INTERNATIONAL EXTRADITION OF MEXICAN NARCOTICS TRAFFICKERS: PROSPECTS AND PITFALLS FOR THE NEW MILLENNIUM

Rishi Hingoraney*

I. INTRODUCTION

The history of international extradition between the United States and Mexico has not been one characterized by emphatic cooperation on either side. It has been plagued by reluctance and mistrust. Both countries have resisted attempts by the other to enforce its criminal laws extraterritorially. This resistance is heightened when the countries are asked to surrender their own nationals to the criminal courts of the other nation. Mexico has been especially reluctant to comply with requests for the surrender of Mexican nationals accused of importing narcotics into the United States. In fact, until March 2, 2001, no major Mexican drug trafficker had ever been extradited to stand trial in the United States. For two countries that share a 2000 mile border and a plague of cross-border crime, this has, and will continue to present a major problem.

A major factor that contributed to this climate of mistrust was the U.S. attempt to circumvent the formal extradition process through the use of a transborder abduction. On April 2, 1990, a group of armed men apprehended Dr. Humberto Alvarez-Machain from Guadalajara and flew him to El Paso, Texas, where the DEA arrested him for his conduct in connection with the

---

* J.D. 2002, University of Georgia; B.S. 1999, Vanderbilt University.
1 See Vicente Fox, 'Now' Trust is the Basis for Mexico-U.S. Cooperation, SEATTLE POST-INTELLIGENCER, Sept. 5, 2001, at B4.
2 See id.
3 See id.
5 See Robert J. Caldwell, End Legal Sanctuary for Drug Kingpins, SAN DIEGO UNION-TRIBUNE, July 16, 2000 at G1; but see Landmark Ruling: Mexico’s Highest Court Upholds Extradition, SAN DIEGO UNION-TRIBUNE, Jan. 24, 2001, at B8 (discussing a recent Mexican Supreme Court ruling authorizing the extradition of Arturo Paez, a key member of the Arellano Felix Organization, but noting that several legal formalities must be satisfied before he can actually be extradited to the United States).
6 See Caldwell, supra note 5, at G1.
7 See Dea Abramschmitt, Note, Neighborly Countries; Un-Neighborly Acts: A Look at the Extradition Relationships Among the United States, Mexico, and Canada, 4 J. TRANSNAT’L L. & POL’Y 121, 125.
murder of an undercover DEA agent in Mexico in 1985. The Mexican authorities, as well as much of the international community were outraged by
the act. In their view, this constituted a major violation of territorial
sovereignty. The Mexican authorities were further appalled when the U.S.
Supreme Court upheld the act as a constitutional method of obtaining
jurisdiction over a criminal, citing the absence of an express provision
prohibiting the use of transborder abductions in the U.S.-Mexico Extradition
Treaty. As a result, the United States' extensive efforts to curb the flow of
illegal narcotics from Mexico to the United States have been severely
hampered.

Also, several institutional obstacles such as widespread corruption in the
police forces and judicial processes of Mexico complicate and further impede
the chances of increased cooperation in the extradition of Mexican nationals
to the United States. On the other hand, continuing corruption in Mexico's
institutions may cause members of the Mexican Executive Branch to realize
that effective domestic prosecution is not feasible, thus increasing the chances
for increased extradition of Mexican nationals.

However, recent developments in the relations between the two countries
indicate that increased cooperation in the matter is forthcoming. For example,
a recent Mexican Supreme Court decision authorized the extradition of a
lieutenant in the notorious Arellano-Felix Organization (AFO) to the United
States. This may signal an end to Mexico's longstanding policy against
extraditing Mexican narcotics traffickers to the United States. Furthermore,
the electoral victory of Vicente Fox over the PRI candidate in the country's
presidential elections has signaled a major change in the trend of non-
extradition of nationals. Fox has vowed to crackdown on narcotics

