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［論文］

Drug Trafficking Control

- Extradition of Christopher Michael Coke -

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Abstract: Increases in drug trafficking bound for the United States force the nation's law enforcement authorities to seek international cooperation, especially through extradition procedures to take fugitives into custody. The research aims to illustrate the difficulties in extradition process through case study and to specify the scope of extradition and extraterritorial law enforcement. This paper also discusses the feasibility of some alternatives to extradition that are less offensive to sovereignty, namely, conducting arrest activities in international waters or in a third state.

Key words: Extradition, Drug Trafficking, Extraterritorial Law Enforcement, Jurisdiction, Sovereignty

Introduction

The transnational characteristic of crimes has become one significant phenomenon of numerous criminal activities in modern era. In other words, although an incident might occur only on the street or in a particular neighborhood in one state, it could have transnational roots and could flow easily across borders.[1] For instance, certain illicit substances, while sold in the United States, are actually supplied through foreign sources, as the movement of people and illegal goods can proceed seamlessly from state to state.

Accordingly, it is reasonable to say that, to control and respond to these transnational crimes, law enforcement authorities from one state must involve their counterparts from another state, whether the other state is willing or not. To illustrate, if a suspect is located on foreign soil, he must be captured there before being transferred to the United States to accomplish the ultimate purpose of law enforcement, *i.e.*, to bring him to stand trial for his crimes. Cooperation between states, therefore, is imperative, due to the transnational nature of modern crime, which makes individual states incapable of effectively combating cross-border crimes.

To obtain custody of alleged suspects from foreign soil to the United States, there are a number of available options. Among these, the most widely accepted method is extradition, as it is generally recognized as the most lawful and formal route to transfer a suspect from one state to another. Meanwhile, compared to the movement of fugitives and controlled substances (*i.e.*, they often are able to move across border swiftly), the extradition procedure through diplomatic channels seems to most to be time-consuming, which has been described as "a creaking steam engine" and even "horse and buggy."[2]

In the case that these so-called bureaucratic extradition procedures end in failure, or when one state wants to sidestep them, extraterritorial arrest activities have been used as a last resort to catch individuals suspected of drug trafficking and, more often, of terrorism.[3] In the lacuna between the needs for speedy law enforcement and the inefficiency of formal extradition, these activities, through which defendants are rendered to the court, have been described as both "fascinating and notorious."[4] These methods are criticized by many law theorists as well as the targeted states as a violation of territorial sovereignty; they have often even been equated to abduction.[5]

Certainly, there are different perspectives concerning how states should address and respond to this threat to both national and international security. Due to the seriousness of organized cross-border drug trafficking, international cooperation to handle this type of crime is notably mature. In the case of the United States, the Department of Justice has cultivated close relationships with its foreign counterparts.[6] Its enduring efforts to transfer suspects who are staying outside of the United States territories are bearing fruit immensely.

Despite this, there are other areas in which contentions still exist within the international community. For instance, in October 1989, the United States Department of Justice was harshly criticized by the international community because of its recognition of legal authority in apprehension of suspects on foreign soil without the host country's consent.[7] If it remains unresolved, this is also a thorny problem that will deter effective drug trafficking control.

In this article, we will delve into how states should control drug trafficking through the case study of Christopher Coke's extradi-

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tion. Because of its complexities, this case epitomizes the intense and tenacious determination of the United States law enforcement authorities in bringing suspects residing outside of the United States to justice.[8]

I. Increase in Drug Trafficking

Before scrutinizing the issues surrounding extradition, it is fitting to illustrate both the barriers obstructing the promotion of international cooperation in extradition and the complications of drug trafficking control caused by the increase in drug trafficking.

A. Definition and Structure of Drug Trafficking

From a law enforcement perspective, drug trafficking refers to almost any acts that facilitate the distribution of controlled substance,[9] *i.e.*, any type of drug whose possession and use is regulated by law, including narcotics.[10] More specifically, trafficking is defined as the act of illegally producing, importing, selling, or supplying significant amounts of a controlled substance.

In the 1980s, the United States became aware that attempts to intercept the flow of drugs along its borders, while ongoing, had only experienced marginal success.[11] Since then, drug trafficking has taken on a transnational dimension, which has become common knowledge.[12] In 2010, *National Drug Threat Assessment 2010* stated that the Mexican drug trafficking organizations constituted the greatest drug trafficking threat to the United States.[13] To fight these transnational organized criminal activities, applying supply-focused enforcement is the priority. Certainly, to put this type of control policy into practice, cooperation from all of the countries concerned is indispensable.

Since drug trafficking is considered by the United States as being simultaneously a criminal act and political threat,[14] the United States has responded to these threats to its national security with military measures, namely, the use of military personnel to assist in the apprehension of suspected drug traffickers on foreign soil. For instance, in December of 1981, Congress enacted a law that sanctioned the use of armed forces in drug enforcement. By 1986, the United States likened the import of illegal drugs into the country to armed attacks.[15] In November of 1989, legal advisor to the Department of State, Mr. Abraham Sofaer, in his testimony to the United States Congress, mentioned that drug traffickers had been trained in terrorism tactics.[16]

Because of the complexity, seriousness, and transnationality of drug trafficking and the criminal organizations that engage in it, efforts in curtailing it have yielded very few results, despite the response of the Mexican government to confront the drug cartels. This quandary symbolizes the difficulty of international drug trafficking control.

