

Date: Sat, 24 Oct 1998 19:43:53 -0400 (EDT)
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Subject: Three questions

Dear Friends,

Raj De and I need your advice on the three questions below in order to complete a draft update of the Commentary to the Draft Convention:

1) Considering the passage from Bassiuni and Wise given below, do you agree that Article V.2 of the Draft Convention provides jurisdiction to the custodial State party over any citizen of another State party even if there is no other nexus and WITHOUT THE NEED FOR A REQUEST TO EXTRADITE?

Bassiouni and Wise in their book "Aut Dedere aut Judicare" (1995) pages 16-18, draw a distinction between "regional conventions" (such as the 1971 OAS Terrorism Convention) and the 1970 Hague Hijacking Convention (and the other model conventions we have used). Certainly the wording in these two types of convention is quite different as regards the point at issue.

"In these regional conventions, the obligation to submit for prosecution comes into play only when a request for extradition has been refused, while the Hague Convention imposes a duty to prosecute whenever the fugitive is not extradited; It makes no difference that extradition has not been requested by the state where the offence took place (or by a state with another more specific jurisdictional interest)."

--Bassiouni and Wise

2) If your answer to question (1) is affirmative, could we delete V.1(f)? A reason for doing so is to make the Draft Convention neater and to remove the possibility of unintentionally weakening its applicability to development, production, transfer, etc.

3) If you agree that V.2 provides jurisdiction to the custodial state so long as the offender is a national of a State Party and even with no other nexus and no need for a request to extradite, would you further agree that if and when the Draft Convention is ratified by a large number of states a State party wishing to do so could reasonably claim universal jurisdiction even over a national of a non-party simply on the basis of custody, with no other nexus and no need for an extradition request?

If the answer to all three questions is yes, completing the commentary will be straightforward.

With very best regards,

Matthew
