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Subject: Re: Three off the cuff answers

Dear Matthew,

I am in Stockholm away from my books, so I can only answer these questions off the cuff. Others may be able to be more definitive.

1) The passage from Bassiouni and Wise supports the broader interpretation of provisions such as Draft Article V.2. However that interpretation is not necessarily correct, and the position is unsettled. The origin of the provision lay in the need to reconcile the prohibition of extradition of nationals, and other constraints on extradition under treaties and national law, with the need for prosecution; the solution was to give a requested third state jurisdiction in the event of non-extradition even if it would not otherwise have had jurisdiction. Precisely because these conventions do not take the simpler step of conferring jurisdiction irrespective, I suspect that the better interpretation of Art V.2 may be the narrower one. However as far as I know the point has never been decided, and the broader interpretation is a possible one.

Yes. But language is #

2) If your answer to question (1) is affirmative, could we delete V.1(f)? That is a matter of judgement. Should you take a significant step away from the standard model in the direction of universality? That is a question of balancing the need for acceptability, especially at the threshold stage, with the need for universality. I have no strong view.

3) I do not see how universal jurisdiction can be asserted on the basis merely of a concession of jurisdiction over nationals of states parties. That jurisdiction is consensual. It would be easier to do so on the basis of an assertion of jurisdiction over crimes committed by anyone at all on the territory of states parties, because that has potentially erga omnes effects.

Best regards

James

The third state

A

offender

(A prohibits extradition even if non nationals)

B

C Has Jurisdiction

If ~~A~~ offender is national of A, no problem
if not but for some other reason extradition is constituting, country C can request that state A extradite.