B. Structure of Drug Trafficking

The border region shared by the United States and Mexico has experienced much gruesome strife between *the Gulf Cartel* and *the Zetas*, criminal organizations that are active in the area.[17] Since the summer of 2010, the Mexican authorities have discovered at least 145 bodies in mass graves in the vicinity of the US-Mexican border, especially near San Fernando, Mexico. Tamaulipas, where San Fernando is located, is virtually controlled by *the Gulf Cartel* and *the Zetas*, not by the Mexican government. The region is contested because there is an extended highway, which can be used as an efficient drug trafficking route into the United States, as San Fernando is situated just 90 miles south of Brownsville, Texas. As a result, *the Gulf Cartel* and *the Zetas* have a tight control on the area, specifically the key roads. To the United States, this situation is likened to an "insurgency" that deprives the Mexican government of control on its territories, borrowing the words of Secretary of State Hillary Rodham Clinton.[18]

To appear to gain a handle on the disorganized situation in Tamaulipas, the Mexican Interior Minister, Francisco Blake Mora, vowed to stabilize the region by increasing the deployment of military personnel, sweeping the cartels from the routes in San Fernando, and capturing the murderers. The Mexican government carried out these promises after the authorities had found 72 remains in graves near San Fernando in August 2010. In fact, the Mexican authorities suspected that *the Zetas* had committed the killing of these 72 migrants, who were abducted from a bus bound for the United States. Nonetheless, it is questionable that the 17 suspects detained would be properly prosecuted by the Mexican government.

The Mexican government's efforts to stabilize its northern border, therefore, are widely considered as insufficient. Furthermore, the cartels' successes have created deep rifts and distrust between Mexico and the United States. This mistrust was demonstrated through the leaked diplomatic cables of the American Ambassador to Mexico Carlos Pascual, criticizing the inadequacy and reluctance of the Mexican government's fight against organized crime. The incident eventually prompted the American ambassador to resign.[19]

This is a prime example of how failed attempts of transnational organized crime control lead to a rupture of international cooperation and *vice versa*.

C. The United States Border and Drug Trafficking

As it is the stage of much transnational drug trafficking, special mention should be made of the border of the United States. Because the United States shares its borders with Canada and Mexico, all of which are countries of substantial size, their bound-

aries are especially long, which understandably have become the locus of drug law enforcement interests and concerns. Furthermore, drug trafficking techniques have become much more advanced to adapt to new drug control methods.[20] The majority of the illegal drugs smuggled from their points of production to the United States arrive by land[21] through the porous borders with Canada and Mexico.[22]

Figures 1 through 4[23] depict the amount of narcotics seized by federal authorities in 2008. It is clear that the states on the southwest and northeast borders bear the effects of drug trafficking much more than their inland counterparts.

II. Legal Frameworks for Extradition

To counter such a severe crime as drug trafficking, it is imperative to establish legal frameworks for cooperation. This section is dedicated to exploring how these instruments are used by the authorities.

A. Procedures for Extradition

1. Definition and Procedures for Extradition

a. Definition of Extradition

There are a number of available options for obtaining custody of alleged suspects. Among these, the most widely-accepted

