

EXTRADITION TREATY IMPROVEMENTS TO COMBAT DRUG TRAFFICKING

International extradition is the legal process through which one nation, upon request by another nation, apprehends and delivers to the requesting nation an individual within its borders who has been accused or convicted of a crime in the requesting nation.¹ On June 28, 1984, the United States Senate ratified new extradition treaties with Thailand,² Costa Rica,³ Jamaica,⁴ and Italy.⁵ These treaties reflect an increased administrative commitment to surmount obstacles in transnational law enforcement efforts.⁶ Specifically, the revision of antiquated extradition treaties⁷ is part of a

¹ The concept of extradition can be traced back to the ancient Egyptian, Chaldean, and Chinese civilizations. M. BASSIOUNI, *INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER* 1 (1974) [hereinafter cited as M. BASSIOUNI]. These early extraditions were generally gestures of friendship between sovereigns rather than acts resulting from treaties or agreements. The earliest recorded extradition treaty was signed between the Egyptians and the Hittites about 1280 B.C. This treaty permitted the surrender of a criminal who had violated the law of one nation and who was found within the other. See Note, *The Jaffee Case and the Use of International Kidnapping as an Alternative to Extradition*, 14 GA. J. INT'L & COMP. L. 357 (1984) [hereinafter cited as *Jaffee Case*]. For in-depth discussions of extradition procedure in the United States, see Bassiouni, *International Extradition in American Practice and World Public Order*, 36 TENN. L. REV. 1 (1968) [hereinafter cited as Bassiouni, TENN. L. REV.]; Bassiouni, *International Extradition: A Summary of the Contemporary American Practice and a Proposed Formula*, 15 WAYNE L. REV. 733 (1969) [hereinafter cited as Bassiouni, WAYNE L. REV.].

² S. TREATY DOC. NO. 16, Extradition Treaty with Thailand, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

³ S. TREATY DOC. NO. 17, Extradition Treaty with Costa Rica, 98th Cong. 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁴ S. TREATY DOC. NO. 18, Extradition Treaty with Jamaica, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁵ S. TREATY DOC. NO. 20, Extradition Treaty with Italy, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁶ See Statement of Mark M. Richard, Deputy Assistant Attorney General Criminal Division United States Department of Justice, Concerning the Senate's Advice and Consent to the Ratification of Law Enforcement Treaties 3, (June 14, 1984) (Department of Justice Prepared Statement) [hereinafter cited as Statement of Mark Richard].

⁷ The procedures contained in the original extradition treaties were signed in the late 19th and early 20th centuries. Extradition Treaty, Dec. 30, 1922, United States-Siam, 43 Stat. 1749, T.S. No. 681; Extradition Treaty, Nov. 10, 1922, United States-Costa Rica, 43 Stat. 1621, T.S. No. 668; Extradition Treaty, Dec. 22, 1931, United States-Great Britain, 47 Stat. 2122, T.S. No. 849 (includes Jamaica); Convention Concerning Extradition of Criminals, June 11, 1884, United States-Italy, 24 Stat. 1001, T.S. No. 192 (original treaty version at 15 Stat. 629). Although adequate at the date of signing, various defects have arisen because the treaties were neither replaced nor amended to keep pace with changing

continuing program to improve the United States' ability to combat international narcotics trafficking.⁸

Historically, the broad oceans which separate the United States from most of the world largely insulated it from transnational criminal activity.⁹ However, with the advent of modern technology, ocean barriers no longer provide insulation against such activity.¹⁰ Furthermore, improvements in international shipping and air traffic allow drug smuggling to operate on an international scale.¹¹

As marijuana, heroin, and cocaine began flowing into the United States in steadily increasing amounts since the 1960's, federal officials recognized that drug trafficking and drug addiction had become one of the most serious social problems in the United States.¹² The increasing drug trafficking problem is illustrated by examining the number of extradition requests within the last twenty years. In the 1960's, the total number of extradition requests involving the United States seldom exceeded twenty per year.¹³ By 1978, however, the number reached one hundred.¹⁴ In 1984, the United States government expected more than four hundred.¹⁵ Based on past experience, approximately one-third of the requests would relate to drug trafficking.¹⁶ To remedy the drug

social conditions and advancing technology. As a result, many crimes such as aircraft hijacking, computer fraud, and drug trafficking were not listed as extraditable offenses in the old treaties. I. SHEARER, *EXTRADITION IN INTERNATIONAL LAW* 132 (1971).

* Statement of Mark Richard, *supra* note 6, at 3. Besides extradition treaties, the development of mutual assistance and prisoner transfer treaties will be important in enhancing international law enforcement cooperation. *Id.* at 6. Mutual assistance treaties greatly facilitate the process of obtaining evidence from abroad providing an arrangement by which nations may cooperate in transferring criminals. Assistance thus becomes mandatory rather than discretionary. *Id.* Prisoner transfer treaties will improve international law enforcement cooperation by improving the ability of the United States to persuade other nations to extradite their own nationals and by furthering the efforts of United States agents and prosecutors in persuading prisoners to provide evidence and testimony against their criminal associates. *Id.* at 7-8.

⁸ *Id.* at 1-2.

¹⁰ *Id.*

¹¹ See generally DiCarlo, *U.S. International Narcotics Control Policy in Southeast Asia*, 83 DEP'T ST. BULL. No. 2073, at 46-48 (Feb. 1983).

¹² At the ceremony to announce President Reagan's program for combatting drug trafficking, Attorney General William French Smith remarked that organized crime and drug trafficking represented the most serious problem facing the United States. See Smith, *Organized Crime Today*, 10 DRUG ENFORCEMENT 7, 7-9 (1983); see also *infra* note 43 and accompanying text (presidential recognition of drug trafficking as a social problem).

¹³ Statement of Mark Richard, *supra* note 6, at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

problem, the Reagan administration has recognized that improvements in law enforcement capabilities are necessary.¹⁷

This Note examines the problem of drug trafficking and the need to improve international extradition efforts. This Note then compares the basic components of the new 1984 extradition treaties with their predecessors. It applies the provisions of the treaties to the specific problems of drug trafficking and international extradition. Finally, this Note considers whether the treaties will achieve their stated purposes of aiding the prosecution of narcotics conspiracies and reducing the flow of illegal drugs into the United States.

I. THE DRUG TRAFFICKING PROBLEM

A. Scope of the Problem

Illegal drugs have been recognized as an international problem since the thirteen nation Shanghai Opium Commission¹⁸ met in 1909 to discuss drug control. As the quality of transportation from remote areas of the world improved, narcotics began flowing into the United States from the major drug producing regions of Latin America,¹⁹ Southwest Asia,²⁰ and Southeast Asia.²¹ For example, improvements in the quality of yachts, fishing trawlers, small inter-island freighters, and light aircraft enable Caribbean smugglers to deliver directly into canals, inlets, and clandestine airstrips along the United States Gulf Coast.²² Similarly, the development

¹⁷ In October 1982, the Reagan administration published its federal strategy for preventing drug abuse and drug trafficking. International cooperation is one of the important elements of the program. See *The Federal Strategy*, 10 DRUG ENFORCEMENT 10 (Spr. 1983).

¹⁸ The International Opium Commission met in Shanghai, China, on Feb. 1, 1908, to study the world-wide opium problem. The meeting was the first international action taken toward solving the opium problem. See Wright, *The International Opium Commission*, 3 AM. J. INT'L L. 648 (1909).

¹⁹ For the purposes of this Note, the term "Latin America" includes the major drug-producing nations of the Caribbean, Central America, and South America. These nations include Bolivia, Colombia, Jamaica, Mexico, and Peru. See *infra* notes 25-30 and accompanying text for a discussion of drug production in Latin America.

²⁰ Afghanistan, Pakistan, and Iran are the major producers of opium and heroin in Southwest Asia. See *infra* notes 37-42 and accompanying text for a discussion of drug production in Southwest Asia.

²¹ Burma, Thailand, and Laos are the primary drug-producing nations in Southeast Asia. See *infra* notes 31-35 and accompanying text for a discussion of drug production in Southeast Asia.

²² SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL, 98TH CONG., 1ST SESS., REPORT ON INTERNATIONAL NARCOTICS CONTROL STUDY MISSIONS TO LATIN AMERICA, JAMAICA, HAWAII, HONG KONG, THAILAND, BURMA, PAKISTAN, TURKEY, AND ITALY 103 (Comm. Print 1984) [here-

of major international airports in Hong Kong, Singapore, and Bangkok provide drug traffickers with several modern departure sites from Southeast Asia. From these cities, opium and heroin can quickly and easily be delivered to drug traffickers in other countries.²³

Government statistics show that over ninety percent of the illegal drugs consumed in the United States are produced in Latin America, Southeast Asia, and Southwest Asia.²⁴ Latin America is responsible for the majority of the cocaine²⁵ and eighty percent of the marijuana imported into the United States.²⁶ In 1981, these percentages amounted to approximately forty to fifty metric tons of cocaine and 8,700 to 12,700 metric tons of marijuana.²⁷ While Colombia leads all other Latin American nations in the production of illegal drugs,²⁸ Jamaica has become increasingly important as a logistical stopover for drug traffickers waiting to enter the United States.²⁹ Although drug control efforts in Mexico have been relatively successful since the mid-1970's, United States officials believe that Mexican heroin production is increasing.³⁰

Opium production in Southeast Asia occurs primarily in north-

inafter cited as STUDY MISSIONS].

²³ See DiCarlo, *supra* note 11, at 46-48.

²⁴ See *The Federal Strategy*, *supra* note 17, at 10.

²⁵ Cocaine is the end product of the leaves of the coca bush. Civilizations on the eastern curve of the Andes mountains have grown coca for thousands of years. *Stopping "Mother Ships" - A Loophole in Drug Enforcement, 1978: Hearings on S.3437 Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. 85 (1978) [hereinafter cited as *Mother Ships*].

²⁶ See STUDY MISSIONS, *supra* note 22, at 1.

²⁷ See *International Narcotics Policy: Hearings Before the House Select Comm. on Narcotics Abuse and Control*, 98th Cong., 1st Sess. 65 (1983) (Narcotics Statistics) [hereinafter cited as *Narcotics Policy Hearings*].

²⁸ Colombia supplies at least 50% of the United States and world cocaine markets at the same time. Further, 70% of the marijuana smuggled into the United States comes from Colombia. Linnemann, *International Narcotics Control Strategy*, 82 DEP'T ST. BULL. No. 2059, at 48 (Feb. 1982).

²⁹ The island of Jamaica is extremely important in drug-trafficking operations as a landing and refueling base for aircraft and marine vessels en route to the United States. *Id.* at 50. The nation also exports marijuana and hashish oil. United States government estimates show that Jamaican exports to the United States are rising. Marijuana exports increased from an estimated 900-1,200 metric tons in 1981 to 1,750-2,500 metric tons in 1982. DiCarlo, *Marijuana Production and Control Abroad*, 84 DEP'T ST. BULL. No. 2082, at 72 (Jan. 1984).

