crime outside the territory of the latter, on one of it subjects, and as such, by its law amenable to its jurisdiction.
jurisdiction in which he or she is criminally charged or convicted, the national is returned through an agreement of international law - an extradition treaty.

The United States has recognized the importance of extradition treaties. The United States Supreme Court stated that

principles of international law recognize no right to extradition apart from Treaty. While a government may, if agreeable to its own constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he had fled, and it has been said that it is under a moral obligation to do so . . . the legal right to demand his extradition and the correlative duty to surrender him to the demanding country exists only when created by treaty.\(^\text{24}\)

Thus, the Court established that legal rights and obligations with respect to extradition are valid “only when created by treaty.” Regardless of any moral obligation to return a fugitive, the Court has acknowledged that the basis of the obligation is written international law. Therefore, extradition treaties are the essence of border relations between nations when a national charged with or convicted of crimes leaves his or her home nation to escape punishment or private or state actors kidnap a wanted suspect.

A. Canada - U.S. Extradition Treaty

The original basis for extradition between Canada and the United States is the extradition treaties drafted by the United States and the United Kingdom (U.K.).\(^\text{25}\) During the 1920's, Canada and the United States extended the implications of the U.S.-U.K. treaty through conventions.\(^\text{26}\) A written treaty, separate from the U.S.-U.K. treaty, was drafted by the United States and

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T. J. LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW 258 (6th ed. 1915). The Lawrence definition, unlike the Hyde definition, does not require any evaluation of the requesting nation's competency to try the accused or convicted national. \(\text{Id.}\) The competency of the requesting nation may include evaluating such factors as judicial integrity, stability of government, and social structure. \(\text{Id.}\)

\(^\text{24}\) Factor v. Laubenhiemer, 290 U.S. 276, 276 (1933).

\(^\text{25}\) The first treaty enacted by the United States and the United Kingdom was Boundaries, Slave Trade, Extradition (Webster-Ashburton Treaty), Aug. 9, 1842, U.S.-U.K., art. X, 8 Stat. 572 [hereinafter 1842 Slave Trade Extradition Treaty].

\(^\text{26}\) The following conventions were held by the United Kingdom and the United States during the 1920's: (1) Convention on the Suppression of Smuggling Between the United States and Canada, June 6, 1924, U.S.-U.K., 44 Stat. 2097 [hereinafter 1924 Smuggling Convention]; and (2) Extradition: Narcotic Violations, Jan. 8, 1925, U.S.-U.K., 44 Stat. 2100 [hereinafter 1925 Narcotics Treaty].

A historical survey of the extradition of fugitives between the United States and the Canada reveals that the extradition treaty based on the 1842 U.S.-U.K. model resolved problems centering around the slave trade. Generally, fugitives who feared capture as a result of conviction or questioning about illegal activities would flee their home nation and simply cross the border into the neighboring nation to escape. Both nations supported the end of slavery; thus, the treaty effectively ordered the deliverance of criminals involved in the slave trade.

Although crimes associated with the slave trade were not extraditable until the 1889 Convention, the 1842 Treaty served to suppress the slave trade indirectly and was used to prosecute those involved with the slave trade. Further, the 1842 Treaty recognized that the boundaries between the United States and Canada were not clear. However, despite the absence of specific physical borders, the United Kingdom and the United States agreed to work together in fighting crime by assuring the deliverance of fugitives to the jurisdiction where they could be properly tried. Thus, the United Kingdom effectuated a prompt delivery system for persons committing crimes in its colony of Canada.

This general deliverance of fugitives was supplemented by a later convention in 1889 between the United States and the United Kingdom. This convention added to the list of extraditable crimes already established by the treaty. It also prohibited the

29. 1842 Slave Trade Extradition Treaty, supra note 25.
30. Id.
31. The treaty defines a criminal as a person who was charged with murder, assault with the intent to commit murder, piracy, arson, robbery, or forgery. Id. art. X.
32. Id.
34. 1842 Slave Trade Extradition Treaty, supra note 25.
35. Id.
36. Id. art. I. Pursuant to subsequent treaties, more offenses were added. In 1900, the following crimes were added to the list of extraditable offenses: (1) obtaining money, valuable securities, or other property by false pretenses; (2) willful and unlawful destruction or obstruction of railroads which endangers human
extradition of a fugitive for political reasons, thus creating the basis for political asylum. Following the extradition convention of 1889, the U.S. and Canada agreed to supplement the existing treaty with conventions expanding the list of extraditable crimes.

The current extradition treaty between the United States and Canada was enacted in 1971. Similar to the first U.S. - U.K. treaty, the 1971 treaty established a goal of repressing crime in the two nations by a reciprocal extradition of offenders. In fact, this treaty replicates many of the articles already enacted in the U.S. - U.K. extradition agreements relating to Canada. However, the two treaties are not the same. Unlike the U.S. - U.K. treaties, the U.S. - Canada extradition treaty addresses the predicament faced when the requested extradition may ultimately result in capital punishment. If the requesting nation may capitaly punish the suspect upon conviction, but the requested nation would not permit capital punishment under such circumstances, extradition may be denied unless guarantees assuring exception from capital punishment are received.

A unique characteristic of the treaty is that the original schedule of extraditable offenses contained in the 1971 extradition treaty was replaced by the 1988 Protocol with a general provision stating, “an offense is extraditable if punishable in both countries
by more than one year’s imprisonment.”44 This statement expands the classes of extraditable offenses originally available in the 1971 treaty.45 Additionally, the 1988 Protocol also expresses a special disapproval of bounty hunters.46

Thus, the U.S. - Canadian extradition treaty now in force is rooted in U.S. - U.K. relations. This root is grounded in fairness and justice. Further, the original extradition agreement entered into focused on the slave trade. The approach to curtailing the crime of slave trading was not to directly arrest those caught trading, but to extradite those persons who were committing ancillary crimes so justice could be served.

After the border between the United States and Canada became more definite, amendments were made to the U.S. - U.K. extradition provisions. Eventually, the United States and Canada identified a need to repress crime through a challenging extradition treaty. This treaty expanded the class of extraditable offenses to crimes punishable in both countries by more than one year’s imprisonment.47 The U.S. - Canadian extradition treaty indicates that transborder fugitives are a major concern and crime will be controlled by sending suspects back to their home nation to either be tried or to serve their sentences.

B. Canada - U.S. Extradition Cases

Numerous cases exist where Americans fled the United States and entered Canada in order to escape either conviction or serving criminal sentences.48 The Canadian courts have dealt with U.S. fugitives charged with or convicted of fraud,49 drug violations,50

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44. Extradition Protocol, supra note 28, at 423.
45. However, a very small number of additional extraditable offenses, such as mail fraud affecting interstate or foreign commerce, crimes of taxation, revenue or of a fiscal nature, and parental kidnapping were specifically included. Id. (i).
46. The United States made a special commitment to stop civilian bounty hunters from kidnapping Canadians charged with or convicted of crimes in Canada. Marian Nash Leich, U.S. Practice: Extradition, 82 AM. J. INT’L L. 336, 336 (1988). In a letter exchanged between U.S. Secretary of State Schultz and Canada’s Secretary of State for External Affairs Clark, the United States committed itself to commence extradition proceedings, pursuant to the 1971 Treaty on Extradition, supra note 27, against a defendant who has been brought into the United States by bounty hunters. Id. at 339.
47. 1971 Treaty on Extradition, supra note 27.
and murder. If the treaty procedure is followed, most fugitives are returned to the United States. However, in recent years, the Canadian courts have debated whether extradition of particular fugitives would violate the Canadian Charter of Rights and Freedoms (hereinafter "the Charter").