---

9 See Plachta, supra note 4, at 1084-91.
10 See id. at 1087-88.
14 See Landmark Ruling: Mexico's Highest Court Upholds Extradition, supra note 5, at B8.
trafficking in Mexico, especially on the infamous, Tijuana-based Arellano-Felix Organization.\(^6\)

This Note analyzes the prospects for increased cooperation by the Mexican authorities in the extradition of Mexican nationals accused of narcotics trafficking by the United States in light of recent events. It argues that despite signs of willingness on behalf of Mexican officials to extradite, major obstacles still lie in the way of making this a common practice. Part II consists of a brief overview of international extradition. Part III discusses the relevant provisions of the U.S.-Mexican Extradition Treaty, which has been in effect since 1980.\(^7\) Part IV outlines the process of extraditing a Mexican national to the United States. Part V sets forth traditional arguments against international extradition of nationals. These arguments help explain Mexico’s longstanding policy against extraditing Mexican narcotics traffickers. Part VI sets forth arguments in favor of extraditing nationals, and aids in the understanding of Mexico’s sudden shift in policy. Part VII discusses recent cases of extradition from Mexico to the United States. Part VIII will discuss the factors that constitute obstacles to the further extradition of Mexican nationals. Part IX will focus on an analysis of the factors that may tend to increase cooperation between the two countries. Finally, Part X will analyze the legal implications and effects of extraditing Mexican narcotics traffickers.

II. BACKGROUND ON INTERNATIONAL EXTRADITION

Extradition is defined as “the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territory of the other, which, being competent to try and to punish

\(^{16}\) See Ken Ellingwood, *Mexican President Reaffirms War on Crime Reform*, L.A. TIMES, Feb 1, 2001, at A3; see also Robert Caldwell, *Still at Large: Tijuana’s Arellano Felix Drug Cartel Defies The United States and Mexico*, SAN DIEGO UNION-TRIB., Apr. 8, 2001, at G1. The Arellano-Felix cartel (AFO), led by brothers Ramon and Benjamin Arellano Felix, is responsible for supplying more than one fifth of all the cocaine consumed in the United States. Both brothers were indicted in the United States last May on charges ranging from drug trafficking to money laundering. While Mexican authorities were successful in apprehending a number of low ranking members of the organization, the brothers still defiantly retain their headquarters and principal residences in Tijuana. Prior attempts to weaken the cartel, like the investigation conducted in 2000 by the Mexican Attorney General’s Office, have been thwarted by corruption and lethal retribution. In that case, the mangled bodies of three Mexican drug prosecutors were found in a ravine in Tijuana. They had been betrayed by corrupt officials of the Mexican Attorney General’s elite anti-narcotics task force. See id.

him, demands surrender.\footnote{18} A state’s power to enforce its criminal laws within its territory is considered to be an important part of the exercise of state sovereignty.\footnote{19} This concept is embodied in the principle of \textit{quidquid est in territorio est etiam de territorio}, i.e., a state has supreme authority over all individuals and property within its boundaries.\footnote{20}

However, states are generally not allowed to enforce their criminal laws outside of their territory.\footnote{21} Although they can exercise criminal jurisdiction over criminals, the problem of bringing the offender inside the territory of the state for prosecution still exists.\footnote{22}

This is where the primary importance of international extradition becomes apparent. Extradition provides a means of gaining custody of fugitives that violate laws within a country and then flee across international borders.\footnote{23} International extradition is a process by which the rights of an individual are balanced against the rights of a state to enforce its criminal laws.\footnote{24} It is based on fundamental principles of international law, such as reciprocity and comity.\footnote{25} Comity refers to general goodwill and cooperation between states,\footnote{26} while under the principle of reciprocity, a government grants extradition in