³⁰ The Mexican poppy crop is increasing as growers are able to avoid government eradication methods. *Id.* at 48. The new practice of planting in small scattered plots rather than a large single plot makes it more difficult for Mexican authorities to eradicate the crop by herbicide spraying. See STUDY MISSIONS, *supra* note 22, at 12-13. See also *Drug Wars: Murder in Mexico*, NEWSWEEK, Mar. 18, 1985, at 25 (article dealing with increases in drug production in Mexico).

ern Thailand, eastern Burma, and western Laos, an area government officials refer to as the Golden Triangle.³¹ The opium growing area is largely remote, rugged, and inhabited by tribal people who have grown opium for years as their major cash crop.³² Opium derivatives³³ leave Asia from Hong Kong, Bangkok, and Singapore via commercial air couriers, air freight, international mail, and merchant vessels for the United States.³⁴ In 1984, the United States government estimated that sixteen percent of all heroin imported into the United States originated in Southeast Asia.³⁵ Predictions are that this figure will increase.³⁶

Afghanistan, Iran, and Pakistan, known as the Golden Crescent, comprise the principal areas for opium and heroin production in Southwest Asia.³⁷ Most of the heroin smuggled into the United States originates in this region.³⁸ Government authority to regulate

³¹ *Review of Attorney General's Trip to Asia in Regard to the Narcotics Situation: Hearings Before the Subcomm. on Asian and Pacific Affairs of the House Comm. on Foreign Affairs*, 97th Cong., 2d Sess. 1 (1982) [hereinafter cited as *Review of Attorney General's Trip*].

³² DiCarlo, *supra* note 11, at 45. Besides providing a guaranteed cash crop, opium has historically been used by Southeast Asian hill tribesmen for medicinal purposes. As a result of this use, opium addiction is common. *Southeast Asian Drug Trade: Hearings Before the Subcomm. on East Asian and Pacific Affairs of the Senate Comm. on Foreign Relations*, 97th Cong., 2d Sess. 8 (1982) [hereinafter cited as *Southeast Asian Drug Trade*].

³³ Opium derivatives include morphine and several varieties of heroin. DiCarlo, *supra* note 11, at 46. Raw opium is refined to morphine base in jungle laboratories for travel convenience. *Id.* The morphine base can be further refined into Heroin #3 (pit'zu), which is smoked, or into Heroin #4, which is generally used for intravenous injections. *Id.*

³⁴ *Id.* at 47. Although Burma produces most of the opium and heroin, the drugs are easily exported from Southeast Asia via Thailand because of the long sea coast, extensive river systems, and large number of fishing boats. *Id.* From Southeast Asia, trafficking organizations move the drugs to Hong Kong, Singapore, or Bangkok. *See Southeast Asian Drug Trade, supra* note 32, at 23. The most common route from these cities to the mainland United States is through Tokyo, Manila, or Honolulu to San Francisco and Los Angeles. *Id.*

Hong Kong has been a major refining and trafficking center for Southeast Asian narcotics because of its open ports, accessible borders, large addict population, and organized smuggling organization. *STUDY MISSIONS, supra* note 22, at 114. Hong Kong is also the financial and banking center of the Far East. The nation has few foreign exchange controls and strictly guards the confidentiality of bank accounts. *Id.* As a result, Hong Kong has also become the major financial center for Southeast Asian narcotics trafficking organizations. *Southeast Asian Drug Trade, supra* note 32, at 55.

³⁵ In 1982, the Golden Triangle produced between 610 and 720 metric tons of opium, representing a 100-200 metric ton increase since 1976. *See* DiCarlo, *supra* note 11, at 44.

³⁶ *Id.*

³⁷ The 1981 National Narcotics Consumers Intelligence Committee estimated that 54% of imported heroin originated in Southwest Asia. *See Narcotics Policy Hearings, supra* note 27, at 65.

³⁸ Linnemann, *International Narcotics Control*, 81 DEP'T ST. BULL. No. 2049, at 56 (Apr. 1981).

drug production is weak in the tribal areas of this region which have long resisted outside control.³⁹ As a result, there are no totally reliable estimates of the amount of illegal drugs produced and exported from the region.⁴⁰ Opium and heroin leave the region by camel caravan or truck en route to Turkey.⁴¹ From Turkey, narcotics trafficking organizations in Italy continue the drugs on their route to the United States and Europe.⁴²

The influence of illegal narcotics has been recognized as a serious social problem in the United States. During the last fifteen years, each presidential administration has recognized the need to address this problem.⁴³ The cost to society is staggering. In 1980, illicit drug sales grossed an estimated \$79 billion, an increase of twenty-two percent from 1979.⁴⁴

Drug trafficking has also led to a significant amount of related crime. In 1981 Miami, West Palm Beach, and Ft. Lauderdale were ranked among the United States' top ten crime-ridden cities due to the influx of narcotics into South Florida.⁴⁵ Further, to keep their

³⁹ *Id.*

⁴⁰ Linnemann, *International Narcotics Control Strategy*, 82 DEP'T ST. BULL. No. 2059, at 48 (Feb. 1982). Members of the House of Representatives Select Committee on Narcotics Abuse and Control were not able to visit Iran or Afghanistan on its fact-finding missions to drug-producing areas in 1983. See STUDY MISSIONS, *supra* note 22, at 176-77. The committee did report that it believed drug trafficking in Afghanistan has increased since the Soviet take-over. *Id.* at 76. The committee also reported that the Iranian government has substantially curtailed opium production. *Id.* at 77.

⁴¹ Linnemann, *supra* note 38, at 50. Opium can be refined into morphine base and heroin at any point on its journey from Pakistan's frontier to eastern Turkey. These refineries are not easy to locate and destroy because they are crude and highly mobile. *Id.*

⁴² *Id.* Because of its strategic location near Southwest Asian source nations, Italy has been a transit country for opium and heroin smuggling since the 1920's. Mafia organizations have been instrumental in shipping heroin to the United States. See STUDY MISSIONS, *supra* note 22, at 195.

⁴³ The Nixon administration recognized narcotics as an affliction affecting society in the early 1970's. In his Annual Report to the Congress, President Nixon spoke of the need for greater international cooperation, stricter law enforcement, and new rehabilitation programs to fight the problem. PUB. PAPERS, Richard Nixon [75] 335 (1971).

In a message to Congress in 1974, President Ford acknowledged the personal tragedy, family destruction, and economic waste caused by the illegal flow of drugs into the United States. PUB. PAPERS, Gerald Ford [34] 849 (1975). In 1982, Ronald Reagan also addressed the drug-trafficking problem. Like his predecessors, he declared his intent to stop the problem through stronger law enforcement and international cooperation. PUB. PAPERS, Ronald Reagan 695 (1982).

⁴⁴ If estimated drug profits are compared with United States corporate profits, the \$79 billion drug trafficking profits would rank second in 1980 behind Exxon's \$103 billion. The next closest competition would be Standard Oil of California which grossed \$40 billion in 1980. See *Drug Traffic Today - Challenge and Response*, 9 DRUG ENFORCEMENT 2 (1982).

⁴⁵ *Trouble in Paradise*, TIME, Nov. 23, 1981, at 23.

operations running smoothly, drug traffickers will often bribe foreign and United States government officials to ignore drug transactions.⁴⁶ In 1982, for example, federal sources reported that evidence linked former Bolivian president, General Luis Garcia Mega, to a drug trafficking operation.⁴⁷ The bribery amounts have become so great that they threaten to destroy the moral, ethical, and legal responsibilities that are the foundations of law enforcement.⁴⁸

Americans are victimized by drug syndicates⁴⁹ and dealers carrying out their operations. Drug gangs kill numerous innocent bystanders by carrying out assassinations in public places.⁵⁰ For example, in 1982, approximately twenty-five percent of all homicides in Dade County, Florida, resulted from the use of machine guns

⁴⁶ Smith, *supra* note 12, at 8. Convicted veteran drug smuggler, Robert Eby, testifying before a House of Representatives Subcommittee on Coast Guard and Navigation about narcotics trafficking, had the following to say about bribery of Mexican and other foreign government officials:

Mr. Eby: If you are a peasant farmer they will spray your field. If you make a little cash gesture to whoever is in charge of that area, of course, they won't spray the big field, only the tiny field. The same thing in Colombia and all of South America. The small man who comes up with say five tons per year is the man who usually gets hit by the D.A.S. which operates in Colombia. The man who grows a nine square mile field or whatever doesn't get bothered because he has enough money to take care of the situation at hand.

Mr. Biaggi: I heard one of the preceding witnesses state that the soldiers help in the loading and unloading.

Mr. Eby: Yes. It depends. You have to go look at the vastness of the situation.

In some cases you can go down and buy directly from the military forces.

Coast Guard Drug Interdiction: Hearings Before the Subcomm. on Coast Guard and Navigation of the House Comm. on Merchant Marine and Fisheries, 95th Cong., 2d Sess. 49 (1978) (statement of Robert Guy Eby, convicted drug smuggler, Richmond City Jail, Richmond, Va.).

Corruption is so prevalent in Colombia that federal sources report that the mayor of Santa Marta closes the city airport to commercial flights each night and permits drug traffickers to use it. The mayor is said to personally greet each plane for his money. Coram, *Georgia: America's Marijuana Funnel*, ATLANTA MAGAZINE, May 1978, at 77.

⁴⁷ Maitland, *U.S. Said to Prepare Drug Case Against Bolivian*, N.Y. Times, Nov. 9, 1982, § A, at 8, cols. 3-5. Federal sources allege that a former Bolivian president received millions of dollars from drug traffickers. *Id.* Federal sources also claim to have evidence that a former Bolivian interior minister conspired to ship cocaine to the United States via a fleet of private planes. *Id.*

⁴⁸ Smith, *supra* note 12, at 9.

⁴⁹ *Id.* at 8. The major criminal organization in the United States is the La Cosa Nostra (LCN). Originating in Italy, the LCN arose in the United States in the early 1930's. *Organized Crime in America: Hearings Before the Senate Comm. on the Judiciary*, 98th Cong., 1st Sess. 42 (1983) (testimony of William H. Webster, Director, Federal Bureau of Investigation) [hereinafter cited as *Organized Crime in America*]. The LCN is a confederation of about 25 families recognizing the authority of a national commission. *Id.* For an in-depth analysis of the LCN, see *id.* at 80.