Canadian extradition procedures are judicially reviewable executive determinations. In particular, "a court must firmly keep in mind that it is in the Executive that the discretion to surrender a fugitive is vested ... consequently, barring obvious or urgent circumstances, the Executive should not be pre-empted." The court views itself as taking a very limited role in executive decisions concerning extradition.

Canadian judicial review of extradition cases is limited because the judiciary adheres to the tenet that relations between nations are political in character and are best left to the executive actors. Additionally, the text of the Canadian Charter limits its extraterritorial application to matters over which the Parliament has authority over. Nonetheless, the Supreme Court of Canada has

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50. Jamieson, supra note 2.
51. Kindler v. Canada (Minister of Justice) (1991), [1991] 2 S.C.R. 858, 67 C.C.C.3d 1 (fled to Canada after being convicted of first degree murder, conspiracy to commit murder, and kidnapping in U.S.); Ng v. Canada (Minister of Justice) (1991), [1992] 67 C.C.C.3d 61 (U.S. sought for extradition on charges of murder, kidnapping, conspiracy to commit murder, accessory after a murder, conspiracy to kidnap, and burglary where defendant asked Canadian ministry to seek assurances that death penalty would not be imposed).
53. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Sched. B of the Canada Act 1982 (U.K.), 1982, c. 11 [hereinafter The Charter.] In most extradition cases, the "Legal Rights" Section of the Charter is challenged. See Kindler, supra note 51. In particular § 7 and § 12 are sources of the debate. The Charter, §§ 7, 12. Section 7 states that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Id. Section 12 states that "everyone has the right not to be subjected to any cruel and unusual treatment or punishment." Id.
54. Idziak, supra note 49, 77 C.C.C.3d at 471.
55. Mellino, supra note 52, 33 C.C.C.3d at 353.
57. Courts have generally been cautious in their application of The Charter to extradition proceedings. Id. Specifically, although a case by case analysis may seem just, treaties should be interpreted with judicial restraint in order to ensure the fulfillment of international obligations. Id.
58. The Charter, supra note 53. Section 32 of the Charter states (1) This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest
declared that a court of competent jurisdiction may “conclude that the surrender of an individual constitutes a violation of the Charter.” Indeed, the Canadian judiciary has stated that it will continue to review extradition cases, although review will be restrictive.

Two of the most publicly criticized decisions of the Canadian courts concerned the extradition of two Americans facing the death penalty in the United States if convicted. Canadian law does not permit the death penalty because it violates sections 7 and 12 of the Charter prohibiting cruel and unusual punishment. According to the U.S. - Canada extradition treaty, the Canadian executive may require assurances that the death penalty will not be imposed upon a fugitive returned to the United States. However, because extradition proceedings are not criminal proceedings, these assurances are not guarantees. Therefore, a fugitive is not denied his fundamental rights if the Canadian minister fails to seek assurances that the accused or convicted fugitive will not receive capital punishment upon return to the United States. In an interesting turn of events, the Canadian judiciary started to refuse to extradite fugitives subject to the minimum sentencing laws if imposition of minimum sentences would violate the Charter.

In September 1994, a Canadian appellate court refused to extradite a U.S. fugitive who was eligible to receive a twenty year minimum sentence upon return to the United States. In United States v. Jamieson, the appellate court stated that extraditing Jamieson would violate section 7 of the Charter.
concluded that Jamieson would face cruel and unusual punishment violating his human rights if he served Michigan’s twenty year minimum sentence for his alleged crime of selling 273 grams of cocaine. If Jamieson was convicted of the same offense in Canada, he would likely serve 5 years in jail.

The Jamieson case is original. For the first time, a Canadian appellate judge overruled a ministerial decision to extradite a U.S. fugitive for reasons of punishment. Previously, when U.S. fugitives who were charged with crimes or convicted of capital crimes escaped, they secured only a temporary haven in Canada and eventually were extradited. However, the Canadian judge stated, “it is my view that a majority of . . . reasonably well-informed Canadians would consider that appellant faces a situation in Michigan that shocks the conscience and is simply unacceptable.” The judge concluded that sending Jamieson back to the United States to face a twenty year minimum sentence without an opportunity for parole would “offend the Canadian sense of what is fair, right, and just.”

When a Canadian court determines whether an American or any other national should be extradited, the reviewing court must consider the offence for which the penalty may be prescribed, as well as the nature of the justice system in the requesting jurisdiction and the safeguards and guarantees it affords the fugitive. In reaching a decision, the judge may consider the amount of time the fugitive would serve if convicted in Canada as opposed to the

available in LEXIS, News Library, Int’l. File. Prior to his trial in the United States, Jamieson fled to Canada. Id. Once Jamieson entered Canada he acquired an alias and began working at a Montreal restaurant. Id. About five years after his initial entry into Canada, Jamieson was arrested by U.S. drug enforcement agents aided by Canadian police. Id.

73. Swardson, supra note 1.
74. Id.
75. However, the decision has been appealed to the Canadian Supreme Court. The Canadian Supreme Court has not yet decided whether or not it will hear the case. Canadian Court Refuses to Extradite Michigan Drug Suspect, THE LEGAL INTELLIGENCER, Sept. 14, 1994, at 25.
76. Id.
77. Swardson, supra note 1.
78. Id.
79. Baker, supra note 3. This standard is based upon the criteria established in the Kindler case. See Kindler, supra note 51, at 67 C.C.C.3d at 2.
country requesting extradition.80 Because Jamieson would serve a mere five years in Canada for this offense, the judge felt had to intervene because to do otherwise would violate the Canadian constitution.81

Nonetheless, some commentators and Canadian citizens criticized the court's refusal to extradite the fugitive.82 Some believed that Canada should not interfere in the U.S. justice system by encouraging fugitives to enter Canada in search of safe havens.83 Others contended that the cost of keeping Jamieson was an unreasonable expense and a waste of Canadian taxpayers' money.84 Still other Canadians argued that the Canadian legal system should not pass judgment on U.S. law, in particular, mandatory sentencing laws intended to fight an epidemic problem of drug crimes.85 Indeed, it appears that the appellate court, by refusing to extradite Jamieson, passed judgment on the U.S. legal system by declaring that the Michigan twenty year minimum sentencing law at issue was unreasonable and fundamentally unfair.86

Even if the Canadian Supreme Court reviews this case and eventually extradites Mr. Jamieson, there will be cases in the future requiring appellate courts to evaluate U.S. laws.87 Future cases could lead to substantial amounts of litigation, resulting in high costs for the Canadian legal system and a general dissatisfaction among the Canadian populace.88 However, under the current

80. Id. at 3.
81. Swardson, supra note 1.
82. For example, see Kathi Stewart Boucher, Canada Shouldn't Interfere in American Justice, THE OTTAWA CITIZEN, Sept. 2, 1994, at A10.
83. Id.
86. Id.
87. Canadian courts must follow their own constitution and other treaty obligations. See Ng, supra note 51, 67 C.C.C.3d at 65. The U.N. Human Rights Committee found that Canada violated its obligations under the International Covenant on Civil and Political Rights in failing to protect against the imposition of the death penalty. Laurie Watson, Extradition Decision Lets Canadian Government Off Hook, Jan. 26, 1986, available in LEXIS, News Library, ARCNWES File.
88. There have been numerous editorials and opinions concerning the extradition of Jamieson in Canadian newspapers. See Boucher, supra note 82; Justice Begins At Home, supra note 85, at A10. In general, these editorials criticize the Canadian judiciary's interference with a Michigan minimum sentencing law. The editorials also comment on the cost to the Canadian legal system resulting from the Jamieson case. Sullivan, supra note 84. Litigation of the case has already cost $280,000. Id. Finally, the articles reprimand the Canadian
extradition treaty, Canada reserves the right to refuse extradition of fugitives if extradition would violate the Canadian sense of what is fair and just while bearing in mind the nature of the offense, the potential penalty, the foreign justice system, and the discretion that should be given to the Canadian judiciary. Therefore, extradition from Canada requires the Canadian judiciary to judge the requesting nation’s laws to assure that the fugitive will not face unconstitutional treatment under the Charter.