Fig.1 Federal Marijuana Seizures 2008

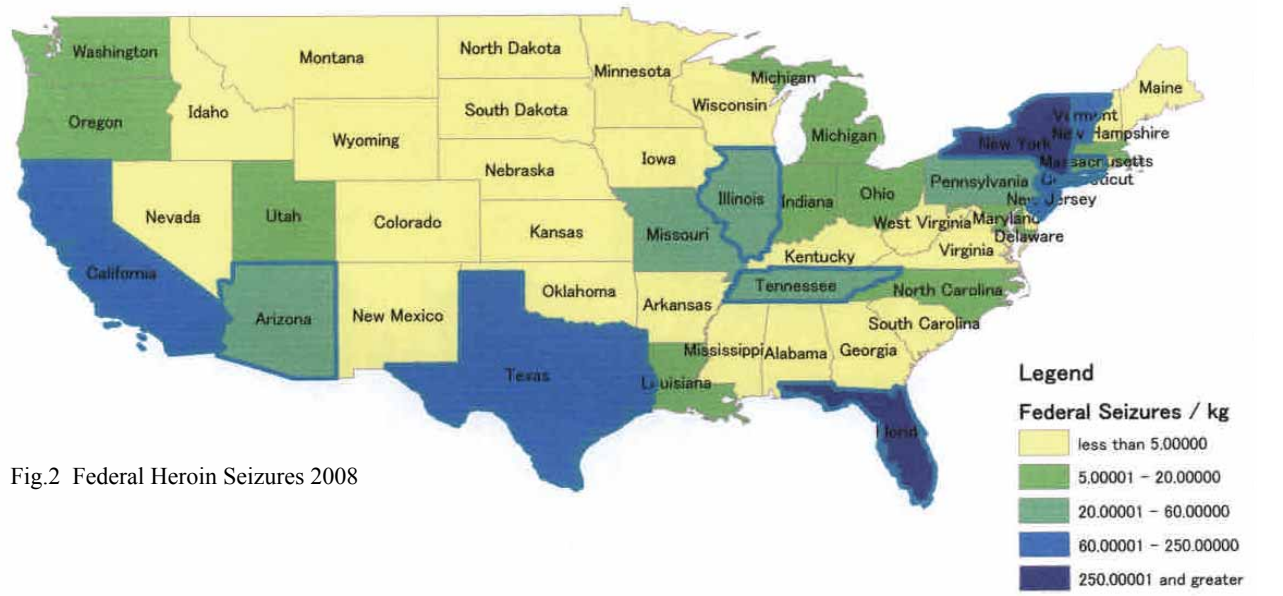

Fig.2 Federal Heroin Seizures 2008

Fig.3 Federal Meth Seizures 2008

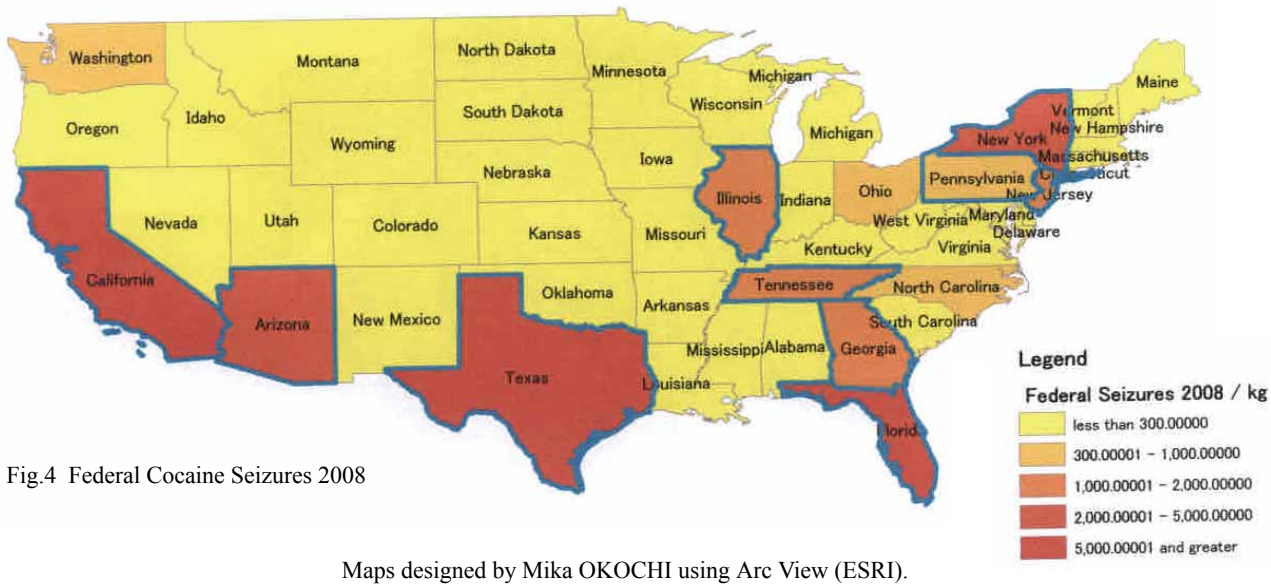

Fig.4 Federal Cocaine Seizures 2008

Maps designed by Mika OKOCHI using Arc View (ESRI).

method is extradition.[24] Extradition is defined as the official surrender of an alleged criminal by one state to another, which has jurisdiction over the crime.[25] Since crimes might not necessarily be committed entirely within only one state, such as the traditional example of firing a gun across border,[26] extradition functions as a means for gaining custody of a suspect residing in a foreign country.

As such, extradition is recognized as the lawful and formal route to take a suspect into custody; on the other hand, it is often criticized as bureaucratic and not fulfilling all of the needs of law enforcement authorities. As a result, it is at times avoided by them. The reasons might be related to the procedures for extradition.

b. Procedures for Extradition

The first reason pertains to the pragmatic aspect of extradition. In general, extradition procedures are overly time-consuming for gaining custody of suspects. The reason for this is that the extradition process is managed and controlled, not by law enforcement authorities directly, but by foreign ministries. For example, in the United States, it is handled by the Department of State. Often, due to the different duties of law enforcement and diplomacy, there are some discrepancy in the willingness and enthusiasm between the two to carry it out. As a consequence, this disagreement presents itself as an oft-unseen obstacle for smooth extradition.[27]

The second reason concerns the customary rule of international law on extradition. Extradition is not part of customary interna-

tional law. Therefore, without an extradition treaty between the requesting and requested countries, the latter has no legal obligations to extradite any suspects to the former. Thus, whether the requested country will extradite the suspect is based solely on its diplomatic courtesy or the matter of comity.[28]

The third reason involves the legal conditions provided in the extradition treaty and the domestic statutes of the requested country. Of these, the most disputed is the nationality exception, which prohibits governments from extraditing their own nationals. Many countries have sanctioned this condition as a provision of their constitutions. Particularly, the United States law enforcement authorities suffered from this rule that prevented them from apprehending Colombian and Mexican drug traffickers even though they would not be prosecuted in their own countries due to their governments being corrupted at one time. Yet these two countries eliminated its nationality exception under the pressure of the United States.[29]

2. Extradition Treaties

Usually, extradition is processed bilaterally. The United States and Mexico concluded *Extradition Treaty between the United States and Mexico of 1980*.[30] Article 9 of this treaty provided that parties be not required to extradite their nationals, but be able to prosecute those nationals in their own courts. Still, due to the problem of Mexican government and law enforcement authorities once colluding with drug traffickers, as in Colombia, the suspects were from time to time not prosecuted.

Understandably, due to the dire need to curb drug trafficking, the United States government petitioned the Mexican government hard to enable extradition of their nationals. By virtue of this endeavor, in 1996, the Mexican government extradited two suspects who had trafficked drugs into the United States. On January 18, 2001, the Mexican Supreme Court of Justice held that the extradition of nationals is constitutional.

Regarding the circumstances between the United States and Colombia, they concluded an extradition treaty that enabled them to extradite their respective nationals in 1979. Before the implementation of the treaty, because of the fact that the Colombian government was involved in drug trafficking, traffickers were neither arrested nor prosecuted by their own government. This treaty was declared by the Colombian court as unconstitutional; however, as the judiciary cannot readily nullify treaties, the extradition treaty remains effective. Indeed, two drug traffickers were extradited to the United States in the year when the treaty went into force.