⁵⁰ Smith, *supra* note 12, at 7.

often associated with drug smuggling.⁵¹

Traditional drug syndicates are not the only enterprises dealing in drugs in the United States. Several large motorcycle gangs have developed throughout the nation.⁵² They are structured as traditional crime families and obtain their income primarily from the sale of drugs.⁵³ Similarly, in the 1960's, prison gangs developed in California.⁵⁴ These quasi-military gangs are highly structured organizations whose influence extends beyond prison walls.⁵⁵

Drugs victimize not only the addict, but also the innocent individuals robbed, assaulted, and burglarized by addicts in search of money to sustain their drug habits.⁵⁶ The University of Delaware published a study which showed that 356 active heroin users in Miami were responsible for 118,134 crimes in one year.⁵⁷ A similar study showed that 243 Baltimore, Maryland, heroin addicts committed about one half million crimes in eleven years — an average of 2,000 crimes each, or a crime every other day.⁵⁸

B. United States Response

In the mid-seventies, President Carter pledged his administration's support in controlling the influx of marijuana, cocaine, and heroin into the United States through international cooperation and law enforcement.⁵⁹ During his presidency, several committees traveled to drug-producing regions to examine the drug trafficking problem.⁶⁰ In addition to recommending aid and mutual coopera-

⁵¹ *Id.*

⁵² *Id.* at 8. The "Big Four" outlaw motorcycle gangs are the Hell's Angels, the Bandidos, the Outlaws, and the Pagans. *Organized Crime in America*, *supra* note 49, at 53.

⁵³ Smith, *supra* note 12, at 8. In some areas, gangs have joined with traditional organized crime. *Organized Crime in America*, *supra* note 49, at 53.

⁵⁴ *Organized Crime in America*, *supra* note 49, at 54. These gangs include the Mexican Mafia, La Nuestra Familia, the Aryan Brotherhood, and the Black Guerilla Family. *Id.*

⁵⁵ The gangs engage in narcotics trafficking, weapons trafficking, extortion, robbery, and murder. *Id.*

⁵⁶ Smith, *supra* note 12, at 8.

⁵⁷ This study was cited in *The Relationship Between the Department of Justice and State/Local Criminal Justice Communities: Hearings Before the Subcomm. of the House Comm. on Government Operations*, 97th Cong., 2d Sess. 1 (1982).

⁵⁸ See *International Narcotics Trafficking: Hearings Before the Permanent Subcomm. on Investigation of the Senate Comm. on Governmental Affairs*, 97th Cong., 1st Sess. 69 (1981) [hereinafter cited as *International Narcotics Trafficking*]. For a detailed explanation of this study, see *id.* at 60-72.

⁵⁹ PUB. PAPERS, Jimmy Carter 1977 II, 1399-1403. In a message to Congress in 1977, President Carter stated that the United States could combat the serious social problem of drug abuse by subjecting traffickers to swift, certain, and severe punishment. *Id.* at 1403.

⁶⁰ In 1976, the Senate Committee on Foreign Relations visited Asia. Committee members

tion, the committees stressed the need for greater commitment by foreign governments to control the flow of illegal narcotics out of their countries.⁶¹

The Carter administration also recognized that in order to disrupt the drug trafficking routes into the United States, the prosecution of fugitive drug smugglers would be required.⁶² As a result, President Carter negotiated extradition treaties with several nations to revise and improve outdated extradition treaties.⁶³ The Extradition and Mutual Legal Assistance Treaty with Turkey,⁶⁴ for example, expanded the scope of the previous Turko-American extradition treaty by adding drug smuggling, bribery, and aircraft hijacking to the list of extraditable offenses.⁶⁵ These charges were designed to contribute to international cooperation in law enforcement with special emphasis on drug-related crimes.⁶⁶

stated that the fundamental problems in Thailand were non-enforcement of the law against growing poppies and the quick release of drug traffickers. STAFF OF SENATE COMM. ON FOREIGN RELATIONS, 94TH CONG., 2D SESS., REPORT ON POSTWAR SOUTHEAST ASIA 6 (Comm. Print 1976).

⁶¹ Without such foreign commitment, United States efforts will not achieve the desired results. See *Mother Ships*, *supra* note 25, at 66.

United States officials believe that the most successful program to fight narcotics trafficking consists of joint United States and foreign government efforts. The governments of drug-producing nations must be convinced of the need to become more involved in limiting production and distribution of narcotics in order to fight the drug trafficking problem. *Id.* at 72. There are, however, several obstacles. Foreign governments do not have adequate funds to allocate to narcotics control. Drugs also bring money into the economies of drug-producing nations. In 1978, it was estimated that drug trafficking brought about \$1 billion into Colombia's economy. Corruption in foreign governments is another obstacle. *Id.* at 73. United States drug enforcement agents in Latin America, for example claim that drug traffickers continually bribe Colombian customs officials, judges, and drug enforcement agents. *Id.* at 85.

After visiting Latin and South America in 1978, members of the Senate Committee on the Judiciary stated that the key to success in anti-drug programs is greater involvement by foreign governments in controlling the flow of drugs from their nations. Committee members also stated that such success is limited by government corruption and a lack of resources that can be allocated to drug enforcement. *Id.* at 66.

⁶² The House of Representatives Committee on Narcotics Abuse and Control recognized that drug smugglers outside United States jurisdiction presented a problem. Criminals not brought to justice remain involved in drug-trafficking. *Narcotics Abuse and Current Federal and International Narcotics Control Effort: Hearings Before the House Select Comm. on Narcotics Abuse and Control*, 94th Cong., 2d Sess. 282-83 (1976) (statement of Peter B. Bensinger, Administrator, DEA, United States Department of Justice).

⁶³ See Extradition Treaty with Turkey, S. EXEC. NO. AA, 96th Cong., 1st Sess., 125 CONG. REC. S22506 (daily ed. Aug. 2, 1979); Extradition Treaty with Mexico, May 4, 1978, United States-Mexico, 31 U.S.T. 5059, T.I.A.S. No. 9656.

⁶⁴ *Id.*

⁶⁵ *Id.* at (III).

⁶⁶ *Id.*

The Reagan administration has continued the attempt to curb the influx of illegal drugs into the United States. In 1982, United States Attorney General William French Smith traveled to Japan, Hong Kong, Thailand, and Pakistan to examine narcotics control and refugee matters.⁶⁷ He recommended developing treaties to facilitate judicial action against drug traffickers and their assets.⁶⁸ In addition, several members of the House of Representatives Select Committee on Narcotics Abuse and Control traveled to Latin America, Southwest Asia, and Southeast Asia in 1984 to inspect the drug trafficking process. The committee then recommended a program consisting of: (1) monetary aid to foreign governments; (2) eradication of poppies, coca, and cannabis; (3) development of substitute cash crops; (4) international cooperation in narcotics enforcement; and (5) effective conspiracy laws to combat drug traffic.⁶⁹

In recent years, the United States has implemented such recommendations. Extradition treaties, negotiated as a method for prosecuting drug traffickers, have been signed with Thailand,⁷⁰ Costa Rica,⁷¹ Jamaica,⁷² and Italy.⁷³ United States authorities are also working with officials of drug-producing nations to implement crop substitution programs among farmers.⁷⁴ For example, Jamaican officials encourage farmers to plant rice and sugar cane and coffee rather than marijuana.⁷⁵ The United States is also working with Thai officials to eliminate the poppy crop by substituting such

⁶⁷ See *Review of Attorney General's Trip*, *supra* note 31, at 4.

⁶⁸ *Id.*

⁶⁹ See *STUDY MISSIONS*, *supra* note 22, at 105, 141, 150.

⁷⁰ S. TREATY DOC. NO. 16, Extradition Treaty with Thailand, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁷¹ S. TREATY DOC. NO. 17, Extradition Treaty with Costa Rica, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁷² S. TREATY DOC. NO. 18, Extradition Treaty with Jamaica, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁷³ S. TREATY DOC. NO. 20, Extradition Treaty with Italy, 98th Cong., 2d Sess., 130 CONG. REC. S8573-74 (daily ed. June 28, 1984).

⁷⁴ Crop substitution programs are not a new idea. United States officials have long recognized the need for crop substitution programs as part of strategy to stop drug trafficking. In 1977, for example, the House of Representatives Select Committee on Narcotic Abuse and Control stressed the importance of crop substitution programs. Substituting other agricultural crops for poppies would decrease opium production. *Southeast Asian Narcotics: Hearing Before the House of Representatives Select Comm. on Narcotics Abuse and Control*, 95th Cong., 1st Sess. 53 (1977) (testimony of Robert B. Oakley, Deputy Assistant Secretary of East Asian and Pacific Affairs, Department of State) [hereinafter cited as *Southeast Asian Narcotics*].

⁷⁵ *STUDY MISSIONS*, *supra* note 22, at 139.

crops as kidney beans, upland rice, millet, maize, and ginger root.⁷⁶

Although the United States continually gives large amounts of monetary aid to foreign nations⁷⁷ to combat drug production, the volume of illicit drugs entering the United States continues to increase. Marijuana exports from Jamaica rose from 900-1200 metric tons in 1981 to 1,750-2,500 metric tons in 1983,⁷⁸ and to an estimated 1,627-2,977 metric tons in 1984.⁷⁹ In the same period, Latin and South American cocaine exports rose by 7,800 metric tons.⁸⁰ Further, the volume of opium from Thailand similarly increased by ten metric tons.⁸¹

Twenty years after drug abuse and drug trafficking became recognized as a serious social problem, virtually every strategy of control has failed.⁸² Several factors explain the failure of programs designed to combat drug trafficking. A successful program requires the cooperation of both the United States and the major drug-producing nations. While the United States government has committed itself to stopping the flow of drugs into its borders, foreign governments have not made a similar commitment.⁸³

Minimal foreign government efforts to curtail the flow of illegal drugs generally stem from severe shortages of manpower, equipment, and operating funds in the drug-producing nations.⁸⁴ The Thai and Burmese governments, for example, have not been able

⁷⁶ *Id.*

⁷⁷ This chart shows the State Department annual financial requests for drug control.
STATE DEPT. FISCAL YEAR ASSISTANCE REQUEST FOR NARCOTICS CONTROL

	1983	1984	1985
Latin America	\$17.0 million	\$30.0 million	\$29.4 million
S.E. Asia	\$ 7.6 million	\$ 8.9 million	\$ 8.1 million
S.W. Asia	<u>\$ 3.95 million</u>	<u>\$ 4.7 million</u>	<u>\$ 3.0 million</u>
TOTAL	\$28.25 million	\$43.6 million	\$38.5 million

Taylor, *FY 1985 Assistance Request for Narcotics Control*, 84 DEP'T ST. BULL. No. 2086, 72-73 (May 1984).

⁷⁸ DiCarlo, *supra* note 29, at 71.

⁷⁹ Brinkley, *Drug Crops Are Up In Export Nations, State Department Says*, N.Y. Times, Feb. 15, 1985, at 6, col. 1.

⁸⁰ Latin and South America exported 5,000 metric tons in 1981. This amount rose to 12,800 metric tons in 1983. Taylor, *supra* note 77, at 72.

⁸¹ The volume of Thai opium increased from 40 metric tons in 1980 to 50 metric tons in 1982. DiCarlo, *supra* note 11, at 44.

⁸² Brinkley, *Rampant Drug Abuse Brings Call for Move Against Source Nations*, N.Y. Times, Sept. 9, 1984, § 1, at 1, col. 1.

⁸³ See generally *supra* notes 70-76 and accompanying text (United States attempts and recommendations to curb drug-trafficking).