\footnote{20} See \textit{Satya Deva Bedi, Extradition in International Law and Practice} 28 (1968).
\footnote{22} See id. at 215. This case outlines the five bases for exercising extraterritorial jurisdiction permitted by the law of nations. The first basis, the territorial principle, determines jurisdiction according to where the alleged offense was committed. \textit{Id.} Included under this principle is the "objective territorial" principle, which allows countries to exercise jurisdiction over acts committed outside the territory of that country, but which are intended to produce, and actually do produce, detrimental effects within the territory of that nation. \textit{Id.} The second basis, nationality jurisdiction, is predicated upon the nationality of the offender. \textit{Id.} The third basis, protective jurisdiction, is based on protecting the interests and integrity of the nation wishing to exercise jurisdiction. \textit{Id.} The fourth basis, universal jurisdiction, allows jurisdiction to be exercised for certain crimes where custody of the offender is sufficient. \textit{Id.} Finally, "passive personality" jurisdiction is based on the nationality of the victim. \textit{Id.} See also United States v. Bowman, 260 U.S. 94, 98 (1922) (holding that extraterritorial jurisdiction can be inferred when, in the interests of the state, the crime would naturally be committed outside the territorial jurisdiction of the United States). \textit{See also} Restatement (Third) of Foreign Relations Law of the United States § 402 (1987).
\footnote{23} See McHam, supra note 19, at 421 (citing M. CHErif BassioUNI, \textit{International Extradition: U.S. Law and Practice} 1 (3d ed. 1996)).
\footnote{24} See id.
\footnote{25} See Kosmetatos, supra note 12, at 1068. \textit{See also} BassioUNI, supra note 19, at 384-85.
\footnote{26} See id.
exchange for the promise of the requesting government to provide reciprocal assistance when the requested government demands surrender of an offender.\textsuperscript{27}

Customary international law imposes a duty on states to either prosecute an offender or extradite him.\textsuperscript{28} This concept has been codified in several multilateral conventions,\textsuperscript{29} which require signatory countries to take offenders into custody for the institution of criminal or extradition proceedings.\textsuperscript{30} If the country in which the offender is located decides to prosecute rather than extradite, a further obligation to use due diligence to punish the offender is imposed upon the country by customary international law.\textsuperscript{31} The duty to extradite or prosecute can also be found in the U.S.-Mexico Extradition Treaty.\textsuperscript{32} It states: "If extradition is not granted pursuant to paragraph 1 of this article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense."\textsuperscript{33}

However, as will be demonstrated later in this Note, domestic prosecution is often not feasible or effective. In such situations, the importance of extradition is greatly enhanced.

\section*{III. U.S.—MEXICAN EXTRADITION TREATY}

International law generally recognizes no right of extradition apart from a treaty in the case of common crimes.\textsuperscript{34} The U.S. Supreme Court has discussed the importance of extradition treaties. It stated that:

\textsuperscript{27} See id.
\textsuperscript{28} See Jimmy Gurule, Terrorism, Territorial Sovereignty, and the Forcible Apprehension of International Criminals Abroad, 17 Hastings Int'l & Comp. L. Rev. 457, 474 (1994). See also Bassiouni, supra note 19, at 5-6.
\textsuperscript{30} See id.
\textsuperscript{31} See Gurule, supra note 28, at 473.
\textsuperscript{32} See U.S. Mexico Extradition Treaty, supra note 17, at art. 9(2).
\textsuperscript{33} Id.
\textsuperscript{34} See Bassiouni, supra note 19, at 6 ("The duty to extradite only by virtue of a treaty . . . has become the prevalent practice of the states, though reciprocity and comity still exist as legal bases relied upon by a number of states . . . ").
While a government may, if agreeable to its own Constitution and laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he has fled, and it has been said that it is under a moral obligation to do so . . . the legal right to the demanding country exists only when created by treaty.  

On May 4, 1978, Mexico and the United States entered into an extradition treaty, which went into effect on January 25, 1980.  

