

## International Law

Q. How extradition has been defined in international law? What is meant by non-extradition of 'political offenders'? What are the conditions necessary for extradition?

### Introduction

Citizens of a particular state are the subjects of its municipal law. A state has jurisdiction over the nationals residing in its territorial boundaries but sometimes when a state's national commits a crime in his country and escapes to another country to seek refuge, the state finds it difficult to exercise its jurisdiction. In such a scenario, it is important that states should have friendly relations among them, so they can hand-over the accused to his state, in other words states shall cooperate to exercise the principle of extradition.

### Definition of Extradition

According to Oppenheim, Extradition occurs when an accused or convict is delivered to the state where he has committed the crime by the state where he was residing temporarily.

### Non-Extradition of 'political offenders'

There are certain type of criminals whose extradition is unlikely to occur based on the followed customs, chief among them are political offenders, religious criminals

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There are certain type of criminals whose extradition is unlikely to occur based on the followed customs, chief among them are political offenders, religious criminals

and military criminals.

This practice of non-extradition of political offenders dates back to the French revolution. Usually, the ~~persons~~ individuals who seek political asylum are revolutionaries or monarchs who have committed political crimes in their respective states. This rule was developed originally to protect the revolutionaries from facing prosecution for crimes committed against their governments.

With reference to the Castioni case, the Swiss government requested for ~~his~~ Castioni's extradition from England because he was proven guilty of killing a municipal councillor. The court decided that the crime was of a political nature, therefore the government of England was not bound to extradite Mr Castioni.

Another case of Re Meunier, where he was charged for explosions in Paris cafe and escaped to England. The court ~~also~~ declared his act to be <sup>non-</sup>political because there were no two parties struggling to form a government in the state. If the offence is committed with the objective to form a government, then only it can be considered as a political offence.

The difference between the decisions of the Castioni case and Re Meunier case shows that not every crime claimed to be political is political in nature. There are certain conditions

for example, the crime must be incidental and clear in its objectives to create a political disturbance in the country.

## Common Condition for Extradition

### \* Rule of Speciality

The rule of speciality clearly states that an accused should be tried or prosecuted for that crime in particular for which he has been extradited.

### \* Double Criminality

This condition further specifies the nature of the crime committed by the individual. The crime committed by the individual should be considered crime in both the countries, the country where the crime was committed and the country where he is residing currently.

### \* Crime prima facie.

Another condition specifies that the nature of the crime should be like that it should appear like a crime at first sight. In other words, there should be enough evidence against the individual so that the extradition is possible.

### \* Extradition treaty condition.

There should be a before-event treaty between the states for extradition. The terms and conditions mentioned in that treaty must be fulfilled.

\* No extradition if there is a possibility of certain punishments.

If there is a possibility of severe punishments i.e. capital punishment, the extradition is not possible.

\* In case of dual nationality.

If both the states have jurisdiction over the individual which means that the accused is the national of both the states, he will not be extradited.

## Conclusion

In the light of above discussion, it is true that there is no universal rule for the process of extradition to occur. but extradition is granted in case of a bilateral treaties mostly with some exceptional cases. Some countries have granted extradition without a treaty in order to maintain global peace and serve justice.

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Q The ICJ has no so called compulsory jurisdiction.

- a) Explain under what circumstances the ICJ has jurisdiction to settle inter-state dispute.
- b) Explain whether or not in the view of ICJ its 'provisional measures' are binding.

## a- Introduction:-

The International Court of Justice is the main judicial organ of the United Nations. States that are not the members of the UN can also become the party to the ICJ but with the recommendation of the Security Council or General Assembly. The Statutes of ICJ grants it the jurisdiction upon its parties but with consent from the parties.

## Jurisdiction of ICJ

### 1- Contentious Jurisdiction:-

According to the Article 59 of the statutes of ICJ when the parties to the dispute, voluntarily submit their dispute to the International Court of Justice and submit their consent, the decision of the ICJ is binding upon them in that particular matter.