⁸⁴ Brinkley, *supra* note 82, at 12, col. 2.

to implement a strong anti-drug policy because they are allocating most available resources to fighting various insurgent groups.⁸⁵ In Jamaica, little can be done to stop narcotics trafficking because of insufficient manpower and resources. The Jamaican Constabulary Force's narcotics division, for example, had only twenty-eight men in 1981 to patrol the island.⁸⁶

Thailand, Jamaica, Peru, and Colombia are hesitant to destroy poppies, cannabis, and coca because so many farmers depend upon these crops for their livelihood.⁸⁷ For instance, marijuana production in Columbia's Guajira peninsula provides a livelihood for an estimated 19,000 families, due in part because marijuana field workers can earn approximately \$7.50 per hour compared to

⁸⁵ Drug trafficking in Southeast Asia is primarily controlled by three insurgent groups based in the remote hill areas along the Thai-Burmese border. The Chinese Irregular Forces (CIF), Shan United Army (SUA), and the Burmese Communist Party (BCP) are well-armed military groups which use drug profits to finance their operations. See *Southeast Asian Drug Trade*, *supra* note 32, at 8-9, 12.

The oldest group in Southeast Asia is the CIF which dominated the Golden Triangle narcotics trade from the 1950's to 1975. This group of about 10,000 represents the remnants of Nationalist Chinese groups which retreated into Southeast Asia following the Communist take-over in China. *Id.* at 8-9.

After the Burmese government's military attack against CIF operations in 1975, the Shan United Army became the dominant narcotics organization in Southeast Asia. The Thailand-based SUA cultivates the image of a bastion against BCP advances into Thailand. *Id.* SUA existence depends upon revenues from narcotics trafficking and other illegal enterprises for its existence. *Id.* at 16.

In 1978, the Burmese Communist Party entered the narcotics trade when China reduced its support of the insurgency. Like the CIF and the SUA, the BCP has established poppy cultivation and opium refining to pay troops and to purchase weapons. See *id.* at 8, 12, 16.

⁸⁶ *International Narcotics Trafficking*, *supra* note 58, at 164. Insufficient resources are also a problem in the Jamaican Defense Force. In 1981 Jamaica had no radar facilities. Thus it was virtually impossible to detect the numerous narcotics flights from clandestine airstrips. *Id.* Furthermore, Jamaican chaser plane and Coast Guard capabilities are minimal. *Id.*

⁸⁷ See *id.* at 135.

To satisfy the market demands of various insurgent groups, many farmers in northern Thailand produce opium as their major cash crop. *Southeast Asian Drug Trade*, *supra* note 32, at 12. Thai and United Nations officials have introduced substitute cash crops such as rice, kidney beans, maize, and coffee into the region. *STUDY MISSIONS*, *supra* note 22, at 139. These crops, however, have not achieved great success because of a lack of interest and low market prices. *Southeast Asian Drug Trade*, *supra* note 32, at 12.

Andean civilizations have chewed and used the leaves of the coca bush in religious ceremonies for about 3,000 years. Chewing coca leaves relieves hunger, fatigue, and cold. In most of the Peruvian and Bolivian Andes, coca is the only source of income. See *Mother Ships*, *supra* note 25, at 75. In Peru's Upper Huallaga Valley, coca is the primary source of income for over 7,000 farmers. Coca trafficking generates an estimated 60% of the region's economy. *Narcotics Policy Hearings*, *supra* note 27, at 47.

roughly \$3.50 per hour for other agricultural work.⁸⁸ A Jamaican poll found that 61.8 percent of the Jamaican population did not want to reduce marijuana exports to the United States.⁸⁹ Furthermore, other agricultural crops cannot match the income from the sale of narcotic crops.⁹⁰ Jamaica, for example, annually earns twice as much income from marijuana exports than from all other exports.⁹¹

Crop substitution programs generally have not been successful. The United States and the United Nations have spent large amounts of money to establish crop substitution programs in Thailand.⁹² In 1984, however, there was a thirty-eight percent increase in poppy production over 1983.⁹³ Crop substitution programs have not been enthusiastically received because narcotics-derived dollars help the economies of drug-producing nations and provide in-

⁸⁸ *Narcotics Policy Hearings*, *supra* note 27, at 42.

⁸⁹ This public opinion poll shows that a majority of Jamaicans favor the marijuana trade. See Stone, *Majority Opposed to Cutting Back Marijuana Trade*, *The Star* (Jamaican newspaper) (reprinted in *International Narcotics Trafficking*, *supra* note 58, at 496).

⁹⁰ *Rampant Drug Abuse Brings Call for Move Against Source Nations*, N.Y. Times, Sept. 9, 1984, at § A, at 1, col. 12 [hereinafter cited as *Rampant Drug Abuse*]. Besides being profitable and easy to grow, marijuana traditionally has been used by Jamaicans for several hundred years for smoking, tea, and other products. *International Narcotics Trafficking*, *supra* note 58, at 163. Members of the Jamaican Rastafarian cult and Ethiopian Zion Coptic Church use the drug in their religious ceremonies. *Id.* at 555.

⁹¹ Treaster, *Jamaica, Close U.S. Ally Does Little to Halt Drugs*, N.Y. Times, Sept. 10, 1984, at § A, at 12, col. 1. In 1983, Jamaica received \$1.4 billion from exports of marijuana. *Id.* In recent years the marijuana trade has replaced tourism as the major supplier of dollars for Jamaica's foreign currency reserves. *International Narcotics Trafficking*, *supra* note 58, at 56.

Jamaican government officials are also reluctant to destroy marijuana because they fear a repeat of the 1979 sugar cane crop burning instigated by drug traffickers in response to the government's marijuana crop destruction. *STUDY MISSIONS*, *supra* note 22, at 107. The present Jamaican government also fears the potential backlash from political opponents if it undertook a major marijuana eradication program. *International Narcotics Trafficking*, *supra* note 58, at 164.

The United States also fears the effects of pressuring the Jamaican government to take greater initiative. In the last several years, Jamaica has become a close ally. At the same time, however, Jamaican marijuana and cocaine exports have been increasing. United States pressure could result in a return in Jamaica of a leftist government, which is perceived by the United States as a greater national threat than drug trafficking. *Rampant Drug Abuse*, *supra* note 90, at col. 2. See also *International Narcotics Trafficking*, *supra* note 58, at 164.

⁹² *International Narcotics Trafficking*, *supra* note 58, at 56. The United States Department of Agriculture has been funding programs in Thailand since 1973. *Id.* The United Nations Fund for Drug Abuse Control (UNFDAC) contributed \$2.4 million for five years. *Id.*

⁹³ Brinkley, *In the Drug War, Battles Won and Lost*, N.Y. Times, Sept. 10, 1984, § A, at 16, col. 1-2.

come for farmers.⁹⁴

Source nations cannot effectively deal with the illegal flow of drugs. Therefore, the United States has assumed most of the burden of attempting to stop drug traffickers. One method to help achieve this goal is to improve the effectiveness of the United States' international law enforcement efforts by revising outdated international extradition procedures.⁹⁵

II. PROBLEMS WITH INTERNATIONAL EXTRADITION

To increase the effectiveness of law enforcement efforts, improvements must be made in obtaining the extradition of traffickers who ship drugs into the United States. Such extradition will enhance the government's ability to prosecute crimes committed outside the United States which affect the United States.⁹⁶

In the United States, the federal government has the sole power to regulate international extradition.⁹⁷ Like most common law nations, the United States does not allow extradition in the absence of a treaty.⁹⁸ This philosophy is consistent with the established international legal principle that nations have no obligations to extradite absent a treaty.⁹⁹

The first United States extradition treaty was signed in 1794 between the United States and Great Britain. Known as the Jay Treaty,¹⁰⁰ it allowed extradition for two crimes: murder and forgery. While the Circuit Court of Virginia stated in 1835 that extra-

⁹⁴ For instance, illegal drug receipts annually add \$1 billion to the Colombian economy. See *Mother Ships*, *supra* note 25, at 73. The State Department estimates that \$150 million from marijuana exports entered the Jamaican economy in 1982. See *Narcotics Policy Hearings*, *supra* note 27, at 42.

⁹⁵ See Statement of Mark Richard, *supra* note 6, at 3; See also S. EXEC. REP. No. 29, 98th Cong., 2d Sess. 1 (1984); S. EXEC. REP. No. 30, 98th Cong., 2d Sess. 1 (1984); S. EXEC. REP. No. 31, 98th Cong., 2d Sess. 1 (1984); S. TREATY DOC. 33, 98th Cong., 2d Sess. 1 (1984).

⁹⁶ Statement of Mark Richard, *supra* note 6, at 4; See also S. EXEC. REPS. NOS. 29-33, *supra* note 95.

⁹⁷ *Holmes v. Jennison*, 14 Pet. 540 (1840); *United States v. Rauscher*, 119 U.S. 407, 408 (1886). *Factor v. Laubenheimer*, 290 U.S. 276 (1933); See also 4 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 305 (1944).

⁹⁸ 18 U.S.C. § 3181 (1982) (list of United States extradition treaties). Civil law nations, however, generally permit extradition without a treaty. For convenience, these nations enter treaties only with those nations which will not extradite in absence of a treaty. SHEARER, *supra* note 7, at 28-31.

⁹⁹ See generally Collins, *Traffic in the Traffickers: Extradition and the Controlled Substances Import and Export Act of 1970*, 83 YALE L. J. 706, 714 (1974).

¹⁰⁰ Jay Treaty, Nov. 19, 1794, United States-Great Britain, art. 27, 8 Stat. 116 (1795), T.S. No. 105.

dition is a right that cannot exist absent a treaty,¹⁰¹ the first federal enactment on the subject did not occur until 1848.¹⁰² The Act of August 12, 1848, instituted a procedure for the apprehension and deliverance of offenders in cases where extradition treaties existed between the United States and foreign governments.¹⁰³ Later, in 1933, the Supreme Court construed the United States Constitution to require an applicable treaty or federal enactment before the federal government may seize a fugitive and surrender him to a demanding nation.¹⁰⁴ Thus, the extradition treaty became the established solution for obtaining jurisdiction over fugitive criminals.¹⁰⁵ By 1983 the United States was a party to bilateral extradition treaties with ninety-nine nations.¹⁰⁶

A typical extradition request by the United States begins with an application for extradition to the United States Secretary of State.¹⁰⁷ The application must state that the person sought is guilty of one of the offenses covered by the extradition treaty and that the fugitive is in the asylum nation.¹⁰⁸ The Secretary of State then has the discretion to decide whether the case is one calling for extradition of the fugitive to the United States.¹⁰⁹

A typical extradition request by a foreign nation begins with that government filing a verified complaint with a United States extradition magistrate.¹¹⁰ After issuing a warrant for the fugitive's arrest and detention, the magistrate conducts a hearing to deter-

¹⁰¹ *Ex parte Dos Santos*, 7 F. Cas. 949 (C.C.D. Va. 1835) (No. 4,016).

¹⁰² Act of Aug. 12, 1848, ch. 167, 9 Stat. 303 (1848).