The treaty uses the list method for defining extraditable offenses. According to this method, thirty-one extraditable offenses are listed in the Appendix. If an offense falls into any of the listed categories and is punishable under the federal laws of both countries by a deprivation of liberty of at least one year, it is considered an extraditable offense. The offense of narcotics trafficking is specifically listed in the appendix of the Treaty. However, this list is not exhaustive. A treaty country is also obligated to extradite or prosecute if the offense involves willful acts that are punishable under the federal laws of both countries by a deprivation of liberty of no less than one year. 

Attempts and conspiracies to commit an offense, as well as participation in the commission of an offense (complicity) are also specifically included in the treaty.  

The treaty further provides for extradition for offenses committed outside of the requesting state only if the person sought is a national of the requesting state, or if the laws of the requested state provide for punishment of the same offense under similar circumstances.

---

36 See U.S. Mexico Extradition Treaty, supra note 17.
37 See id. at art. 2(1).
38 See id. at art. 2(1).
39 See id. at app. (14).
40 See BASSIOUNI, supra note 19, at 391.
41 See U.S. Mexico Extradition Treaty, supra note 17, at art. 2(3).
42 See id. at art. 2(4)(a). These provisions are especially helpful in the fight against narcotics trafficking because, in the absence of these provisions, many of the cartel kingpins would be far enough removed from the actual trafficking to avoid extradition to the United States.
43 See id. at art. 1(2)(b).
44 See id. at art. 1(2)(a).
Article 3 of the treaty imposes an important limitation on the extradition of offenders. Extradition is limited to cases where there exists sufficient evidence, under the laws of the requested state, for trial of the offender had the offense been committed in the requested state.\textsuperscript{45} In the situation where the person sought has already been convicted by the requesting state, the treaty requires sufficient evidence to prove that the person sought is the same person convicted by the requesting state.\textsuperscript{46}

Article 5 contains the political offense exception clause.\textsuperscript{47} The Mexican Constitution specifically prohibits negotiation of extradition treaties that allow for extradition for offenses that are political or military in nature.\textsuperscript{48} Also included in Article 5 are certain exceptions to the political offense exception. Excluded from the category are (a) murder or other willful crimes against the life or physical integrity of a Head of State or Head of Government, or their families, and (b) offenses which a treaty country is obligated to prosecute under a multilateral agreement.\textsuperscript{49}

Article 6 addresses the issue of double jeopardy.\textsuperscript{50} Under this provision, extradition is not allowed where the requested person has been prosecuted, tried and convicted or acquitted in the requested state for the offense for which extradition is requested.\textsuperscript{51} This type of provision is also common to almost all international extradition treaties.\textsuperscript{52} It prevents different countries from prosecuting an offender more than once for the same crime.\textsuperscript{53} Although this principle is embodied in international law, many extradition treaties contain a similar clause because the principle is often circumvented through application of the dual sovereign rule.\textsuperscript{54} This rule allows for subsequent prosecution of an offender if the earlier conviction was obtained by a different sovereign from the one attempting to prosecute.\textsuperscript{55}

Article 8 of the treaty provides for cases where the requesting state imposes the death penalty for the offense for which extradition is requested, and where

\textsuperscript{45} See id. at art. 3.
\textsuperscript{46} See id.
\textsuperscript{47} See U.S. Mexico Extradition Treaty, \textit{supra} note 17, at art. 5.
\textsuperscript{48} See \textit{MEX. CONST.} art. 15, reprinted in \textit{JOSEPH WHELESS, I COMPENDIUM OF THE LAWS OF MEXICO} 5 (1910).
\textsuperscript{49} See U.S. Mexico Extradition Treaty, \textit{supra} note 17, at art. 5(2)(a)-(b).
\textsuperscript{50} See id. at art. 6.
\textsuperscript{51} See id. at art. 6.
\textsuperscript{52} See \textit{BASSIOUNI, supra} note 19, at 599, n.332.
\textsuperscript{53} See id. at 598.
\textsuperscript{54} See id. at 598-99 (referring to the rule as the "doctrine of separate sovereignties.").
\textsuperscript{55} See id.
the laws of the requested state do not provide for the death penalty.\textsuperscript{56} In this situation, extradition may be refused unless the requesting state provides assurances that the death penalty will not be imposed or if imposed, will not be executed.\textsuperscript{57} This provision is important in the present context because Mexican law does not provide for the death penalty.\textsuperscript{58}