B. Practice of the Extradition

Despite the aforementioned obstacles, the extradition of Christopher Michael Coke from Jamaica to the United States was successful. As it is usually the case, formal extradition process needs persistent and enduring attempts. Actually, from the request of the United States to the arrival of Coke in New York, this case took 9 months. Nevertheless, the Jamaican government, who initially was not willing to extradite Coke, finally issued an arrest warrant for Coke, and extradited him to the United States. This case should be examined closely.

1. Extradition of Christopher Coke

In August of 2009, the United States Department of Justice announced an official request for the arrest and extradition of Coke.

a. Background and Summary of Facts

Coke was the leader of an international criminal organization, the *Shower Posse*, which with close to 5,000 members in Jamaica and the United States since the early 1990s. Its name derived from its engaging in showering shootouts. Coke, a Jamaican citizen, was listed on the Consolidated Priority Organization Targets (CPOTs) roster by the Department of Justice. Since he directed his members to sell marijuana and crack cocaine in the New York area, and also armed his organization with trafficked firearms, Coke was charged with conspiracy to distribute narcotics and conspiracy to traffic firearms.

To begin proceedings of his apprehension, the United States officially requested by Diplomatic Note No. 296 on August 25, 2009 that the Jamaican authorities arrested Coke and extradited him to the United States Southern District Court in New York to face charges.

After 9 months of negotiating with the United States government, the Minister of Justice of Jamaica Dorothy Lightbourne eventually signed off on the authority to proceed for the arrest of Coke on May 18, 2010. Subsequently, the Jamaican government carried out a large-scale operation that attempted to capture Coke but it resulted in 73 deaths. However, Coke ultimately surrendered himself to the United States embassy and was extradited.

b. Legal Basis of Extradition

The Extradition Treaty between the Government of Jamaica and the Government of the United States of America, signed on June 14, 1983, outlines the legal protocols required for formal extradition of criminals. Under this treaty, the Government of Jamaica is entitled to request information on evidence and charges additional to that submitted by the Government of the United States.[31] Therefore, on September 18, 2009, the Jamaican government exercised that discretion regarding the Coke Case, because it viewed the evidence preliminarily presented was insufficient to justify the issuance of the arrest warrant.

We will examine the Jamaican government's assertion in detail below.

2. The Negotiation between the United States and Jamaica

a. The Jamaican Government's Standpoint

As convention dictates, the extradition requests from the United States are processed in a smooth and prompt fashion by the Jamaican government in accordance with the *Extradition Treaty and Treaty between the United States and Jamaica on Mutual Legal Assistance in Criminal Matters*.[32] In other words, the Jamaican government is by and large cooperative with the United States in extradition. As a result, the Jamaican government claimed in this case that it was willing to cooperate in extraditing one of its nationals even when it is authorized by its constitution to decline the extradition of its nationals. However, it appeared reluctant to extradite Coke through reiterating that the evidence submitted initially was insufficient to grant the extradition request.

Meanwhile, Prime Minister of Jamaica Bruce Golding explained the reasons for refusal of extradition in a Statement to Parliament on May 11, 2010, just one week before the date when the Minister of Justice signed the authorization to proceed on May 18, 2010. According to the Prime Minister's statement, the arrangements between the United States and Jamaica allowed information sharing not for judicial purposes, but only for specific purposes mentioned by Article 16 (9) of the Interception of Communications Act[33]. Consequently, the Jamaican government requested that the United States provide additional information that would enable the Minister to fulfill the request and to sign the authorization. He also stressed that if such action was taken, Jamaica would extradite Coke. This view was consistent with that of Jamaican Minister of Justice Dorothy Lightbourne's, as expressed on her official website on a page dedicated to the Coke case, *Chronology of Events Leading to the Extradition of Christopher Coke.*[34]

According to Minister of Justice Lightbourne's assertions, the Government of Jamaica was required to seek further information, precisely, the identity of the cooperating witnesses, and other evidence as to how the United States obtained "intercepted communications", which was a request made under the provisions of the Mutual Assistance (Criminal Matters) Act (MACMA) to justify extradition of its nationals. The United States stood its ground on that the evidence submitted in the original request was sufficient to proceed and that the evidence had been obtained in accordance with the mutual understandings between the Jamaican and United States law enforcement authorities.

Under these circumstances, the Minister of Justice ultimately exercised the executive discretion and signed the authority to proceed on May 18, 2010, citing consideration of "public interest", according to her website.

b. The United States' Response

The United States, like the Jamaican government, also recognizes that the relationship between the United States and Jamaica has usually been collaborative. Despite the complicated issues involved in Coke's extradition, their partnership for combating organized crime remains strong, as demonstrated by a speech of Attorney General Mr. Eric Holder, which was given at the *Inaugural Caribbean-U.S. Security Cooperation Dialogue* on *Caribbean-United States Security Initiative* on May 27, 2010.[35] He stressed that drug trafficking and organized crime is expanding across the Western Hemisphere, as criminals know no borders. Therefore, to cope with this problem, the most powerful tool is the partnership between the Caribbean countries and the United States. He strongly advocated for establishing a legal framework that all countries should embrace through multilateral agreements, such as the *Single Convention on Narcotic Drugs*.[36] In addition to these tools, he also suggested the use of bilateral mutual legal assistance and extradition treaties to combat transnational crimes.

The International Narcotics Control Strategy Report (INCSR) of 2011 also concludes that this extradition case did not hinder the close cooperation between the Jamaican Government and the United States government in efforts to curb narcotics and related transnational crimes.

As a result, this case should be considered the prime example of sovereign states' willingness to reconcile different perspectives on extradition of a specific individual and to reach a successful outcome in controlling organized crime. With reiterating that the information was sufficient, the United States persisted in petitioning for the extradition of Coke. In the end, the Jamaican government extradited Coke, even when it had not been given the further information requested of the United States.