Although the Jamieson case is the first of its kind, there have been subsequent related cases. In September of 1994, the Canadian courts were faced with the extradition of another American charged with a drug offense. Salvatore Cazzetta was arrested in May, 1994 in Florida for drug trafficking. Prior to his trial, Cazzetta, like Jamieson, fled to Canada. The Superior Court of Montreal decided to extradite Cazzetta to the United States. However, Cazzetta is appealing this decision by arguing that he has a right to be heard in Canada. Cazzetta is hoping his extradition will be overturned on the same basis as Jamieson’s.

The Canadian extradition cases recognize a sense of justice and fairness in international relationships. The Canadian judiciary, although directed by its legislature to rarely overrule executive decisions concerning extradition, feels obliged to adhere to the tenets of its Constitution which provides for freedom from cruel and unusual punishment in the issuance of minimum sentences and death penalties.

C. Mexico - U.S. Extradition Treaty

The United States and Mexico first entered into an extradition treaty in 1899. The two nations decided to “deliver up” fugitives for creating a safe haven for fugitives. Canada Should Return Fugitive, THE GAZETTE (Montreal), Aug. 30, 1994, at B2.

90. Id.
92. Id.
93. Id.
94. Id.
95. Id.
96. Baker, supra note 91.
97. Kindler, supra note 51, 67 C.C.C.3d at 31-42.
in order to better administer justice and prevent crime.\textsuperscript{99} Therefore, a fugitive who was charged with or convicted of a crime enumerated in the treaty within the jurisdiction of either the United States or Mexico had to be returned to the requesting nation.\textsuperscript{100} Twenty-one extraditable offenses were included in the 1899 Treaty.\textsuperscript{101} The treaty also specified when extradition could not take place.\textsuperscript{102} As with other international agreements, articles IV and VIII of the treaty required the Executive to issue extradition decisions and required diplomatic agents, such as executive agents, to administer the details of the extradition including the production of the warrant and other necessary papers.\textsuperscript{103} Extradition to third-party nations was also anticipated and denied.\textsuperscript{104}

\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} 1899 Extradition Treaty, supra note 98, art. IV.
\textsuperscript{102} Mexico and the United States anticipated the implications of an extradition treaty and provided that third parties could not request the extradition of a fugitive. Id. art. XII. Article XII reads:

A person surrendered under this convention shall not be tried or punished in the country to which his or her extradition has been granted, nor given up to a third power, for a crime or offense not provided for by this convention and committed previous to his or her extradition, unless the consent of the surrendering government be given for such trial or such surrender to a third power. Id.

However, according to article XVI, if another convention of extradition between a third party and either Mexico or the United States is in effect, the fugitive could be extradited to a third-party nation. Id. art. XVI. Article XVI reads:

A person surrendered to or delivered up by either of the contracting parties by virtue of a convention of extradition with a third party and not being a citizen of the country of transit, may be conveyed in transit across the territory of the other, of the convenient course of travel from or to the country to which he has been surrendered shall lie in whole or
Following a convention in 1902 to amend the treaty, a second agreement was signed in 1925. Furthermore, in 1939, the bilateral agreement was expanded in scope to include accessories to any crimes previously listed as extraditable.

The contracting party delivering up or receiving such surrendered person shall make application for such purpose to the government of the country through which transit is desired, producing in support of such application a duly attested copy of the warrant of surrender issued by the government granting the extradition; and thereupon, the proper executive authority of the country whose territory is to be so traversed may issue a warrant permitting the transit of the surrendered person transported. Such transit must be wholly accomplished within thirty days, counting from the date of the entrance of such transported person within the territory of the country of transit, after which time said person may be set at liberty if there found.

Thus, assume that a Canadian fugitive fled to the United States and then to Mexico. According to the first extradition treaty between the United States and Mexico, the Canadian government could petition the United States government to request Mexico to extradite the fugitive to the United States. The United States, according to its extradition treaty with Canada, could then extradite the fugitive to Canada.

Approximately three years after signing the treaty, the United States and Mexico added the crime of bribery to the list of extraditable offenses covered by the treaty. Extradition, June 25, 1902, U.S.-Mex., T.S. 421.

The crimes of trafficking and using narcotic drugs, the manufacturing of or traffic in substances injurious to health or poisonous chemicals, and smuggling were added to the list of extraditable crimes. Extradition, Dec. 23, 1925, U.S.-Mex., 44 Stat. 2409 [hereinafter 1925 Extradition Treaty]. Obviously, the U.S.-Mexican border is the perfect door for the drug trade because a criminal could trade drugs in one nation and then escape by crossing the border. For a current critique of this problem, see Miriam Mercado, Central America is Gateway to Drugs for United States, Notimex American News Serv., available in LEXIS, News Library, NON-U.S. File. For example, criminals could produce drugs in Mexico and simply bring the drugs into the United States to sell. Upon sale, the criminal would disappear in Mexico. Because no crime had been committed in Mexico, the criminal would not be a concern to the Mexican police. The 1925 Convention attempted to remedy this problem by requiring the Mexican police to return any person to the United States who had violated a drug law, including the trafficking of chemicals hazardous to a human’s health. 1925 Extradition Treaty, art. I. Under the 1925 Convention, violations of customs laws were added to the list of extraditable offenses. Id. Thus, by 1925 the list of extraditable offenses totaled 25. Id. at art. II.

Another offense designated in the Supplementary Extradition Convention states that “extradition shall also take place for participation in any of the crimes before referred to as an accessory before or after the fact; provided such participation be punishable by the laws of both the High Contracting Parties.” Extradition Convention, U.S.-Mex., Aug. 16, 1939, art. I, 55 Stat. 1133.
In 1978, the U.S. and Mexico signed a completely revised extradition treaty which is still in force today. One of the goals of the new proclamation was to further the fight against crime and establish better procedures for extradition. The first article of the treaty creates a mutual obligation to extradite persons who have committed a crime in either the U.S. or Mexico. Further, the U.S. and Mexico are required to extradite a national who commits a crime outside the territory of the requesting party if either of two situations exist.

Under the first situation, if the harboring nation's laws would punish the fugitive in similar circumstances, then extradition must be granted. Further, in the second situation, the nation must extradite the fugitive if the fugitive is a national of the requesting nation, and the requesting nation has jurisdiction to try this fugitive under its own law. This obligation to extradite creates a large class of extraditable persons who have committed crimes outside the jurisdiction of either country who have then fled to Mexico or the United States.

The second article sets up the schedule of extraditable offenses listed in an appendix to the treaty. However, the list of crimes included in the Appendix is not exhaustive. The second article permits extradition for willful acts punishable by more than one year of imprisonment. Also, extradition must be granted

109. Id.
110. Id. art. I.
111. Id.
112. Id.
114. Id. art. 2.
115. Id. app.
116. Extraditable crimes include those that fall into the categories of crimes listed in the Appendix. Id. art. 2. Therefore, the list does not appear to be exhaustive and includes related crimes within the category of extraditable offenses. If the fugitive has already been convicted and served part of his jail term, the remaining jail time must be for at least more than six months. Id. The reason for this minimum requirement is likely that extradition is a long, expensive process. Consequently, by the time a fugitive's extradition is requested and reviewed, much of the six months of jail time will have expired.
117. This clause states "extradition shall also be granted for willful acts which, although not being included in the Appendix, are punishable, in accordance with the federal laws of both Contracting Parties, by a deprivation of liberty the maximum of which shall not less than one year." U.S.-Mex. Extradition Treaty, supra note 108, art. 2. The language in the clause indicates that in order for the
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for attempting or conspiring to execute or participating in execution of an offense listed in the Appendix. In addition, the treaty addresses the issue of jurisdiction and permits the United States to have overreaching powers.