¹⁰³ *Id.*

¹⁰⁴ *Factor v. Laubenheimer*, 290 U.S. 276 (1933). The Supreme Court stated that a nation has no international legal right for extradition in the absence of a treaty. The court ruled that although a moral duty to extradite may exist, the legal right exists only when created by a treaty. *Id.* at 287.

¹⁰⁵ See Collins, *supra* note 99, at 711.

¹⁰⁶ For a list, see M. BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE, at Booklet B, *Tables of Current U.S. Extradition Treaties*, 1-11 (1983).

¹⁰⁷ If the alleged offense is within the jurisdiction of the state or territorial courts, the application must come from the governor of such a state or territory. If the offense is a violation of federal law, it must come from the Attorney General of the United States. See BASSIOUNI, WAYNE L. REV., *supra* note 1, at 737-38.

¹⁰⁸ *Id.* at 738.

¹⁰⁹ *Id.* at 739. The Secretary of State exercises considerable discretion in performing this responsibility. The Secretary must examine the case to determine if all extradition treaty requirements have been fulfilled. He will then consider such aspects as equity in the case and international consequences. For an in-depth analysis of the executive discretion privilege see Note: *Executive Discretion in Extradition*, 62 COLUM. L. REV. 1313 (1962).

¹¹⁰ The extradition magistrate may be a federal judge, a state judge, or a United States Commissioner. See BASSIOUNI, WAYNE L. REV., *supra* note 1, at 737.

mine whether the demanding nation has sufficient grounds for requesting extradition.¹¹¹ If the evidence is found sufficient, the case is then turned over to the Secretary of State, who may issue a warrant of surrender upon requisition by the demanding nation.¹¹²

Traditional extradition methods have often proven ineffective. Although the United States has negotiated extradition treaties with many nations, most of these treaties have not been revised since the original versions were enacted. For example, until 1984, extradition treaties with Thailand, Costa Rica, Jamaica, and Italy had remained unchanged for over fifty years.¹¹³ These early extradition treaties, however, did not anticipate the development of crimes such as computer fraud, drug trafficking, airplane hijacking, and credit card fraud.¹¹⁴ Since extradition is permitted only for crimes specified in the treaties, it was very difficult to control and prosecute crimes such as drug trafficking or computer fraud because these were new crimes not included in older extradition treaties.¹¹⁵

Another problem with international extradition is the double criminality principle. This principle requires that the conduct complained of be criminal under the laws of both nations.¹¹⁶ Double criminality is, in effect, a reciprocity requirement intended to assure each nation that it can rely on corresponding treatment. It also ensures that a nation will not surrender an individual for conduct which it does not characterize as criminal.¹¹⁷

When a court restricts its inquiry in an extradition case to the label of the criminal charge, extradition will be allowed only when the specific crime is stated in the laws of both nations.¹¹⁸ A classic example of this problem occurred in 1949 when the governor of Alabama requested the extradition of Henry and Eleanor Dunster

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See *supra* note 7 (lists of extraditable crimes in the extradition treaties). Similarly, in 1979, the United States amended extradition treaties with Turkey and Mexico that were signed in 1902 and 1923, respectively. Extradition Treaty with Turkey, S. EXEC. NO. AA, 96th Cong., 1st Sess. 125 CONG. REC. S22,506 (daily ed. Aug. 2, 1979). Extradition Treaty with Mexico, May 4, 1978, United States-Mexico, 31 U.S.T. 5059, T.I.A.S. No. 9656.

¹¹⁴ See SHEARER, *supra* note 7, at 132.

¹¹⁵ *Id.* at 134.

¹¹⁶ See M. BASSIOUNI, *supra* note 106, at VII, 3-3 (1983).

¹¹⁷ This principle is still pertinent even though there is a trend toward uniformity of criminal laws. Sharp variations are found among laws relating to such matters as abortions, euthanasia, and homosexuality. See SHEARER, *supra* note 7, at 138.

¹¹⁸ See COLLINS, *supra* note 99, at 735.

from Great Britain.¹¹⁹ The Dunsters had aided their daughter in unlawfully taking her children from Alabama to Great Britain against the wishes of her husband. The act was characterized as kidnapping in the United States. British law, however, did not consider such an act to be kidnapping. As a result, extradition was denied.¹²⁰

Governments may circumvent traditional extradition procedures to gain custody of individuals because of the frustration, time, and cost associated with the process.¹²¹ Such circumvention is referred to as an "extraordinary apprehension." Extraordinary apprehension is carried out by abduction and irregular rendition. Abduction is the unilateral seizure of a fugitive by agents of the apprehending nation without the cooperation of the government of the nation in which the fugitive is located.¹²² Irregular rendition is seizure through ad hoc agreements, cooperation, or acquiescence by the other government.¹²³

The United States' position on extraordinary apprehensions differs as to abductions and irregular renditions. In *United States v. Toscanino*,¹²⁴ the Second Circuit held that United States courts have no jurisdiction over a person seized through abduction. This decision is consistent with the traditional notion that abduction violates customary international law.¹²⁵ Generally, customary inter-

¹¹⁹ This situation is discussed in 6 WHITEMAN, DIGEST OF INTERNATIONAL LAW 776-77 (1968).

¹²⁰ *Id.* Not all nations adhere to such a strict approach requiring the crimes to be the same in both nations. A less restrictive view ignores the label, and inquires into the criminal conduct and type of crime. In *Collins v. Loisel*, 259 U.S. 309 (1921), the court stated that the name of the crime does not have to be the same in both countries. It is enough if the particular act is criminal in both jurisdictions. *Id.* at 312. Similarly, in 1959 the Second Circuit held that it is immaterial if the acts in question constitute the crime of theft and fraud in Canada, and the crime of larceny in the United States. It is enough if the particular acts are criminal in both jurisdictions. *United States v. Stockinger*, 269 F.2d 681 (2d Cir. 1959).

¹²¹ See M. BASSIOUNI, *supra* note 1, at 123.

¹²² *Abramovsky and Eagle, U.S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition*, 57 OR. L. REV. 51, 52 (1977-78). For an in-depth discussion of abduction, see *Jaffee Case*, *supra* note 1.

¹²³ *Abramovsky and Eagle, supra* note 122, at 51-52. See *Jaffee Case, supra* note 1, at 368.

¹²⁴ 500 F.2d 267 (2d Cir. 1974). In 1974, United States government officials kidnapped Uruguayan citizen Toscanino to face drug trafficking charges in the United States. At the same time, the United States-Uruguayan extradition treaty did not list narcotics violations as extraditable offenses. The federal court held that as a matter of fundamental fairness, the United States government should be obligated to return Toscanino. *Id.* at 271-75.

¹²⁵ Abductions by one nation of a person located within the territory of another violate the territorial sovereignty of the second nation and are redressable usually by the return of the person kidnapped. *Id.* at 278.

national law governs where a federal statute or judicial decision does not provide otherwise.¹²⁶ Because no such statute exists, the United States must rely on customary international law. The practice, therefore, violates international legal principles.¹²⁷

The *Toscanino* court also held that irregular renditions are illegal if the defendant can prove that United States agents have engaged in reprehensible conduct which deprived him of due process of law.¹²⁸ Because international law has not proscribed irregular renditions as it has abductions,¹²⁹ the language in the *Toscanino* opinion suggests the notion that those irregular renditions where a nation does not engage in reprehensible conduct depriving a defendant of due process would be in accord with international law.¹³⁰

In 1975, one year after the *Toscanino* decision, the Second Circuit stated in *United States ex rel. Lujan v. Gengler*¹³¹ that an abduction from another country violates international law only when the offended state objects to the conduct. Following a comment in the Harvard Research in International Law Draft Extradition Treaty,¹³² the *Lujan* court stated that every irregularity in recovering a fugitive is not a violation of international law.¹³³ If the

¹²⁶ *The Paquette Habana*, 175 U.S. 677, 700 (1900).

¹²⁷ *Abramovsky and Eagle*, *supra* note 122, at 64.

¹²⁸ 500 F.2d at 275

When an accused is kidnapped and forcibly brought within the jurisdiction of the United States, the court's acquisition of power over his person represents the fruits of the government's exploitation of its own misconduct. Having unlawfully seized the defendant in violation of the Fourth Amendment, which guarantees "the right of the people to be secure in their persons . . . against unreasonable . . . seizures," the government should, as a matter of fundamental fairness, be obligated to return him to his status quo ante.

Id. See also *United States v. Edmons*, 432 F.2d 577 (2d Cir. 1970). In *Edmons*, the Third Circuit Court of Appeals recognized that illegal renditions have been seriously questioned because they condone illegal police conduct. *Id.* at 583; *Government of Virgin Islands v. Oritz*, 427 F.2d 1043, 1045 n.2 (3d Cir. 1970).

¹²⁹ A nation's consent or acquiescence to an irregular rendition waives any international right it possessed against the offender, and thus precludes any violation of international law. *United States ex rel. Lujan v. Gengler*, 510 F.2d 62 (2d Cir. 1975), *cert. denied*, 421 U.S. 1001 (1975). This principle has been expressed by various commentators. See *Harvard Research Draft Convention on Extradition*, 29 AM. J. INT'L L. 631 (Supp. 1935); 1 G. SCHWARZENBERGER, *MANUAL OF INTERNATIONAL LAW* 162 (4th ed. 1960).

¹³⁰ See *Toscanino*, 500 F.2d at 276. See also *supra* note 129 and accompanying text.

¹³¹ See *Lujan*, 510 F.2d at 68. See also *Abramovsky and Eagle*, *supra* note 120.

¹³² This draft treaty is reprinted in 29 AM. J. INT'L L. 631 (Supp. 1935). The Research in International Law was organized by the faculty of Harvard Law School in 1927 and 1928 to prepare a draft of an international convention on several topics. *Id.* at 1. The law of extradition was one of the subjects examined.

¹³³ *Lujan*, 510 F.2d at 67.

state in which the fugitive is found acquiesces or agrees even in the most informal manner, there is no element of illegality.¹³⁴ United States law thus allows abductions and irregular renditions in specific situations.

Resort to such practices, however, causes problems. The Charter of the Organization of American States, of which the United States is a member, states:

The territory of a state is inviolable; it may not be the object, even temporarily, of military occupation or of other measures, of force taken by another state, directly or indirectly, on any grounds whatsoever. No territorial acquisitions or special advantages obtained by force or by other means of coercion shall be recognized.¹³⁵

The forceful abduction of an individual can thus be viewed as a violation of the Charter of the Organization of American States because it violates national sovereignty and territorial integrity.¹³⁶

Irregular renditions also suggest illegality because they fall outside the traditional extradition process.¹³⁷ Because such seizures do not provide a hearing to determine whether the evidence justifies removal,¹³⁸ irregular renditions may also constitute a violation of the fourth amendment which forbids the an illegal seizure and arrest of an individual.¹³⁹

The new extradition treaties ratified in 1984¹⁴⁰ significantly improve United States efforts to obtain fugitives through extradition. Substantive and procedural improvements in the extradition procedure are part of a concerted United States policy designed to revise and improve the effectiveness of international law enforcement efforts.¹⁴¹ These treaties will allow the United States to avoid having to resort to abductions and irregular renditions by eliminating the defects present in earlier, outdated treaties. At the same

¹³⁴ *Id.*

¹³⁵ Charter of the Organization of American States, opened for signature Apr. 30, 1948, art. 17, 2 U.S.T. 2394, T.I.A.S. No. 2361 (entered into force Dec. 13, 1951).