Meanwhile, the concerns of the United States were not only whether the extradition would be successful, but also, during this prolonged negotiation, whether he would be killed by some other concerned parties. Accordingly, two other options were simultaneously considered by the authorities as well.

One was to lure Coke from Jamaica into international waters. Another was to lure him into a third state. Both would be carried out through informants, in other words, *surrogates*, because this method is generally viewed as less offensive to the host's sovereignty. In light of past practice, in the case that the operation is achieved peacefully, the host country, in the present case, Jamaica, which did not want to be directly involved with extradition matters, would only need to give its tacit acquiescence.

The following section will be dedicated to the theory and practice of extraterritorial law enforcement.

III. Theory and Practice

As mentioned, due to the procedures for extradition, law enforcement authorities occasionally have to resort to the alterna-

tives. One controversial alternative is abduction of suspects on foreign soil. International law prohibits states from sending their agents into another state to apprehend fugitives without the host state's consent. To examine this issue, it is essential to cite some cases.

A. Alternatives to the Extradition

1. Cases in the United States

a. The *Ker-Frisbie* doctrine

The *Ker-Frisbie* doctrine emerged from two United States Supreme Court judgments, *Ker v. Illinois* and *Frisbie v. Collins*.[37] The court held that, although the defendant's custody may have been unlawfully taken by the authorities, the prosecution is not necessarily dismissed.

b. *The United States v. Alvarez-Machain*

The *Ker-Frisbie* doctrine was reaffirmed in 1992 in *the United States v. Alvarez-Machain*,[38] where the defendant was kidnapped by Mexican citizens from Guadalajara, Mexico to El Paso, Texas on April 2, 1990. The Supreme Court held that defendant may not be prosecuted due to the manner with which he had been brought into the United States. On the other hand, it also stated that the existence of an extradition treaty does not necessarily imply prohibition of abduction.

c. *The United States v. Noriega*[39]

The capture of General Manuel Antonio Noriega on drug charges by means of invasion of Panama did not bar prosecution. He was indicted by a federal grand jury in Miami. The alleged crime was international conspiracy to import cocaine into the United States, violating federal laws. The issue on extraterritorial law enforcement in this case was whether the invasion of Panama and the subsequent arrest of Noriega violated Panama's territorial sovereignty and whether the United States had jurisdiction over Noriega's alleged criminal activities.

The point of Noriega's assertion was the issue of applicable international law on extraterritorial jurisdiction to indict acts committed by foreign nationals on foreign soil. Since Noriega was charged with providing safe haven to drug traffickers, manufacturing and shipment of cocaine bound for the United States, the issue of extraterritorial jurisdiction whether the United States may prosecute the person who has not committed these illegal acts in the United States emerged. Defendant claimed that, in light of established principle of international law, exercise of extraterritorial jurisdiction on Noriega's acts was not possible.

The United States district court held that Noriega's acts in Panama had a direct effect within the United States, and thus, extraterritorial jurisdiction in this case was appropriate from standpoint of international law.

Often, a state that resorts to extraterritorial law enforcement is usually criticized harshly for "a more extreme violation of sovereignty"[40] by both the international community and the targeted country itself. Still, *Operation Golden Rod*, which was aimed to capture *Fawaz Yunis* was not condemned by other countries. It is worthwhile, therefore, to examine this case closely to determine what distinguishes this case from other similar ones that have been seriously chastised by the international community.

d. *The United States v. Fawaz Yunis*[41]

Yunis was a citizen of Lebanon and accused of hijacking a Jordanian passenger plane in Beirut, Labanon. Three Americans were aboard. After the incident, the United States persevered in pursuing *Yunis*, who was on the run. As a result, in 1987, agents from the Federal Bureau of Investigation (FBI) and DEA lured him onto a yacht in the Mediterranean Sea with the promise of a drug deal by *agent provocateur*. When the vessel entered the international waters off the shore of Cyprus, they arrested *Yunis* and transferred him to the United States.

After being convicted of conspiracy, hostage taking, and air piracy by the United States District Court for the District of Columbia, *Yunis* appealed, claiming that the court lacked jurisdiction over him. His reasoning was twofold. The first point focused on the nexus between his acts and the territories of the United States; the United States may not apply its own laws to offenses committed by a nonresident alien on foreign soil. The second point focused on the method through which he had been brought to the United States; the use of extraterritorial enforcement by *agent provocateur* was unlawful. In short, the jurisdictional issues in this case were whether a state could apply its laws to acts committed by a foreign national outside of its territories and whether extraterritorial arrest activities were lawful.

To address the first argument, the court found that a state may punish non-nationals for crimes committed against its nationals outside of its territory. According to the reasoning of the court, the statute in question in the present case, the Destruction of Aircraft Act[42], extended jurisdiction over an alleged saboteur who committed crimes against aircraft located in foreign airspace and was later found in the United States. Additionally, the court noted that the Hostage Taking Act[43] specified that one circumstance in which a suspect could be charged for an offense occurring outside the United States was when an American was taken hostage. This Act provides expressly that when an American was taken hostage, a suspect could be charged no matter where the act is committed.

With regard to the second argument, the court determined that whether the suspect was forcibly renditioned to the United States or located after he voluntarily entered its territories did not bar its jurisdiction. In fact, Section 1203(b)(1)(B) of the Hostage Taking Act provides that as long as the offender is found within the United States, regardless of what manner this was achieved, s/he

can be charged by the authorities. Therefore, whether *Yunis* was brought by force or found within the United States was immaterial.