The United States and Mexico have agreed to prohibit extradition of fugitives involved in political or military offenses. This prohibition is based on the concept of refuge which allows nationals to search for refuge where nations share common physical borders. Nonetheless, some offenses have been deemed unworthy of such an exception.

The controversial issue of capital punishment is included in the 1978 extradition treaty. Article 8 of the Treaty does not mandate extradition of a fugitive who faces the death penalty if he is or has been convicted. Thus, the harboring nation will view extradition with discretion if it does not allow for the death penalty for particular offenses.

If the requesting state, the nation where the fugitive is hiding, permits the death penalty for the charged offense, the treaty must be enforced and the fugitive must be extradited. In the alter-

118. Id.
119. Id.
120. Pursuant to article 5 of the treaty, political and military offenses are not be extraditable. Id. art. 5. However, the determination of what constitutes such an offense is left to the authority of the Executive of the requested party. Id.
121. Id.
122. Id. art. 2. The offenses which are excluded from the political and military exceptions are:
   a) The murder or other wilful crime against the life or physical integrity of a Head of State, of Head of Government or his family, including attempts to commit such an offense.
   b) An offense which the Contracting Party [the United States or Mexico] may have the obligation to prosecute by reason of a multilateral international agreement.
124. Id.
125. Id.
126. Id.
native, if the requested party does not permit capital punishment for that particular crime, the requesting nation may make assurances that the death penalty will not be imposed and the fugitive must then be extradited.\textsuperscript{127}

Some situations exist which do not require the extradition of a fugitive. If the fugitive is a national of the requested party, the requested nation is not bound to extradite.\textsuperscript{128} However, the Executive of the requested nation may, in its discretion, deliver the national for extradition.\textsuperscript{129} Nonetheless, if the Executive does not extradite the fugitive, the requested nation must prosecute the fugitive if it has proper jurisdiction.\textsuperscript{130} Obviously, the effectiveness of this clause is not clear. Indeed, Mexico has never acceded to a U.S. request for extradition of a Mexican national.\textsuperscript{131}

Most recently, Mexico refused to extradite Serapio Zongiga-Rios for prosecution in the brutal rape of a four year old American child.\textsuperscript{132} Further, there are reports that the Mexican legal system is corrupt.\textsuperscript{133} For example, a Mexican lawyer reported that after inquiring about a client at a Mexican police station, the police searched his home, terrorized his friends and family, and forced the lawyer to submit a forced confession all without probable cause.\textsuperscript{134} Even the Mexican electoral system is plagued with accusations of coercion by government officials and union agencies.\textsuperscript{135} Ultimately, these reports of corruption will lead to a congressional hearing on the rampant bribery and corruption of Mexican officials.\textsuperscript{136} Therefore, it is possible that the extradition treaty is not completely effective in suppressing crime because the Mexican national who is not extradited may face inappropriate sanctioning.

\begin{enumerate}
\item \textsuperscript{127} Id.
\item \textsuperscript{128} U.S.-Mex. Extradition Treaty, supra note 108, art. 9.
\item \textsuperscript{129} Id. art. 9(1).
\item \textsuperscript{130} Id. art. 9(2).
\item \textsuperscript{131} Jimmy Gurule, Think Twice on Extradition Treaty, CHI. TRIB., June 27, 1994, at 13.
\item \textsuperscript{132} Id.
\item \textsuperscript{133} Christopher Whalen, Bordering on Repression: We Shouldn't Trade Freely with Mexico Until It Cleans Up Its Act, WASH. POST, Dec. 27, 1992, at C3.
\item \textsuperscript{134} Les Whittington, Torture and Free Trade: Mexico, which could soon have closer ties to Canada through free trade, continues to be a country where almost anyone who arrested runs the risk of police torture, THE VANCOUVER SUN, Nov. 9, 1991, at B6.
\item \textsuperscript{135} More Democracy Needed in Mexico; Reforms are positive but killings and impunity persist, THE GAZETTE (Montreal), Aug. 24, 1994, at B2.
\end{enumerate}
The United States and Mexico realized that extradition of criminals could be more effective if the two nations agreed to mutually assist in the investigation of crimes and the capture of criminals.\textsuperscript{137} Thus, in 1988, the U.S. and Mexico signed the Mutual Legal Assistance Cooperation Treaty (hereinafter “Mutual Assistance Treaty”).\textsuperscript{138} This treaty calls for cooperation in criminal matters including: (1) the taking of testimony or statements of witnesses;\textsuperscript{139} (2) the provision of documents, records, and evidence;\textsuperscript{140} (3) the execution of requests for searches and seizures;\textsuperscript{141} (4) the serving of documents;\textsuperscript{142} and (5) the assistance with immobilizing, securing, and forfeiture of the proceeds, fruits, and instrumentalities of crime.\textsuperscript{143} In addition to the implementation of the Mutual Assistance Treaty, the United States and


\textsuperscript{138} Id. at 447. The treaty aspires to provide assistance in the “prevention, investigation and prosecution of crimes” and in other criminal and ancillary proceedings arising from the criminal acts in question. Id. Therefore, the treaty facilitates easier investigation and processing after formal charges have been filed. Id.

\textsuperscript{139} Pursuant to article 5 of the Mutual Assistance Treaty, the requested nation must pay all costs relating to (1) the execution of the request for witnesses except for the lawful fees of witnesses and expert witnesses and (2) travel costs incurred by witnesses. Id. art. 5. Article 7 states that a subpoena must compel the testimony of a witness. Id. art. 7. Also, article 8 requires that the witness, although subpoenaed to appear, consent to testifying in the extradition proceeding. Mutual Assistance Treaty, supra note 137, art. 8. These provisions indicate that the production of witnesses will be facilitate by the terms of the treaty. Id.

\textsuperscript{140} Id. at 449-50. Article 10 of the Mutual Assistance Treaty requires the harboring nation to provide the requesting party with available public records of government departments and agencies. Id. Furthermore, if the documents are not publicly available, but are available to law enforcement officers or judicial authorities, the documents must be provided to the requesting party as long as no legal prohibitions exist. Id.

\textsuperscript{141} Upon the requesting party’s inquiry, article 12 of the Mutual Assistance Treaty permits the requested party to execute a search or seizure pursuant to its own laws. Mutual Assistance Treaty, supra note 137. Once a search has been completed, its fruits may be admissible at trial upon certification by the party who actually conducted the search. Id. at 447.

\textsuperscript{142} Article 14 of the Mutual Assistance Treaty requires the requested nation to serve a party upon the showing of cause by the requesting nation. Id. at 451.

\textsuperscript{143} Article 11 of the Mutual Assistance Treaty allows a party to notify the other party when it has reason to believe that proceeds, fruits or instrumentalities of crime are located within its territory. Id. at 450. Additionally, the two parties will assist one another in immobilizing, securing, and collecting the proceeds, fruits, and instrumentalities of crime, restitution and fines. Mutual Assistance Treaty, supra note 137, at 450.
Mexico revised their 1978 extradition treaty with an accord in 1994. The accord prohibits cross-border kidnapping of criminal suspects wanted for prosecution in either the U.S. or Mexico. Although the accord still must be ratified by official lawmakers in both nations, it signifies a reestablished movement towards cooperation in extradition.