¹³⁶ Abramovsky and Eagle, *supra* note 122, at 92.

¹³⁷ *Id.*

¹³⁸ See U.S. CONST. amend. IV.

¹³⁹ The *Toscanino* Court held that an illegal arrest constitutes a seizure of the person in violation of the fourth amendment. 500 F.2d at 275. See also *Henry v. United States*, 361 U.S. 98, 100-01 (1959), where the 7th Circuit Court of Appeals discussed the philosophy embodied in the Fourth Amendment against illegal arrests.

¹⁴⁰ See *supra* notes 2-5.

¹⁴¹ Statement of Mark Richard, *supra* note 6, at 3.

time, the treaty changes will facilitate government efforts to prosecute drug traffickers and combat the flow of drugs into the United States.¹⁴²

III. NEW EXTRADITION TREATIES DESIGNED TO STOP DRUG TRAFFICKING AND IMPROVE EXTRADITION PROCESS

The 1984 extradition treaties are the most recent attempts by the United States to revise and improve extradition procedures.¹⁴³ The purposes of the treaties are tri-fold. First, they will provide a more flexible formula for defining an extraditable offense.¹⁴⁴ This substantive change will obviate the need to renegotiate or supplement a treaty should both nations pass laws dealing with a new type of criminal activity.¹⁴⁵ It will also allow extradition for crimes presently not included in existing extradition treaties.¹⁴⁶ Second, the treaties will facilitate United States efforts to prosecute narcotics conspiracies by expressly providing that conspiracies and attempts to commit offenses constitute extraditable offenses.¹⁴⁷ Finally, the new treaties will provide procedural changes which better accommodate international law enforcement efforts.¹⁴⁸

A. Substantive Changes

1. *Defining Extraditable Offense*

The first substantive change in the treaties concerns the method

¹⁴² See S. EXEC. REPS., *supra* note 95.

¹⁴³ In 1970, the Department of State began evaluating United States extradition treaties with the intention of renegotiating or reviewing older treaties which did not provide for contemporary offenses such as aircraft hijacking and narcotics trafficking. Evans, *Legal Bases of Extradition in the United States*, 16 N.Y.L.J. 525, 549 (1970).

¹⁴⁴ See S. TREATY DOC. No. 16, *supra* note 2, at 3; S. TREATY DOC. No. 17, *supra* note 3, at 3; S. TREATY DOC. No. 18, *supra* note 4, at 3; S. TREATY DOC. No. 20, *supra* note 5, at 3; S. EXEC. REP. No. 29, *supra* note 95, at 1; S. EXEC. REP. No. 30, *supra* note 95, at 1; S. EXEC. REP. No. 31, *supra* note 95, at 1; S. EXEC. REP. No. 33, *supra* note 95, at 1.

¹⁴⁵ *Id.*

¹⁴⁶ Nations adhering to treaties listing specific crimes are limited to seeking extradition for only those crimes. SHEARER, *supra* note 7, at 134. Early extradition treaties did not include major crimes such as drug trafficking and aircraft hijacking. See *supra* note 7.

¹⁴⁷ Statement of Daniel McGovern, Deputy Legal Advisor, United States Department of State, Concerning the Senate's Advice and Consent to the Ratification of Law Enforcement Treaties, 2-3 (June 14, 1984) (Dept. of State Prepared Statement) [hereinafter cited as Statement of Daniel McGovern]. See also S. EXEC. REP. No. 29, *supra* note 95, at 2; S. EXEC. REP. No. 30, *supra* note 95, at 2; S. EXEC. REP. No. 31, *supra* note 95 at 2; S. EXEC. REP. No. 32, *supra* note 95, at 2.

¹⁴⁸ Statement of Mark Richard, *supra* note 6, at 3; see also S. TREATY DOC. No. 16, *supra* note 2, at 3; S. TREATY DOC. No. 17, *supra* note 3, at 3; S. TREATY DOC. No. 18, *supra* note 4, at 3; S. TREATY DOC. No. 20, *supra* note 5, at 3.

for defining an extraditable offense. The generally adopted practice is to list specifically all of the offenses for which extradition will be allowed.¹⁴⁹

The United States has continually used such a method of enumeration since its first extradition treaty in 1794.¹⁵⁰ The primary defect with this method is the inadequate range of offenses covered by the treaties.¹⁵¹ Because nations adhering to treaties listing specific crimes may seek extradition for only those crimes, they can not extradite a criminal who has committed an unlisted crime.¹⁵² This problem occurred in *United States v. Toscanino*, where the United States government was held to have unlawfully kidnapped a Uruguayan citizen because the extradition treaty between the United States and Uruguay did not include narcotics violations.¹⁵³ To remedy this substantive defect, the 1984 extradition treaties define an extraditable offense as one punishable under the laws of both nations by imprisonment for more than one year.¹⁵⁴ By avoiding lists of extraditable crimes, the eliminative method¹⁵⁵ will dis-

¹⁴⁹ This practice became the standard international form in the late 19th century. SHEARER, *supra* note 7, at 133.

¹⁵⁰ Jay Treaty, *supra* note 100; see also *supra* note 7.

In 1939, Secretary of State Hull commented upon the possibility of adopting a minimum-penalty provision rather than a list of offenses by stating that "all the bilateral extradition agreements of the United States contain lists of extraditable crimes and the State Department does not desire to make any exceptions to this practice." 6 WHITEMAN, *supra* note 119, at 733.

¹⁵¹ Statement of Daniel McGovern, *supra* note 146, at 2; see also S. EXEC. REP. No. 29, *supra* note 95, at 2; S. EXEC. REP. No. 30, *supra* note 95, at 2; S. EXEC. REP. No. 31, *supra* note 95, at 2; S. EXEC. REP. No. 33, *supra* note 95, at 2.

¹⁵² SHEARER, *supra* note 7, at 134.

¹⁵³ *Toscanino*, 500 F.2d at 275-77.

¹⁵⁴ The extradition treaty with Thailand states:

An offense shall be an extraditable offense for prosecution or for the imposition of a penalty or detention order only if it is punishable under the law of both contracting parties by imprisonment or other forms of detention for a period of more than one year or by any greater punishment.

S. TREATY DOC. No. 16, *supra* note 2, at 2, para. 2, at (1).

The treaty with Costa Rica describes an extraditable offense as one "punishable under the laws of both contracting parties by deprivation of liberty for a maximum period of more than one year or by any greater punishment." S. TREATY DOC. No. 17, *supra* note 3, art. 2, para. 2, at (1). Similarly, the Jamaican treaty defines an offense as extraditable "if it is punishable under the laws of both contracting parties by imprisonment or other form of detention for a period of more than one year or by any greater punishment." S. TREATY DOC. No. 18, *supra* note 4, art. 2, para. 2, at (1). An extraditable offense is defined in the treaty between the United States and Italy as one "punishable under the laws of both contracting parties by deprivation of liberty for a period of more than one year or by a more severe penalty." S. TREATY DOC. No. 20, *supra* note 5, art. 2, para. 2, at (1).

¹⁵⁵ The eliminative method does not list specific extraditable crimes. Rather, the method

pense with the need to renegotiate the treaty or to supplement it.¹⁵⁶ This modern definition will aid governments in fighting new, and as of yet, unknown criminal offenses.¹⁵⁷

The revision should benefit government efforts to control the movement of illegal drugs into the United States¹⁵⁸ as well as improve the effectiveness of international law enforcement efforts.¹⁵⁹ Because earlier treaties did not include drug smuggling, the United States found it difficult to extradite and prosecute drug smugglers.¹⁶⁰ With the new definition of an extraditable offense, the United States will be able to prosecute drug traffickers and other fugitives more effectively while avoiding the need to resort to extraordinary apprehensions. Had there been such a provision in the United States-Uruguayan extradition treaty¹⁶¹ in 1973, the outcome of the *Toscanino* case probably would have been different. United States officials would have been able to request extradition rather than resorting to kidnapping.

2. *Attempts and Conspiracies to Commit Extraditable Offenses*

The provision allowing extradition for attempts and conspiracies to commit extraditable offenses is the second substantive improvement in the 1984 extradition treaties. The addition of the conspiracy provision will close a significant loophole in traditional extradition practices by allowing the extradition of those who prepare, aid, abet, or assist in the commission of an extraditable crime.¹⁶² Punishing conspiracy is important because:

collective criminal agreement presents a greater potential threat to the public than individual acts. Concerted action both increases the likelihood that the criminal objective will be suc-

defines an extraditable offense by its punishability under the laws of both nations by a minimum standard of severity. SHEARER, *supra* note 7, at 134.

¹⁵⁶ See S. TREATY DOC. No. 16, *supra* note 2, at 3; S. TREATY DOC. No. 17, *supra* note 3, at 3; S. TREATY DOC. No. 18, *supra* note 4, at 3; S. TREATY DOC. No. 20, *supra* note 5, at 3.

¹⁵⁷ See SHEARER, *supra* note 7, at 132.

¹⁵⁸ Bringing fugitive drug smugglers to justice will aid the effort to control drug trafficking. Riding, *Costa Rica Moves to Close Door to Fugitives*, N.Y. Times, Nov. 14, 1982, at 6, col. 6.

¹⁵⁹ Statement of Mark Richard, *supra* note 6, at 3.

¹⁶⁰ See generally *supra* note 7 (drug trafficking not included as extraditable offense).

¹⁶¹ The treaty between the United States and Uruguay lists the crimes for which extradition is allowed. Drug trafficking is not included. Extradition Treaty, March 11, 1905, United States-Uruguay, 35 Stat. 2028, T.S. No. 501.

¹⁶² See S. TREATY DOC. No. 18, *supra* note 4, at 3.

cessfully attained and decreases the probability that the individuals involved will depart from their path of criminality. Group association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish.¹⁶³

Organized criminal conspiracies are necessary to provide the large amounts of cash and international connections required for large, efficient, and successful trafficking operations.¹⁶⁴ The use of a conspiracy theory, therefore, is the most effective legal tool for the prosecution of organized crime because it permits the prosecution of members of the entire conspiracy rather than only those who physically committed the crime.¹⁶⁵ Prosecuting members of a trafficking operation, such as the financiers, can help curb the flow of drugs from producers to consumers, since cutting off financial backing is essential to destroying drug trafficking operations.¹⁶⁶

3. *Statute of Limitations*

A third substantive difference between the 1984 extradition treaties and their predecessors concerns the statute of limitations. The older treaties denied extradition if either of the nations' statute of limitations had expired.¹⁶⁷ Impediments to extradition could occur

¹⁶³ Callanan v. United States, 364 U.S. 587, 593 (1961).