Moreover, to strengthen this reasoning, the court interpreted that there was a congressional intent to authorize the prosecution of those who took American hostages no matter where the offense occurred or where the offender was found. This legal framework was also consistent with the United States' treaty obligations, which were instituted after the ratification of the International Convention against the Taking of Hostages. Generally, this type of multilateral anti-terrorism treaties accepts the passive personality principle. Under this principle, states may assert jurisdiction over offenses committed against their citizens overseas.[44] In conclusion, the court had jurisdiction over *Yunis*.

In this case, two issues were specified. First, the court is indifferent to whether a suspect has been brought to the United States forcibly or has voluntarily come over by himself. Second, the arrest activities on international waters do not construe, by definition, a violation of territorial sovereignty. In contrast, customary international law is interpreted that it is strictly prohibited for any state to exercise enforcement jurisdiction outside of its territory, which involves investigation by police agencies and any physical arrests of suspects. This is the principle of territoriality.

2. Customary Rules of International Law

The customary rule of international law was framed by *the S. S. Lotus* Case (*France v. Turkey*).[45] On August 2, 1926, the *Lotus*, a French mail steamer, had collided with the *Boz-Kourt*, a Turkish collier. When the *Lotus* arrived at Constantinople, Turkish authorities arrested a French officer, Demons. The French objected that his acts were completed on the French ship on the high seas; therefore, Turkish law could not be applied to his actions. The Turkish and French governments agreed to submit this case to the Permanent Court of International Justice (PCIJ).

The PCIJ ruled in favor of the Turkish government, stating that Turkish law enforcement had the jurisdiction to prosecute Officer Demons. In the reasoning for this decision, the PCIJ analyzed the legal rules on extraterritorial jurisdiction. The reasoning, which is widely-accepted, articulates that states may extend the application of their laws unless restrained by a prohibitory rule of international law. However, this understanding is limited to prescriptive jurisdiction. In contrast to this type of jurisdiction, enforcement jurisdiction on foreign soil by other states should be strictly prohibited by international customary law, unless allowed by a permissive rule of international law, and thus should be regarded as a serious violation of sovereignty. In other words, enforcement jurisdiction is limited to being within the border by the territorial principle still.

Thus, international law and the international community have traditionally been reluctant to recognize extraterritorial enforcement jurisdiction. Yet, with September 11, the argument for extraterritorial law enforcement has gained more proponents, particularly in counter-terrorism measures, as the following quote illustrates.

"If a non-state terrorist group attacks a state from a safe haven in another host state that will not or cannot take action against the non-state armed group, the attacked state may employ armed force against the terrorist group within the borders of the host state. Extraterritorial law enforcement is not an attack on the host state, but on its parasitical terrorist group."[46]

More generally, the International Court of Justice Judge Rosalyn Higgins comments on *the S. S. Lotus* Case decision, as follows:

"I believe that the key to the issue lies in the protection of common values rather than the innovation of state sovereignty for its own sake.... The exercise of extraterritorial jurisdiction to that end seems to me as acceptable as its exercise in the other non-territorial bases of jurisdiction."[47]

Evidently, drug trafficking is also universally condemned; therefore, extraterritorial prescriptive jurisdiction, *i.e.* legislation of *long-arm laws*,[48] is not objected by the international community,[49] since such legislation itself does not necessarily violate the sovereignty of foreign countries. However, once it reaches the stage of taking *enforcement* actions in another country, there have been objections over the application of these *long-arm* narcotics laws,[50] as it might be construed as a violation of the territorial sovereignty of the foreign country. In consequence, the feasibility of extraterritorial arrest activities is still unknown.

B. Scope and Limits of Extradition

Having scrutinized the practice of extradition and extraterritorial law enforcement, it is apparent that extradition functions effectively enough by virtue of the effort of the authorities. Yet, controversial arrest activities, though rare, still exist. These cases and materials illustrate the scope and limits of extradition and the availability of alternatives to extradition.

As a matter of principle, law enforcement authorities seek the cooperation of other states as a top priority when extraditing suspects. They eschew infringing on the territorial sovereignty of the host state.[51] Reflecting on the magnitude of the international reaction[52] caused by the extraterritorial activities, therefore, they consider these acts as a final resort, or the worst case scenario.

Nevertheless, failure is not an option. While the authorities exercise great restraint, they are sometimes compelled to prepare alternatives to extradition due to the wide discrepancy between the territorial principle and the needs for law enforcement. Thus, the antiquated territorial principle established in *the S. S. Lotus*

Case and the surfeit of support for it make extraterritorial law enforcement exceedingly challenging.

For the time being, some methods might be presumed less offensive to sovereignty. One is to lure a suspect by local or private *surrogates* peacefully into international waters or to a third state.[53] The next issue that should be reconciled is what particular conditions might justify such extraterritorial arrest activities. This topic merits future research.

Conclusion

Recent transnational organized criminal activities related to drug trafficking organizations are on the rise. In addition to drug trafficking, some examples of these crimes are terrorism, money laundering, arms trafficking, human trafficking, kidnapping, and ransom. These crimes would certainly have a wide variety of structures — corporate-like organizations, socially-bonded[54] organizations based on family ties, religions, ethnicities, etc. — and *modus operandi*, such as the different trafficking routes and equipment, the ability to launder the profits of illicit businesses, and the extent of association with terrorism.

Still, one of the common denominators is that the offenses committed by these organizations are prepared, planned, directed, and controlled in more than one state. That is the very definition of transnational organized crime. Since the extradition is recognized as the lawful route to take a suspect into custody, it might be a primary route for gaining custody of suspects to tackle these insidious and pernicious offenses. At the same time, it might be crucial to also erect multiple layers of safety net so that a fugitive cannot escape to a safe haven.

On the occasion of the indictment of Coke, the United States Attorney Preet Bharara pointed out that the charges against Coke patently illustrated, on the one hand, the seriousness of the international trade of narcotics for firearms, and *vice versa*, and on the other, the importance of bringing the criminals to justice, wherever they may be found.[55] His brief expression demonstrates the core of the issues arisen from transnational organized crime.