Thus, the United States and Mexico can not deny that crime is a problem along the stretch of border that the two nations share. Criminals will probably continue to find that crossing over a nation's border is the easiest way to escape prosecution. However, the United States and Mexico have gone beyond the formal requirements of extradition by combining their law enforcement efforts to suppress crime.

D. Mexico - U.S. Extradition Cases

Generally, the United States and Mexico have faced problems with the extradition treaty of Mexican nationals from Mexico. The most recent case, United States v. Alvarez-Machain, involved the abduction by U.S. agents of a Mexican doctor who supposedly was involved in the murder of a U.S. federal drug enforcement agent. The United States Supreme Court concluded that the national's abduction from Mexico was not a violation of the Mexico - U.S. extradition treaty.

145. Id.
146. Id.
147. See Mercado, supra note 106. See also Unique Opportunity U.S.-Mexico Should on Drug Trafficking, SAN DIEGO UNION & TRIB., Mar. 13, 1994, at G2 (Mexico and U.S. began implementation of a joint task forces to combat drug trafficking over the border).
148. It is likely that the U.S. Supreme Court's decision in Alvarez-Machain, supra note 4, may displace remaining effects of the Mutual Assistance Treaty. In Alvarez-Machain, a Mexican national was abducted by United States government authorities. Id. at 657. Although the Court admonished the U.S. government’s actions, it concluded that the terms of the U.S.-Mexico extradition treaty did not prohibit the Mexican national’s abduction. Id. at 669.
149. The Mexican national was charged with conspiracy to commit violent acts in furtherance of racketeering acts, violation of racketeering acts, conspiracy to kidnap a federal agent, kidnapping of a federal agent, and felony murder of a federal agent. Id. at 657.
150. Id. at 669-70. Many commentaries have criticized the Supreme Court's ruling in Alvarez-Machain. See, e.g., Jordan J. Paust, After Alvarez-Machain: Abduction, Standing, Denials of Justice, and Unaddressed Human Rights Claims, 67 ST. JOHN’S L. REV. 551 (1993); Stephanie A. Re, “The Treaty Doesn't Say We Can't Kidnap Anyone”-Government Sponsored Kidnapping as a Means of
The Court analyzed the extradition treaty in terms of its express language.\textsuperscript{151} The Court initially acknowledged that Article 9 of the Mexico - U.S. extradition treaty states that neither Mexico nor the United States is obligated to deliver its own nationals to the other nation for prosecution.\textsuperscript{152} However, the treaty does not prohibit abduction of a national in order to prosecute.\textsuperscript{153} Because the extradition treaty does not prohibit the abduction of an accused criminal, U.S. courts are not precluded from obtaining personal jurisdiction by this means.

The Court thus applied its long-standing Ker\textsuperscript{154} - Frisbie\textsuperscript{155}...
Rule. This Rule states that the power of a court to try a person for a crime is not impaired by reason of a forcible abduction.\footnote{156} The Court held that the abduction of a Mexican national with the aid of or by the direction of the U.S. government does not preclude the U.S. courts from prosecution due to lack of personal jurisdiction.\footnote{157} Therefore, where the United States and Mexico have attempted to extradite a national from his own nation\footnote{158} pursuant to article 9,\footnote{159} and the extradition treaty has not provided a solution, a government may turn to forcible abduction.\footnote{160}

The dissenting justices in \textit{Alvarez-Machain} suggested that international law had been violated. International law prohibits securing personal jurisdiction by abduction of the suspect.\footnote{161} Nonetheless, the Court's opinion concluded that the extradition treaty between the United States and Mexico was not violated because an executive police power was exercised.\footnote{162} According to the majority, then, it follows that international law was not violated.\footnote{163}

In order to supplement its reasoning, the Court discussed the purpose of the U.S. - Mexico extradition treaty.\footnote{164} The Court stated that in the absence of an extradition treaty, nations are under no obligation to surrender persons to foreign authorities for justice simply because he was forcibly brought before a tribunal. \textit{Id.} \footnote{156} \textit{Alvarez-Machain}, supra note 4, at 665. \footnote{157} \textit{Id.} at 662-70. The court applies its \textit{Ker-Frisbie} rule, regardless of the identity of the abductors. \textit{Id.} at 662-63. \footnote{158} It is speculated that the United States Department of State and the Government of Mexico exchanged notes prior to the abduction. Keith Highet, et al., \textit{International Decisions: United States v. Alvarez-Machain}, 86 \textit{AM. J. INT'L L.} 811, 811 (1992). Thus, it may be assumed that a deal for Alvarez-Machain's extradition was attempted. \textit{Id.} \footnote{159} \textit{Alvarez-Machain}, see supra notes 4, 148 and 149 and accompanying text. \footnote{160} Abduction is referred to as informal extradition. \textbf{GERHARD VON GLAHN}, \textit{LAW AMONG NATIONS} 267-69 (1976). A great variety of devices and practices are utilized by a state to apprehend civil, criminal and political offenders. \textit{Id.} These practices and devices do not follow the details and characteristics of normal practice pursuant to an extradition treaty. \textit{Id.} After forcible abductions have taken place, some nations (the United States in particular) do not return the defendant to the nation from which he was abducted. \textit{Id.} Formal apologies may, however, be sent from the abducting state to the abductee's home state. \textbf{See} Helen Silving, \textit{In Re Eichman: A Dilemma of Law and Morality}, 55 \textit{AM. J. INT'L L.} 307-58 (1961) for an example of an apology resulting from an abduction case in the case of Adolf Eichmann who was abducted by some private citizens in Argentina and taken to Israel. \footnote{161} \textit{Alvarez-Machain}, supra note 4, at 670-88. \footnote{162} \textit{Id.} at 669. \footnote{163} \textit{Id.} at 667-70. \footnote{164} \textit{Id.} at 659.
prosecution. Therefore, if nations mutually agree to extradite people, they are not protecting their territorial sovereignty but are attempting to secure the return of fugitives. By securing a return of fugitives through such means as abduction, states risk alienating neighboring nations. In Alvarez-Machain, after the Supreme Court confirmed the lower court’s jurisdiction, the case was remanded for trial. The lower court judge concluded that no substantive case existed against Alvarez-Machain and, thus, dismissed all charges. Deviation from treaty applicability most likely caused damage to the U.S.-Mexican relationship as the Mexican government publicly reprimanded the U.S. for its involvement in the Alvarez-Machain abduction. Further, the U.S. government now faces a multi-million dollar law suit for damages suffered by Alvarez-Machain. Thus, extradition of nationals is a critical concern in all extradition treaties.

III. Multilateral Extradition Treaties

Generally speaking, the extradition laws of many nations provide that extradition may only be granted pursuant to a treaty. Thus, for those nations that share borders with more than one nation or foresee the flow of their people to neighboring nations, it may be wise to draft a multinational extradition treaty. Furthermore, for nations in close geographic proximity to one another, a multilateral extradition treaty may be more

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165. United States v. Rauscher, 119 U.S. 407, 411-12 (1886). Rauscher was decided on the same day as Ker, supra note 154. The court in Rauscher concluded that if a requesting nation violated an extradition treaty in bringing a fugitive before a court, the defendant must be repatriated. Id. Although the Court has reviewed several extradition cases, it has yet to specifically characterize a violation of an extradition treaty. Alvarez-Machain, supra notes 4, 151-64, and accompanying text.

166. Id.


169. Lauter, supra note 150.


171. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 475 cmt. b (1990). Some nations permit extradition in the absence of a treaty. Id. In such instances, extradition is based on reciprocity and the incorporation of the dual criminality doctrine. Id.