¹⁶⁴ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE — TASK FORCE REPORT: ORGANIZED CRIME 3-4 (1967) [hereinafter cited as ORGANIZED CRIME].

¹⁶⁵ The crime of conspiracy thus enables those with the criminal intent to be punished even if their acts, standing alone, appear innocent. LAFAYE & SCOTT, CRIMINAL LAW 460 (1972).

¹⁶⁶ See *Review of Attorney General's Trip*, *supra* note 31, at 5. Studies conducted by the Drug Enforcement Administration have established that Hong Kong is the financial center for Southeast Asian narcotics trafficking. *Id.* at 5. Prosecuting foreign financial conspirators would prevent drug money from leaving Hong Kong and would disrupt drug trafficking operations. *Id.* at 6.

¹⁶⁷ The United States-United Kingdom (Jamaica) treaty of 1931 states that:

[T]he extradition shall not take place if, subsequently to the commission of the crime or offense or the institution of the penal prosecution or the conviction thereon, exemption from prosecution has been acquired by lapse of time, according to the laws of the High Contracting Party applying to or applied to.

Extradition Treaty with United Kingdom, *supra* note 7, at art. V. The original Costa Rican and Thai treaties both state the same principle in a different manner:

A fugitive criminal shall not be surrendered under the provisions thereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

Extradition Treaty, United States-United Kingdom, *supra* note 7, at art. V; Extradition Treaty, United States-Siam, *supra* note 1, at art. V. A situation is conceivable where the crime committed in the requested nation would also affect the requesting nation, thus, trig-

because each nation's criminal statutes of limitations are not necessarily the same length. India, for example, has no statute of limitations regarding non-capital offenses. India instead applies a case-by-case approach dependent upon the facts of each case.¹⁶⁸ Non-capital offenses in the United States, on the other hand, carry a five-year limit.¹⁶⁹

To avoid potential prescription problems, the new 1984 treaties allow extradition unless the requesting nation's statute of limitations has run.¹⁷⁰ The statute of limitations of the requested nation thus becomes irrelevant. This substantive change will improve the effectiveness of United States international law efforts and aid United States efforts to combat international narcotics trafficking¹⁷¹ because statute of limitation differences will not hamper efforts to prosecute a criminal fugitive.

4. *Extradition of Nationals*

Another important substantive difference between the superseded treaties and the 1984 treaties regards the extradition of nationals. Traditionally, a nation could either refuse to extradite its own citizens altogether or use its discretion regarding extradition.¹⁷² Although the former view is the more prevalent,¹⁷³ the United States has opposed exempting nationals from extradi-

gering the statute of limitations provision. The situation is very feasible in the areas of conspiracy and organized crime.

¹⁶⁸ *Jhirad v. Ferrandine*, 355 F. Supp. 1155, 1162 (S.D.N.Y. 1973).

¹⁶⁹ 18 U.S.C. § 3282; see also *Jhirad*, 355 F. Supp. at 1161.

¹⁷⁰ All four 1984 extradition treaties declare that extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time pursuant to the laws of the requesting state. S. TREATY DOC. No. 16, *supra* note 2, art. 7; S. TREATY DOC. No. 17, *supra* note 3, art. 6; S. TREATY DOC. No. 18, *supra* note 4, art. 8; S. TREATY DOC. No. 20, *supra* note 5, art. 7.

¹⁷¹ See Statement of Mark Richard, *supra* note 6, at 3-4.

¹⁷² See SHEARER, *supra* note 7, at 94.

Historically, there have been four major reasons used by nations that have refused to extradite their own citizens. One of the older rationales is the "natural judges" theory. Under this theory, the natural judges of a man were his neighbors, because they were likely to be acquainted with the facts. See W. HOLDSWORTH, I A HISTORY OF ENGLISH LAW, 317 (7th ed. 1956) for a thorough discussion of these theories. A second basis for refusal to extradite is known as *Treupflicht*. German writers refer to this special duty as protection said to be owed by the state to its subjects. A third reason often given for refusal to extradite is that a citizen has the right to remain undisturbed in his homeland. The most practical rationale for refusing to extradite a national is the fear that a foreigner will not receive the same standard of justice in a foreign court as in his home court. See SHEARER, *supra* note 7, at 118-20 for a thorough discussion of the theories.

¹⁷³ SHEARER, *supra* note 7, at 94.

tion.¹⁷⁴ The texts of the superseded treaties did not bind either party to extradite its nationals.¹⁷⁵ This language, in effect, gave a nation the discretion to grant or to refuse a request for the extradition of one of its citizens.

The articles regarding nationals in the 1984 treaties, however, are more stringent. With the exception of the Costa Rican agreement, the treaties permit extradition if it is deemed appropriate.¹⁷⁶ If extradition is denied, the treaties direct officials of the requested nation to submit the case to the competent authorities for prosecu-

¹⁷⁴ The United States Supreme Court stated that the word "persons" means the same as "citizens" in extradition treaties. The Court also recognized that there is no rule of international law exempting citizens from extradition unless such a provision appears in the treaty text. *Charlton v. Kelly*, 229 U.S. 447, 467 (1913). See also BASSIOUNI, *supra* note 106, at VII, 3-1.

¹⁷⁵ The original United States-Siam treaty stipulated that "neither of the high contracting parties shall be bound to deliver up its own citizens." Extradition Treaty with Siam, *supra* note 7, art. 8, at 1011. The extradition treaty between the United States and Costa Rica also stipulated that "neither of the contracting parties shall be bound to deliver up its own citizens or subjects." Extradition Treaty with Costa Rica, *supra* note 7, art. 8, at 1036. The treaty between the United States and Great Britain (Jamaica) stipulated that "neither of the High Contracting parties shall be bound to deliver up its own citizens or subjects." Extradition Treaty with Great Britain (Jamaica), *supra* note 7, art. 8, at 485. The treaty between the United States and Italy is not as specific as the other extradition treaties. The treaty states that both parties

agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed.

Extradition Treaty with Italy, *supra* note 7, art. 1, at 629-30.

¹⁷⁶ The Extradition Treaty with Thailand states that "neither party shall be bound to extradite its own nationals. If extradition is not granted pursuant to paragraph (1) of this Article, the Requested State shall, at the request of the Requesting State, submit the case to its competent authority for prosecution." S. TREATY DOC. No. 16, *supra* note 2, art. 8, para. (1)-(2), at 3. In the Jamaican treaty, "neither party shall be bound to deliver its own nationals, but may do so if it be deemed proper. If extradition is not granted, the Requested State shall, if it has jurisdiction over the offense, submit the case to its highest authorities for prosecution." S. TREATY DOC. No. 18, *supra* note 3, art. 7, para. (1)-(3), at 3. The United States-Italian treaty states that "a Requested Party shall not decline to extradite a person because such a person is a national of the Requested Party." S. TREATY DOC. No. 20, *supra* note 4, art. 4, at 2. Costa Rica is constitutionally barred from extraditing its nationals. The Costa Rican treaty, therefore, states that:

Neither of the parties shall be bound to surrender its nationals. The Requested State, however, shall have the power to grant extradition if, in its discretion, this is deemed proper and provided the constitution of the requested state does not so preclude. If the requested state refused, it shall, at the request of the requesting state, submit the case to its competent authorities for prosecution.

S. TREATY DOC. No. 17, *supra* note 5, art. 5, para. (1)-(3), at 3.

tion.¹⁷⁷ These new treaty provisions make it more difficult for fugitives to avoid extradition. Drug traffickers, previously immune from prosecution because of their nationality, may now be brought to justice. Allowing the extradition of nationals avoids the problem of having to transport witnesses long distances at great expense and inconvenience or providing evidence in the form of written affidavits.¹⁷⁸ The change thus aids the effectiveness and efficiency of international extradition and international law enforcement efforts.

5. *Procedures, Documentation, and Evidence Requirements*

The clarification of extradition procedures, documentation requirements, and evidence requirements is the final substantive improvement in the 1984 extradition treaties.¹⁷⁹ The superseded treaties did not specify the information required in extradition documents.¹⁸⁰ Because hearings were required before an extradition request was granted,¹⁸¹ delays occurred as a result of lack of information. Delays often frustrated a nation's attempt to obtain jurisdiction over a fugitive and ultimately led to abduction or irregular rendition attempts.¹⁸² The texts of the 1984 treaties eliminate and forestall such problems by explicitly listing the information required in an extradition request.¹⁸³

¹⁷⁷ S. TREATY DOC. NO. 17, *supra* note 5, art. 5, para (1)-(3), at 3.

¹⁷⁸ SHEARER, *supra* note 7, at 122-23.

¹⁷⁹ Statement of Mark Richard, *supra* note 6, at 4.

¹⁸⁰ The Costa Rican treaty requires only that the requesting nation turn over a mandate or preliminary warrant of arrest. Extradition Treaty with Costa Rica, *supra* note 7, art. XI, para. 3. The treaty with Jamaica simply states that the requisition for surrender of a fugitive shall be made to the Governor or chief authority. Extradition Treaty with Jamaica, *supra* note 7, art. 15. The Thai treaty requires the request to be made by the respective diplomatic agents. A mandate or preliminary warrant is also required. Extradition Treaty with Siam (Thailand), *supra* note 7, art. XI.

¹⁸¹ Extradition Treaty with Costa Rica, *supra* note 7, art. XI; Extradition Treaty with Siam (Thailand), *supra* note 7, art. XI; Extradition Treaty with Great Britain (Jamaica), *supra* note 7, art. 15; Extradition Treaty with Italy, *supra* note 7, art. II.

¹⁸² See *supra* notes 121-39 and accompanying text.

¹⁸³ The typical article dealing with extradition procedures and required documents is illustrated by article 9 of the Extradition Treaty with Thailand:

Extradition Procedures and Required Documents

(1) The request for extradition shall be made through the diplomatic channel.

(2) The request for extradition shall be accompanied by:

(a) documents, statements, or other evidence which describe the identity and probable location of the person sought;

(b) a statement of the facts of the case, including, if possible, the time and location of the crime;

(c) the provisions of the law describing the essential elements and the designa-

The evidence requirements necessary to allow extradition have also been clarified to provide more efficient extradition procedures. The superseded treaties allowed a warrant for the surrender of the fugitive only if the evidence presented at the extradition hearing was deemed sufficient to sustain the charge.¹⁸⁴ Whether the evidence was sufficient was to be determined in the extradition hearing.¹⁸⁵ The treaties provided no guidelines for an evidence standard.¹⁸⁶ To facilitate extradition, the new treaties apply a "probable cause" test to determine whether the evidence supports the extradition request.¹⁸⁷ The "probable cause" test is easier to establish than a "beyond a reasonable doubt" standard which could have been applied by requested nations under the older treat-

tion of the offense for which extradition is requested;

(d) the provisions of the law describing the punishment for the offense; and

(e) the provisions of the law describing any time limit on the prosecution or the execution of punishment for the offense.