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13 THE UNITED STATES DEPARTMENT OF JUSTICE, NATIONAL DRUG INTELLIGENCE CENTER, NATIONAL DRUG THREAT ASSESSMENT 2010, 2010, http://www.justice.gov/ndic/pubs38/38661/dtos.htm#Top

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15 The National Security Decision Directive 221 (NSDD-221), at 2.

16 INCSR of 1989 pointed out the links between drug trafficking and revolutionary movements.

17 MURPHY, M. N., SMALL BOATS, WEAK STATES, DIRTY MONEY, PIRACY AND MARITIME TERRORISM IN THE MODERN WORLD, Columbia University Press, 2010, at 388-390; ABADINSKY, H., ORGANIZED CRIME, 8th ed., Thomson Wadsworth, 2007, at 165-166. The articles regarding the incidents in the US-Mexican border region appeared in New York Times, April 16, 2011, at A1.

18 Seven members of Congress, including Rep. Michael T. McCaul and Rep. Peter T. King, Chairmen of the Subcommittee on Oversight, Investigations, and Management of the Committee on Homeland Security pointed out in a letter to Secretary of State Hilary Clinton, dated April 27, 2011, that the Mexican drug cartels presented a dangerous threat to the national security of the United States and certain Mexican drug cartels should be designated as terrorist organizations.

19 The article about the resignation of the US Ambassador appeared in New York Times, March 26, 2011, at A10.

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21 THE UNITED STATES DEPARTMENT OF JUSTICE, NATIONAL DRUG INTELLIGENCE CENTER, NATIONAL DRUG THREAT ASSESSMENT 2010, *supra* note 13.

22 ANDREAS, P. AND NANDELMANN, E., POLICING THE GLOVE, CRIMINALIZATION AND CRIME CONTROL IN INTERNATIONAL RELATIONS, Oxford, 2006, at 201.

23 The data obtained and used for this map were from Office of National Drug Control Policy, State and Local Resources, Drug Policy Information Clearinghouse, Profile of Drug Indicators, http://www.whitehousedrugpolicy.gov/statelocal/index.html.

24 BURNHAM, W., INTRODUCTION TO THE LAW AND LEGAL SYSTEMS OF THE UNITED STATES, 4TH ed., Thomson West, 2006, at 701.

25 BLACK'S LAW DICTIONARY, at 665; GOLDSMITH, B., FOREIGN RELATIONS LAW, CASES AND MATERIALS, 3rd ed., Aspen Publishers, 2009, at 719.

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27 The United States Assistant Attorney Richard Gregory complained that the Department of State's attitude was unenthusiastic regarding the extradition of Jorge Ochoa, who had moved nearly sixty tons of cocaine into the United States between 1982 and 1987 and had been arrested in Spain in 1985 on drug trafficking charges. COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE, DRUGS, LAW ENFORCEMENT AND FOREIGN POLICY, Dian Publishing, 1988, at 31-32. *See also* GOLDSMITH, B., *supra* note 25, at 726. In a similar case, the United States requested the extradition of Walid Makled, who was a Venezuelan drug trafficker and arrested in Colombia. The United States, upon learning of his arrest, requested that Colombia transfer him for shipping ten tons of cocaine a month to the United States. Yet the Colombian President announced that he would accept only the Venezuelan extradition request, rather than the one from the United States. Crandall, R., *The Post-American Hemisphere, Power and Politics in an Autonomous Latin America*, FOREIGN AFFAIRS, Vol. 90, No. 3, 2011, at 83. Compared with these cases, a successful one accomplished by the DEA was the extradition of Viktor Bout, a Russian national, who was an arms trafficker lured to Bangkok, Thailand, and extradited to the United States.

28 GOLDSMITH B., *supra* note 25, at 719.

29 BLAKESLEY, C. L., *et al*., THE INTERNATIONAL LEGAL SYSTEM, CASES AND MATERIALS, 5th ed., Foundation Press, 2001, at 1421; Rotman, E., *Foreward* for ZANOTTI, I., EXTRADITION IN MULTILATERAL TREATIES AND CONVENTIONS, STUDIES ON THE LAW OF TREATIES, Vol. 3, Martinus Nijhoff Publishers, 2006, at X.

30 Signed on May 4, 1978, 31 U.S.T. 5059. Article 9 (Extradition of Nationals) provides the following: "1. Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so. 2. If extradition is not granted pursuant to paragraph 1 of this article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense." Cf. Article 7 of the 1981 Inter-American Convention on Extradition, signed on February 25, 1981 (the 1981 OAS Convention) provides as follows: "1. The nationality of the person sought may not be invoked as a ground for denying extradition, except when the law of the requested State otherwise provides." *See also* ZANOTTI, I., *supra* note 29, at 74.

31 Article 9(1) provides the following: "If the executive authority of the requested state considers that information furnished in support of request for extradition is not sufficient to fulfill the requirements of this treaty, it shall notify the requesting state in order to enable that state to furnish additional information before the request is submitted to the court."

32 The Governments of Jamaica and the United States have a Mutual Legal Assistance Treaty (MLAT) that assists in evidence sharing.

33 The Interception of Communications Act Article 16 (9) specifies the conditions as follows: "An authorized officer shall not disclose any communications data obtained under this Act, except-(a) as permitted by the notice; (b) in connection with the performance of his duties; or (c) if the Minister responsible for national security directs such disclosure to a foreign government or agency of such government where there exists between Jamaica and such foreign government an agreement for the mutual exchange of that kind of information and the Minister considers it in the public interest that such disclosure be made."