172. The European Union has already anticipated the movement of terrorists and has ratified the Council of Europe’s European Convention of the Suppression of Terrorism which authorizes extradition of terrorists between Member nations. Written Question to the Council of European Communities, 1990 O.J. (C 303) 38.
effective and justifiable.\textsuperscript{173} As an example, suppose three nations share borders such that the border of state A touches the physical border of state B and state B shares a border with state C. If the extradition laws of the three nations are very different, a fugitive could plan his escape to the nation least likely to extradite pursuant to its extradition treaty. A multilateral treaty which provides for similar treatment of fugitives apprehended in all three nations would ameliorate this scenario.

Several groups of nations have ratified multilateral extradition treaties.\textsuperscript{174} As of 1990, the European Union was very concerned about the harmonization of extradition procedures because two nations had not ratified the European Convention on Extradition of 1957.\textsuperscript{175} In 1992, with the execution of the Single European Act, this problem was solved by the unified extradition treaty.\textsuperscript{176}

Nations that are not a unified economic unit also have discussed multilateral extradition treaties.\textsuperscript{177} Therefore, although the United States, Canada, and Mexico are members of a multilateral trade agreement instead of an economic union, a discussion of the multilateral extradition treaty enacted by the European Union\textsuperscript{178} and the multilateral extradition treaty proposed by the Afro-Asian\textsuperscript{179} world is instructive.

The European Convention on Extradition\textsuperscript{180} obligates con-

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\textsuperscript{175} European Convention on Extradition, supra note 174; Afro-Asian Treaty, supra note 174.

\textsuperscript{177} Arab Convention, supra note 174, 218-24.

\textsuperscript{178} The current extradition treaty in force is basically the same as the multilateral treaty which was promoted by the Community in 1990, and now in effect for the Union. Written Question No. 1236/90, 1990 O.J.C. (C 303) 38.

\textsuperscript{179} Afro-Asian Treaty, supra note 174.

\textsuperscript{180} European Convention on Extradition, supra note 174, at 273. An additional protocol to the 1957 European Convention on Extradition was enacted in 1975. Protocol to the European Convention on Extradition, Aug. 20, 1979, E.T.S. 86, 24 I.L.M. 1505 [hereinafter Protocol]. This Protocol excludes human rights violations and war crimes from the list of extraditable offenses. Id. The Protocol further defines when extradition can be refused on the ground that the fugitive has already been tried in the requested nation. Id. Subsequently, in 1978, another Protocol was added to the Convention. This Protocol further develops the
\end{quote}
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tracting parties to surrender all persons sought for an offense or for the completion of a sentence. Similar to other bilateral treaties, the purpose of this multilateral treaty is to return fugitives in an effort to decrease crime. However, the treaty's specific purpose is to achieve greater unity between its members.

In contrast, the Afro-Asian multilateral treaty states within its first article that five nations, Burma, Ceylon, India, Japan, and Pakistan, were in favor of bilateral extradition treaties. Only two of the nations, Iraq and the United Arab Republic, endorsed a multilateral treaty, while Indonesia did not express a view. Therefore, while there is an indication in the European multilateral treaty that the agreement will not only control crime but also will unify some European nations, this may not be the case in the Afro-Asian multilateral treaty since no policy of a unified fight against crime is stated.

Article 2 of the European Convention treaty fails to provide a list of extraditable offenses. However, like the Mexican and Canadian extradition treaties, crimes which are punishable by a minimum period of at least one year are extraditable. In contrast, the Afro-Asian treaty provides three alternatives for extraditable offenses. The first alternative sets the minimum prison sentence at three years. The second alternative requires a one year punishment term which includes the extradition of crimes of accessory and attempt. Finally, alternative three provides a schedule of extraditable crimes.


\[\text{181. European Convention on Extradition, supra note 174, at 274.}\]

\[\text{182. The term \textit{members} refers to members of the Council of Europe. Id. at 274.}\]

\[\text{183. Afro-Asian Treaty, supra note 174.}\]

\[\text{184. Id.}\]

\[\text{185. Id. A possible explanation for the difference in positions is that Iraq and the United Arab Republic, were not as powerful in terms of political might compared to Burma, Ceylon, India, Japan and Pakistan. Therefore, these stronger nations likely believed that they could negotiate separate bilateral treaties that included provisions in their favor.}\]

\[\text{186. European Convention on Extradition, supra note 174, art. 2.}\]

\[\text{187. The article also states that fugitives who have already received a sentence are extraditable only if the sentence is longer than four months. Id.}\]

\[\text{188. Afro-Asian Treaty, supra note 174, art. 2.}\]

\[\text{189. Id.}\]

\[\text{190. Id.}\]

\[\text{191. The schedule includes 18 crimes. Id. art. 2. The extraditable offenses include (1) homicide; (2) attempt to murder; (3) causing miscarriage and}\]
In both multilateral treaties, a special provision excludes extradition based on military or political offenses.\textsuperscript{192} The European multilateral treaty goes further and excludes from extraditable offenses those offenses based on the fugitive's race, religion, nationality, or political opinion.\textsuperscript{193} Additionally, both treaties prohibit extraditing nationals of the requested nation who are requested for extradition.\textsuperscript{194} Furthermore, according to the Asian-African model, if a fugitive is abducted, the nation from which the fugitive was abducted may demand his return.\textsuperscript{195}

In conjunction with the notion of cooperation between the signatory nations, the European Convention includes a special provision regarding capital punishment.\textsuperscript{196} If the requested nation does not "normally carry out" the death penalty for a certain offense, extradition may be refused unless the requesting party provides sufficient assurances that the death penalty will not be

abandonment of child; (4) kidnapping, abduction, slavery and forced labor; (5) rape and unnatural offenses; (6) theft, extortion, robbery and dacoity; (7) criminal misappropriation and criminal breach of trust; (8) cheating; (9) mischief; (10) forgery, using forged documents and other offenses relating to false documents; (11) offenses relating to coins and stamps; (12) piracy by law of nations committed on board or against a vessel of a foreign state; (13) sinking or destroying a vessel at sea or attempting or conspiring to do so; (14) assault on board a vessel on the high seas with intent to destroy life or to do grievous bodily harm; (15) revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas against the authority of the master; (16) smuggling of gold, gold manufactures, diamonds, and other precious stones or of any narcotic substances; (17) immoral traffic in women and girls; (18) any offense which may, from time to time, be officially specified either by all states or specifically one or more states.

\textsuperscript{192} Afro-Asian Treaty, \textit{supra} note 174, art. 2. European Convention on Extradition, \textit{supra} note 174, art. 11.

\textsuperscript{193} This exception to the list of extraditable offenses is noteworthy because it takes into account the political and social differences of the signatory nations. European Convention on Extradition, \textit{supra} note 174, arts. 4 and 11. Each nation may have inherent social problems revolving around political issues. \textit{Id}. Therefore, as the nations have agreed to unify themselves, they are taking responsibility for one another by providing refuge to European citizens. \textit{Id}.

\textsuperscript{194} Article 6 of the European Convention gives each contracting party a right to refuse extradition of its own nationals. European Convention on Extradition, \textit{supra} note 174, art. 6. Furthermore, each nation may define the term national for treaty purposes. \textit{Id}. Allowing each nation to define national indicates that aliens, legal or illegal, also may be extradited once they enter a nation that has signed the convention. European Convention on Extradition, \textit{supra} note 174, art. 6. The Afro-Asian treaty does not indicate any special definition for national but states that extradition shall not be refused because the fugitive is not a national. Afro-Asian Treaty, \textit{supra} note 174.

\textsuperscript{195} Afro-Asian Treaty, \textit{supra} note 174, art. 21.