Therefore, there are certain conditions for the contentious jurisdiction.

#### (i) Consent of the parties

It is necessary for both the parties to submit their legal disputes before the court with consent, only then lies the

legal obligation upon the parties to comply on the court's decisions.

(2) Treaty based jurisdiction Optional Jurisdiction  
States can also consent to the jurisdiction of the case for the future disputes if there are compromisory clauses in the provisions of the treaties signed between them. In other words, if two parties sign the treaty with the provision of giving the court jurisdiction over the future disputes, the decision of the court will be binding upon them. For example, in Australia vs Japan case of 2010 about whaling in the Antarctic region where Australia claimed Japan was hunting whales for scientific research violating the treaty of International Convention of whaling, the court gave the decision against Japan.

(3) Advisory jurisdiction:

Advisory jurisdiction of ICJ occurs when United Nations Security Council or General Assembly, within the mandate asks for an advisory opinion from this judicial organ, regarding the legality of any matter. The advisory jurisdiction is non-binding in nature. For example, in the Reparations of Injuries suffered by UN case (1949) the court gave the opinion that UN is a legal personality and has the capacity to claim the compensation for its losses.

### ③ Transferred jurisdiction :-

The predecessor court of ICJ was the Permanent Court of Justice. After, the organs of the League of Nations ~~was~~<sup>were</sup> dissolved, the jurisdiction was transferred to the ICJ of the pending cases. ICJ has successfully given verdicts on those cases and completed the mandate.

## Principles of the jurisdiction of ICJ

### (i) Ex Aequo et bono :-

According to the Article 39(2) of the statutes of ICJ, it follows the principle of just and good. ICJ is not bound to give the decision strictly on the legality of the matter, but usually the decisions are announced on equity bases and the principles of fairness because it is the responsibility of the court to maintain the judicial fairness and promoting the international peace and security.

### (ii) Rule of relevancy :-

The decisions of the court will be / shall be about the particular dispute that is submitted before the court. This principle shows that since the parties to the dispute are sovereign, the court cannot enforce its decision or interfere in their other disputes. The court is bound to pronounce the decision relevant to the matter submitted



before court.

### (iii) Law of Precedents

The International court of Justice does not follow the law of precedent which means that the court is not bound to give the same decision it gave in a case similar to the case in trial.

The reason for this provision is that the states who are sovereign beings and their intentions matter before committing an act, so the court should review the merits of the case separately for each dispute.

b-

### The nature of ICT's provisional measures:

The provisional measures of the ICT are to prevent from the serious losses to the rights of the parties until a final judgement is rendered. These are interim or temporary measures before the decision is announced. For example, these measures can be related to cease fire or halting certain activities relevant to the dispute.

\* The binding nature of the provisional measures.

These measures are binding in the view of ICT and are to be complied until or unless the final decision is rendered. The legal nature of these provisional

measures have consequences too increase of non-compliance.

### \* Challenges and consequences of non-compliance

In case of non-compliance, to the decisions of ICT, the matter is forwarded to the Security Council to enforce the decision of the ICT. Therefore, the Security Council through Article ~~40~~ 40, 41, 42 and 43 of the UN charter enforces the decision of the court.

### \* Legal and diplomatic implications of non-compliance.

If the state does not comply to the decisions of ICT the Security Council has the authority to put sanctions on the state as listed in the Article - 41 of the UN charter. If it further acts aggressively, then according to Article - 42 and 43, Blockade and Armed attack can also be initiated by Security Council.

### Conclusion:-

The jurisdiction of the ICT is not compulsory but voluntarily depending upon the consent of the states and the circumstances involved in the dispute. Since, States are sovereign it is a challenge for ICT to enforce the compliance of its decisions but in order to maintain the peace and security of the world, ICT's decisions are not opposed oftenly and are accepted by the states.