(3) A request for extradition relating to a person who is sought for prosecution also shall be accompanied by:

(a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting State;

(b) such evidence as, according to the law of the Requested State, would justify that person's arrest and committal for trial, including evidence establishing that the person sought is the person to whom the warrant of arrest refers.

(4) When the request for extradition relates to a convicted person, in addition to the items required by paragraph (2) of this Article, it shall be accompanied by:

(a) a copy of the judgment of conviction by a court of the Requesting State; and

(b) evidence providing that the person sought is the person to whom the conviction refers.

If the person has been convicted but not sentenced, the request for extradition shall also be accompanied by a statement to that effect. If the convicted person has been sentenced, the request for extradition shall also be accompanied by a copy of the sentence imposed and a statement showing to what extent the sentence has been carried out.

(5) All documents submitted by the Requesting State shall be translated into the language of the Requested State.

(6) Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the Requested State without further authentication, or other legalization.

S. TREATY DOC. NO. 16, *supra* note 2, at 9. See also S. TREATY DOC. NO. 17, *supra* note 3, at 9; S. TREATY DOC. NO. 18, *supra* note 4, art. 8; S. TREATY DOC. NO. 20, *supra* note 5, art. 10.

¹⁸⁴ Extradition Treaty with Costa Rica, *supra* note 7, art. XI, para. 3; Extradition Treaty with Jamaica, *supra* note 7, art. 9; Extradition Treaty with Siam, *supra* note 7, art. XI, para. 5; Extradition Treaty with Italy, *supra* note 7, art. II.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ S. TREATY DOC. NO. 16, *supra* note 2, art. 9, para. 1; S. TREATY DOC. NO. 17, *supra* note 3, art. 9, para. 3; S. TREATY DOC. NO. 18, *supra* note 4, art. 9, para. 1; S. TREATY DOC. NO. 20, *supra* note 5, art. 10, para. 2.

ties. A "probable cause" standard does not demand absolute certainty, but requires the existence of reasonable grounds for belief.¹⁸⁸ Because this burden is relatively easy to meet, jurisdiction over fugitives will be easier to obtain. By eliminating potential evidentiary and delay problems, these new provisions will enhance United States efforts to prosecute drug traffickers and improve the effectiveness of international law enforcement.

B. Procedural Changes

Because extradition is a lengthy process, criminals are sometimes able to avoid arrest and prosecution.¹⁸⁹ To avoid this consequence, the 1984 treaties have updated provisions permitting provisional arrest in situations where the flight of the fugitive appears imminent.¹⁹⁰ Several older extradition treaties also addressed this problem by allowing provisional arrest.¹⁹¹ The defect in the older provisions, however, was that requests had to be made through lengthy, traditional diplomatic channels.¹⁹² Fugitives, therefore, still had time to avoid arrest. The 1984 treaties allow the extradition request to be made through traditional methods or directly between the departments of justice of the two nations.¹⁹³ The pro-

¹⁸⁸ The Court in *United States v. McGuire*, 300 F. 98 (N.D.N.Y. 1924), stated the difference between "probable cause" and "beyond a reasonable doubt."

"Beyond a reasonable doubt" must include "probable cause." But "probable cause" does not include or measure up to satisfaction "beyond a reasonable doubt." They are widely different. "Beyond a reasonable doubt" may be likened to a summit of a high mountain, and "probable cause" to a halfway station on the mountain side. Few may reach the summit, but many may reach the halfway station.

McGuire, 300 F. at 102.

¹⁸⁹ SHEARER, *supra* note 7, at 200.

¹⁹⁰ Statement of Mark Richard, *supra* note 6, at 5; *See also* S. TREATY DOCS., *supra* notes 2-5.

¹⁹¹ The 1922 treaty with Thailand, for example, states that "in case of urgency, the application for arrest and detention may be addressed directly to the competent magistrate in conformity to the statute in force. Extradition Treaty with Siam, *supra* note 7, at art. XI, para. 3.

¹⁹² SHEARER, *supra* note 7, at 201-02.

¹⁹³ The Costa Rican agreement states:

In case of urgency, either Contracting Party may request the provisional detention of any charged or convicted person. Application for provisional detention shall be made either through the diplomatic channel or directly between the Department of Justice of the United States of America and the *Ministerio de Justicia* of the Republic of Costa Rica.

S. TREATY DOC. NO. 17, *supra* note 3, at art. 11. The United States-Jamaican provision on provisional arrest is as follows:

In case of urgency either Contracting Party may request the provisional arrest

visional detention documents generally must contain: (1) information identifying the person sought; (2) a brief statement of the facts; (3) a statement of the existence of a warrant of arrest or a judgment of conviction; and (4) a statement that a request for extradition of the person sought will follow.¹⁹⁴ Because this method is quicker, it avoids the delays of the traditional extradition process. Such provision also allows use of the communication facilities of the International Criminal Police Organization (Interpol)¹⁹⁵ to circulate requests for arrest swiftly and effectively.¹⁹⁶ By avoiding traditional extradition procedures, provisional arrest allows greater success in obtaining jurisdiction over fugitives. Thus, the efficiency of international law enforcement efforts is greatly improved. The speedy detention of fugitives will also aid United States efforts to prosecute drug traffickers who may have been able to avoid arrest under lengthy traditional procedures.

The Costa Rican and Italian treaties contain procedural improvements for the temporary surrender of fugitives serving sentences in a requested country.¹⁹⁷ This provision, absent from

in accordance with the law of the Requested State of any accused or convicted person pending the request for extradition. Application for provisional arrest shall be made through the diplomatic channel or directly between the Department of Justice in the United States of America and the Minister responsible for extradition in Jamaica.

S. TREATY DOC. No. 18, *supra* note 4, at art. 10.

The United States-Thailand provision states:

In case of urgency, either Contracting Party may request the provisional arrest of any accused or convicted person. Application for provisional arrest shall be made through the diplomatic channel or directly between the Department of Justice in the United States of America and the Ministry of Interior in Thailand, in which case the communication facilities of Interpol may be used.

S. TREATY DOC. No. 16, *supra* note 2, at art. 10.

The United States-Italian treaty is as follows:

In case of urgency, either Contracting Party may apply for the provisional arrests of any person charged or convicted of an extraditable offense. The application for provisional arrest shall be made either through the diplomatic channel or directly between the United States Department of Justice and the Italian Ministry of Grace and Justice, in which case the communication facilities of the International Criminal Police Organization (Interpol) may be used.

S. TREATY DOC. No. 20, *supra* note 5, at art. 7.

¹⁹⁴ See S. TREATY DOC. No. 16, *supra* note 2, at art. 10; S. TREATY DOC. No. 17, *supra* note 3, at art. 11; S. TREATY DOC. No. 18, *supra* note 4, at art. 12.

¹⁹⁵ *Id.* Interpol is a non-governmental international organization of national police forces. The organization offers a liaison service to national police authorities and coordinates police inquiries among its members. SHEARER, *supra* note 7, at 202-03.

¹⁹⁶ See generally SHEARER, *supra* note 7, at 202.

¹⁹⁷ The United States-Costa Rican treaty provision on temporary surrender states:

If the extradition request is granted in the case of a person who is serving in the

older treaties, improves the effectiveness of United States international extradition efforts by permitting the requesting nation to try the person sooner while evidence and witnesses are more likely to be available.¹⁹⁸ This increases the likelihood of a successful prosecution.¹⁹⁹

Where the person is part of a conspiracy, the provision enables the requesting nation to use the prisoner in the prosecution of other participants.²⁰⁰ Generally, everything said, done, or written by one conspirator during the existence of the conspiracy and in the execution or furtherance of a common purpose is admissible evidence against the others.²⁰¹ The prosecution of one member of a drug trafficking operation, therefore, may be used to construct cases against members not in legal custody.

A third procedural improvement establishes simplified extradition procedures when the person sought wishes to waive formal extradition.²⁰² This new provision provides a mechanism for avoiding

territory of a Requested State for a different offense, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody while in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person in accordance with conditions to be determined by mutual agreement of the Contracting Parties.

S. TREATY DOC. NO. 17, *supra* note 3, at art. 14.

The Italian treaty proclaims:

After a decision on a request for extradition has been rendered in the case of a person who is being proceeded against or is serving a sentence in the Requesting Party for a different offense, the Requested Party shall have the authority to temporarily surrender the person sought to the Requesting Party solely for the purpose of prosecution. A person so surrendered shall be kept in custody while the Requesting Party at the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Contracting Parties.

S. TREATY DOC. NO. 20, *supra* note 5, art. XIV.

¹⁹⁸ Traditionally, a requested nation had the option to defer the surrender of the person until all proceedings were concluded and/or all sentences served. *See* S. EXEC. REP. NO. 30, *supra* note 95, at art. 14.

¹⁹⁹ *Id.* *See also* S. EXEC. REP. NO. 33, *supra* note 95, at art. 1.

²⁰⁰ *Id.* S. EXEC. REP. NO. 33, *supra* note 95, at art. 1.

²⁰¹ *See* *United States v. Pellegrino*, 273 F.2d 570 (2d Cir. 1960); *Cooper v. United States*, 256 F.2d 500 (5th Cir. 1958). This idea is premised upon the principles applicable to agencies and partnerships that when a body of individuals assume the attributes of one association, all should be bound by the acts of one of its members in carrying out the design. *Merrill v. United States*, 40 F.2d 315, 316 (6th Cir. 1930). The extent to which such testimony is admissible against others is within discretion of the court. *Delaney v. United States*, 263 U.S. 586 (1924).

²⁰² S. TREATY DOC. NO. 16, *supra* note 2, at art. 15; S. TREATY DOC. NO. 17, *supra* note 3, at art. 25; S. TREATY DOC. NO. 18, *supra* note 4, at art. 18; S. TREATY DOC. NO. 20, *supra* note 5, at art. 17.

the traditional time-consuming extradition request. Simplification of an extradition request improves the effectiveness of United States international legal efforts by avoiding the delays and costs associated with traditional extradition procedures.²⁰³

IV. CONCLUSION

Broadening the scope of extraditable offenses, allowing extradition for attempts and conspiracies to commit extraditable offenses, avoiding statute of limitation problems, permitting the surrender of nationals, and clarifying and simplifying extradition procedures will substantially improve outdated United States extradition procedures. Such substantive and procedural improvements to the extradition process should aid government efforts to fight narcotics trafficking and to improve the effectiveness of the United States' international law enforcement efforts.

The new treaties signed with Costa Rica, Jamaica, Thailand, and Italy in 1984 should become part of a large program of international cooperation in law enforcement aimed at combatting international narcotics trafficking. In recent years, although the United States has increased monetary aid to drug-producing nations, the volume of illicit drugs entering the United States continues to increase. A successful program to fight drug trafficking requires efficient international legal cooperation. These new treaties provide the mechanism for such cooperation.

J. Richard Barnett

²⁰³ SHEARER, *supra* note 7, at 194.