\textsuperscript{196} European Convention on Extradition, \textit{supra} note 174, art. 11.
imposed. However, this Convention permits a nation to refuse extraditing, even if it tolerates the death penalty. The nation may evaluate the death penalty and alleged crime in accordance with its own law. If the law in the requested nation would not impose the death penalty for the fugitive’s crime, extradition may be refused. Similar to the United States v. Jamieson case, this provision may be problematic because the extraditing nation judges the appropriateness of another nation’s law. If crime and punishment are dealt with somewhat similarly in the signatory nations, however, such a judgment should not cause problems. Nonetheless, it may be argued that a state should not blindly accept the laws of another nation if those laws are considered barbaric or uncivilized. Although challenging the law of another nation may seem to be a just response with respect to individual human rights, such adjudication on a case by case basis may be destructive in terms of international relations.

The European and Afro-Asian multilateral treaties address issues not contained in most bilateral extradition treaties. For example, article 23 of the European treaty permits the extraditing nation to request a translation of a document into a language of its choice. Additionally, the European and Afro-Asian treaties include articles describing their relationship with other bilateral treaties. According to article 28 of the European

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197. "Id.
198. Article 11 reads:
   If the offense for which extradition is requested is punishable by death under the law of the requesting party, and if in respect of such offense the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting party gives such assurance as the requested party considers sufficient that the death-penalty will not be carried out.
European Convention on Extradition, supra note 174, art. 11.
199. "Id.
200. Jamieson, supra note 2, at 465. See also supra notes 68-97 and accompanying text.
201. The European Union prides itself in fighting crime as a unified force as much of its crime policy revolves around international agreements such as the Council of Europe’s European Convention on the Suppression of Terrorism as signed in 1978 prior to the formation of the Union. See Written Question No. 1236/90, supra note 178.
202. See Kindler, supra note 51.
204. "Id.
205. Afro-Asian Treaty, supra note 174, art. 2.
Convention, the multilateral treaty supersedes any bilateral treaty, convention, or agreement governing extradition between any two signatory nations.\textsuperscript{207} However, the treaty does permit another group of two or more nations to extradite based on indistinguishable laws provided that the signatory nations regulate the law with respect to this multilateral treaty.\textsuperscript{208} The Afro-Asian treaty does not require compliance with the multilateral agreement, but permits the two nations to apply the most suitable provisions from either a bilateral or multilateral agreement.\textsuperscript{209}

IV. Why Propose a NAFTA Multilateral Extradition Treaty?

In order to appreciate NAFTA, it must be viewed as an agreement involving trading partners representing billions of people. Business deals will be consummated, laws will change, and trade will grow.\textsuperscript{210} However, it is projected that illegal immigration will increase by one hundred percent.\textsuperscript{211} Also, Canadians are worried about the effects NAFTA will have on their nation.\textsuperscript{212} Mexico is concerned about the growth of its economy and has been willing to make numerous concessions to reach the bargaining table as a formidable player.\textsuperscript{213} It appears that if the United States hopes to benefit from NAFTA,\textsuperscript{214} this may be the appropriate time for the United States to secure NAFTA's success through a multilateral extradition treaty.

To propose such a multilateral treaty, the United States must determine the purpose of the treaty beginning with an international law analysis.\textsuperscript{215} Beyond the purpose of the treaty, some reflection must be given to the historical significance of the instant U.S. - Canada and U.S. - Mexico extradition treaties. Once the guidance of history is considered, and a new multilateral treaty is proposed

\textsuperscript{207} European Convention on Extradition, \textit{supra} note 174, art. 28.
\textsuperscript{208} Id.
\textsuperscript{209} Afro-Asian Treaty, \textit{supra} note 174, art. 30.
\textsuperscript{211} Nelson, \textit{supra} note 11, at 987.
\textsuperscript{215} See \textit{BEDI}, \textit{supra} note 19.
using the age old art of looking to other multilateral treaties as models, the United States should propose an extradition treaty resolving concerns that Americans, Canadians, and Mexicans have expressed about NAFTA. By attempting to address some of the side effects of NAFTA, the economic treaty will be stronger and more useful. For instance, extraneous factors such as crime will be controlled with an extradition treaty. Further, in the absence of an unified extradition treaty, no obligation for extradition exists.

The first U.S.-Canada extradition treaty, originally drafted by the U.S. and U.K.,\(^2\)\(^1\)\(^6\) dealt with the social and economic issue of slavery and worked to resolve its resulting criminal effects.\(^2\)\(^1\)\(^7\) Therefore, the origin of U.S.-Canada extradition relations began with negotiations and promises made by a nation, the U.K., that did not share a physical border with both Canada and the U.S.\(^2\)\(^1\)\(^8\)

Once a treaty was enacted solely between the United States and Canada, Canada used the extradition treaty as an expression of its territorial independence.\(^2\)\(^1\)\(^9\) Canadians became concerned with the social problem of bounty hunters and consequently used politics to ensure the end of the practice.\(^2\)\(^2\)\(^0\) Canada further asserted its power to control their territory through judicial determinations.\(^2\)\(^2\)\(^1\)

Following the adoption of the Charter,\(^2\)\(^2\)\(^2\) Canada began to explore the Charter’s effect on all those who entered the nation. The Canadian courts have tried to restrain themselves from interfering with executive extradition decisions.\(^2\)\(^2\)\(^3\) However, the death penalty\(^2\)\(^2\)\(^4\) and minimum sentencing laws\(^2\)\(^2\)\(^5\) cause problems in extradition cases because the Canadian criminal system differs from the United States system. Therefore it should be no surprise that Canadians have criticized the “reform” of Mexico’s legal system.\(^2\)\(^2\)\(^6\)

\(^{216}\) 1842 Slave Trade Extradition Treaty, supra note 25.
\(^{217}\) Id.
\(^{218}\) Id.
\(^{219}\) See Swardson, supra note 1. The Quebec appellate court’s Jamieson decision demonstrates the ideological social and legal differences between the U.S. and Canada, including contrasting views of just punishment in the respective states.
\(^{220}\) Baker, supra note 3.
\(^{221}\) See Kindler, supra note 51.
\(^{222}\) The Charter, supra note 53.
\(^{223}\) Schmidt, supra note 56, 33 C.C.C.3d at 212.
\(^{224}\) Pak, supra note 41.
\(^{225}\) Morning Edition, supra note 72.
\(^{226}\) Diane Francis, Mexican Road to Reform No Easy Route, THE FIN. POST, Mar. 25, 1994, § 1, at 7.
Canadians hesitate to say that the Mexican criminal system is reformed since business people are kidnapped and reports indicate that Mexican officials are corrupt.\textsuperscript{227} Therefore, to allow an illegal Mexican alien to enter Canada and then be sent through the Canadian judicial system may cause practical problems similar to those occurring between the United States and Canada in the \textit{United States v. Jamieson} case. Thus, for the Canadian courts to delve into Mexican law without the guidance of an extradition treaty might be disastrous.

In the case of the U.S.-Mexico extradition treaty, the purpose again was to prevent crime.\textsuperscript{228} In order to facilitate this purpose, the early treaties permitted a third-party state to petition for extradition of a fugitive through the United States or Mexico.\textsuperscript{229} With its concentrated focus, the nations set up conditions that would solve problems if a fugitive committed a crime outside either nation's territory and then fled. If a Canadian committed a crime in his home country and realized that he could easily travel into the United States and then into Mexico, the U.S.-Mexico extradition could possibly facilitate his return to Canada. However, there have been no reported cases of the applicability of this provision of the treaty.