34 http://dlightbourne.blogspot.com/2010/07/chronology-of-events-leading-to.html. ABADINSKY, H., *supra* note 17, at 239 illustrates that the Jamaican *posses* (gangs) have strong ties with not only Jamaica's major parties, but also the residents in the poorest sections of the city, such as Tivoli Gardens, Kingston, where the *posses* are supported by the residents and likened to "Robin Hood."

35 http://www.justice.gov/ag/speeches/2010/ag-speech-100527.html

36 18 U.S.T. 1409, New York, March 30, 1961, ratified by the United States in 1967, amended 26 U.S.T. 1441.

37 In *Ker v. Illinois*, 119 U.S. 436 (1886), a private person had abducted a United States citizen-fugitive from a foreign soil. On the other hand, in *Frisbie v. Collins*, 342 U.S. 519 (1952), state officials abducted a fugitive from another state in the United States. BURNHAM, W., *supra* note 24, at 700.

38 *The United States v. Alevarez-Machain*, 504 U.S. 655, 112 S.Ct. 2188, 119 L.Ed.2d 441 (1992). *Reprinted in* INTERNATIONAL LEGAL MATERIALS, No. 31, 1992, at 901. Cf. HIGGINS, R., PROBLEMS AND PROCESS, INTERNATIONAL LAW AND HOW WE USE IT, Clarendon Press, 1994, at 71; JANIS, M. W. AND NOYES, J. E., CASES AND COMMENTARY ON INTERNATIONAL LAW, 3rd ed., Aspen Publishers, 1997, at 243. The Mexican government's

response to this decision is in SECRETARIA DE RELACIONES EXTERIORES, LIMITS TO NATIONAL JURISDICTION, DOCUMENTS AND JUDICIAL RESOLUTIONS ON THE ALVAREZ MACHAIN CASE, Vol. II, 1993, at 116.

39 *The United States v. Noriega*, 746 F.Supp. 1506 (S.D. Fla. 1990). The other cases concerning extraterritorial law enforcement are *Ex parte Lopez*, 6 F.Supp. 342 (S.D. Texas 1934); *Eichmann v. Attorney General of Israel, reprinted in* INTERNATIONAL LEGAL MATERIALS, No. 136, 1962, p. 277; *The United States v. Verdugo-Urquidez*, 856 F.2d 1214 (9th Cir. 1988); *The United States v. Caro-Quintero*, 745 F.Supp. 599 (C.D.Cal.1990).

40 BURNHAM, W., *supra* note 24, at 699.

41 *The United States v. Fawaz Yunis*. 681 F.Supp. 896.

42 18 U.S.C.A. 32. Destruction of Aircraft Act 32(b)(4) also provides that an alleged saboteur who commits offenses and "is later found in the United States" can be charged by the United States.

43 18 U.S.C.A. 1203.

44 BURNHAM, W., *supra* note 24, at 688.

45 *The S.S. Lotus* Case (France v. Turkey), 1927 P.C.I.J. (ser.A) No. 10, at 18.

46 SOLIS, G. D., THE LAW OF ARMED CONFLICT, INTERNATIONAL HUMANITARIAN LAW IN WAR, Cambridge University Press, 2010, at 162.

47 HIGGINS, R., *supra* note 38, at 77. *See also*, Kolosov, Y. M., *Limiting the Use of Force: Self-Defense, Terrorism, and Drug Trafficking*, in DAMROSCH, L. F. AND SCHEFFER, D. J., *supra* note 14, at 231.

48 RAUSTIALA, K., *supra* note 6, at 157. SHANY, Y., REGULATING JURISDICTIONAL RELATIONS BETWEEN NATIONAL AND INTERNATIONAL COURTS, Oxford, 2009, at 13-14 points out that the increasing extraterritorial reach of national legislation extended the reach of national law.

49 The doctrine affirming that trafficking in narcotics is subject to the universality principle, which enables any state to punish for crimes against all of humankind, such as piracy, slave trade, genocide, etc. is not commonly received. Cf. BROWNLIE, I., PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 6th ed., Oxford, 2003, at 303; RYNGAERT, C., JURISDICTION IN INTERNATIONAL LAW, Oxford, 2008, at 107. In *the United States v. Ledesma-Cuesta*, 347 F.3d 527 (3rd Cir. 2003), the court held that federal jurisdiction existed over offenses committed outside of the United States under the universality principle.

50 BURNHAM, W., *supra* note 24, at 691.

51 O'CONNELL, M. E., THE POWER AND PURPOSE OF INTERNATIONAL LAW, INSIGHTS FROM THE THEORY AND PRACTICE OF ENFORCEMENT, Oxford, 2008, at 346.

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53 Under specific conditions, the national authorities may undertake the enforcement acts as international enforcement agents. SHANY, Y., *supra* note 48, at 98. In *the United States v. Fawaz Yunis*, the court held that "not only the United States acting on behalf of the world community to punish alleged offenders of crimes that threaten the very foundations of world order, but the United States has its own interests in protecting its nationals".

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麻薬密輸事犯の取締り
ークリストファー・コーク引渡し事案ー

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要旨：　アメリカ合衆国の法執行当局は、同国を仕向地とする麻薬の密輸の増加によって、犯罪人引渡手続を通じた国際司法協力の必要に迫られている。本研究は、逃亡犯罪人の身柄確保のための手続と、法執行管轄権の域外適用の射程を、クリストファー・コーク引渡事案を紹介しながら検討する。あわせて引渡手続以外のオプションとして、公海上又は第三国における逃亡犯罪人の逮捕活動を中心とした域外法執行の実現可能性を検討する。

キーワード：　犯罪人引渡し、麻薬密輸、域外法執行、管轄権、国家主権