One of the biggest differences between the Mexican and Canadian extradition treaties is that the Mexican treaty still incorporates a schedule of offenses\textsuperscript{230} while the Canadian treaty has completely eliminated a schedule.\textsuperscript{231} This may be problematic. For example, abortion is illegal in Mexico,\textsuperscript{232} but not in Canada.\textsuperscript{233} In the United States, abortion laws vary from state to state. Nonetheless, while Mexico's extradition laws vary from state to state.

\begin{thebibliography}{9}
\bibitem{227} Les Whittington, \textit{Torture and free trade: Mexico, which could soon have closer ties to Canada through free trade, continues to be a country where almost anyone who is arrested runs the risk of police torture}, \textit{The Vancouver Sun}, Nov. 9, 1991, \textit{available in LEXIS, News Library, NON-U.S. File}.
\bibitem{228} 1899 Extradition Treaty, \textit{supra} note 98.
\bibitem{229} \textit{Id}.
\bibitem{230} 1899 Extradition Treaty, \textit{supra} notes 98, 100, 101, 105, 106 and accompanying text.
\bibitem{231} Extradition Protocol, \textit{supra} note 28, at 423.
\bibitem{232} Christine Tierney, \textit{PAN Candidate's Agenda Worries Mexican Feminists}, Reuters World Serv., Aug. 12, 1994, \textit{available in LEXIS, News Library, WIRES File} (reporting that although abortion is illegal, the procedure is still performed in Mexico).
\bibitem{233} \textit{One in Four Pregnancies End in Abortions in Canada}, Reuters World Serv., Oct. 5, 1994, \textit{available in LEXIS, News Library, WIRES File}. In 1988 the Supreme Court of Canada struck down a law prohibiting the operation of private abortion clinics in Canada. \textit{Id}.
\end{thebibliography}
crime of abortion as an extraditable offense, Canada's one year minimum imprisonment law would not apply to abortion procedures. Consequently, the list of extraditable offenses among the NAFTA nations are not the same. However, this problem may be solved by looking at the recent trend in the United States - Mexico extradition treaty.

The list of crimes in the appendix of the Mexico extradition treaty is supplemented by a clause which states that crimes punishable by more than one year imprisonment are also extraditable. Therefore, it may be that the Mexican - U.S. relationship is advancing into the stages contemplated by the Mutual Legal Assistance Cooperation Treaty which calls for cooperation in all criminal matters. The offenses listed in the appendix can not in terms of practicality be exhaustive: the nations have agreed to aid one another not only in the capture of fugitives but also in the formal procedures of prosecution.

In relation to the United States interpretation of the Mexican - United States extradition treaty, it is clear that Mexico protests the abduction of its citizens. Prior to the signing of NAFTA, President Bush pledged that the United States would not participate in the abduction of Mexican nationals. Consequently, this created a tense and difficult situation because the United States Supreme Court rejected any due process considerations of the Mexican national. Mexico realized that the terms of its extradition treaty did not apply when the United States manipulated its international agreements and the judiciary indirectly supported such activity even though the abduction was "shocking."

The Canadian authorities used the words "shocking and unconscionable" to describe the Michigan minimum sentencing rules in the United States v. Jamieson case. The United States Supreme Court noted that abduction of foreign nationals is "shocking." Not surprisingly, Mexico is dissatisfied with the

234. Factor, supra note 24, at 276.
235. 1899 Extradition Treaty, supra note 98.
236. Mutual Assistance Treaty, supra note 137.
238. Id.
240. Id. at 669.
241. Id.
current extradition relationship it has with the United States.\textsuperscript{242} In addition, Canada was displeased with the United States participation in the \textit{Alvarez-Machain} abduction.\textsuperscript{243} Likewise, Americans may not be content with the Canadian courts delay and current rejection to repatriate a U.S. citizen accused of a drug offense.\textsuperscript{244}

Thus, while the history and development of the Mexican and Canadian extradition treaties share commonalities, the resulting treaties are unique. But the historical and judicial interpretation of the two treaties demonstrates a possible avenue of compromise that will result in a necessary supplement to NAFTA: a NAFTA multilateral extradition treaty. If a multilateral treaty is not agreed upon, drug cartels may further use the free trading zone to enhance business.\textsuperscript{245} NAFTA, however, may provide a mechanism to control crime, and more specifically, drug trafficking by assuring no escape from justice for fugitives.\textsuperscript{246}

V. The New Multilateral Treaty

Though the particulars of any multilateral treaty require much political negotiation,\textsuperscript{247} there are specific issues that must be addressed. These issues include: (1) purpose; (2) extraditable offenses; (3) excluded extraditable offenses; (4) when nationals are extraditable; (5) abduction; (6) death penalty; and (7) language.

The purpose of the new multilateral treaty must be to deter and suppress crime while providing an orderly process between the U.S., Canada, and Mexico to maintain friendly relations.\textsuperscript{248} Furthermore, the nations may consider incorporating a purpose of

\textsuperscript{242} To ameliorate the situation, the United States brought Mexico to the bargaining table to discuss the matter of kidnappings, bounter hunters and abductions of extraditable persons. \textit{New U.S. - Mexico Extradition Treaty Bars Cross Border Kidnappings}, supra note 144, at 2A. Further, prior to the signing of NAFTA, the United States and Mexico agreed to talk about extradition policies. \textit{Salinas & Bush Try to Iron Out Trade & Extradition Matters}, supra note 237.


\textsuperscript{244} See Swardson, supra note 1.

\textsuperscript{245} \textit{NAFTA Crime Fears Surface}, supra note 210, at 6.


\textsuperscript{247} This conclusion is drawn from the discussion of the treaties's historical development. \textit{See supra} notes 19-47, 98-132 and accompanying text.

\textsuperscript{248} This conclusion is drawn from the common historical purposes of the bilateral extradition treaties. \textit{See supra} notes 27-32 and accompanying text.
facilitating and strengthening NAFTA by suppressing crime. If the nations hope to strengthen their economic futures, extraditable offenses must be broadly defined. In the past, nations have been open to the one year imprisonment standard which expands the list of extraditable crimes.\(^{249}\) Additionally, a multilateral extradition treaty may provide, via political pressure, more efficient criminal systems within the NAFTA nations. After NAFTA's ratification, Mexico has felt the political pressure from concerns about its law enforcement and as a result has attempted to create more law and order within its borders.

Nonetheless, political offenses should continue to be excluded from the list of offenses because this category has been agreed upon in the past.\(^{250}\) In order to avoid another *Alvarez-Machain*\(^{251}\) situation, and to further cooperation between nations, when a national *may not* be extradited must be specifically articulated.

In addition, abduction should be prohibited because such a provision: (1) would force nations to recognize their interrelationship and (2) could indirectly require nations to create some equity behind their criminal punishments. Further, a provision concerning assurances against capital punishment should be included since Canada has refused to extradite fugitives based on this issue. Finally, like other multilateral extradition treaties, a language provision must be included to facilitate procedures.

VII. Conclusion

The United States, Canada, and Mexico have agreed to align themselves economically through NAFTA. Although some repercussions of this alignment are not yet known, it is clear that illegal immigration will increase. Undoubtedly, this transborder movement of people will include fugitives.

While the nations have two bilateral treaties, these may not be adequate. The existing treaties do not fully anticipate the entry of Mexican fugitives into Canada and vice versa. Without an extradition treaty, neither Canada nor Mexico currently have an obligation to extradite. Therefore, a multilateral extradition treaty would help control the illegal immigration resulting from NAFTA and would result in a stronger more unified trading relationship.

\(^{249}\) 1889 Extradition Treaty, *supra* note 33.
\(^{250}\) *Alvarez-Machain*, *supra* note 4.
\(^{251}\) *Id.*
The U.S. - Canada - Mexico multilateral extradition treaty must address various issues. In particular, the treaty should address abduction of nationals as well as capital punishment, because in recent times, these have been areas of international concern for the United States, Canada, and Mexico. Furthermore, if the nations fail to implement a multilateral treaty, crime, as a NAFTA waste product, may defeat its ultimate purpose. Finally, since extradition is to serve justice, NAFTA should further justice by being the impetus of a multilateral extradition treaty.

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