The extradition of nationals is addressed in Article 9. Under these provisions, neither country is required to extradite its own nationals.\textsuperscript{59} However, the executive authority of the requested state may extradite a national in its discretion.\textsuperscript{60}

The Article takes into account the Mexican law prohibiting the extradition of its nationals but permitting their prosecution in Mexico for offenses committed abroad. Mexican law, like the laws of most countries in Latin America and countries following the civil law system, prevents the extradition of nationals, except in 'extraordinary circumstances.'\textsuperscript{61}

This stipulation has proved to be a major impediment to anti-narcotics efforts, and a source of friction between the U.S. and Mexico for many years.\textsuperscript{62} In fact, until recently, Mexico had rarely considered circumstances surrounding an extradition request to be exceptional or extraordinary, and thus, there have been relatively few occasions where a request for extradition of a Mexican national has been granted.

IV. PROCESS OF EXTRADITION FROM MEXICO TO THE UNITED STATES

Every request for extradition must be approved by the U.S. Department of Justice.\textsuperscript{63} The State Department is responsible for requesting the extradition of foreigners whom the United States wishes to prosecute.\textsuperscript{64} This applies to

\textsuperscript{56} See U.S. Mexico Extradition Treaty, supra note 17, at art. 8.
\textsuperscript{57} See id.
\textsuperscript{59} See id. at art. 9.
\textsuperscript{60} See id.
\textsuperscript{62} See generally Spector, supra note 4.
\textsuperscript{63} See Zagaris & Peralta, supra note 61, at 551.
\textsuperscript{64} See id.
those offenders who have only been charged with a crime and not yet convicted, as well as to fugitives who have already been convicted in the United States and who have fled since their conviction. 65

In order to initiate extradition of a fugitive located in Mexico, U.S. officials must submit a formal request to the Mexican Ministry of Foreign Affairs. 66 A certified copy of the arrest warrant, along with evidence showing that apprehension of the offender is appropriate and justified according to the laws of the requested state, must be submitted with the request. 67 If the requested individual has already been convicted, a certified copy of the conviction of the individual is necessary, and must accompany the request. 68

Next, a determination that the requirements of the U.S.-Mexico Extradition Treaty, and the requirements under Mexican law are met is required. If satisfied, the Ministry of Foreign Affairs then forwards the materials to the Mexican Attorney General. 69 If the evidence provided is determined to be sufficient to show probable cause 70 by a Mexican district judge assigned to the case, 71 the requested offender is arrested and brought before the judge for an extradition hearing. 72

At the extradition hearing, the accused offender may set forth two arguments. First, he or she may argue that the requirements of the treaty or those that are applicable under Mexican law have not been satisfied. 73 Second, he may argue that he is not the person sought by U.S. officials. 74

The district judge then makes a decision, and sends it back to the Ministry of Foreign Affairs. 75 At that point, they review the opinion of the district court judge and other relevant materials. 76 The final decision on whether to extradite

65 See Bassiouini, supra note 19, at 791-93 (citing a memorandum issued by the Office of the Legal Advisor, Department of State).
66 See Zagaris & Peralta, supra note 61, at 551.
67 See U.S. Mexico Extradition Treaty, supra note 17, at art. 10(3)(a),(b).
68 See id. at art. 10(4).
69 See Zagaris & Peralta, supra note 61, at 543.
70 See id. at 544. Two evidentiary prerequisites must be met before a suspect is arrested or prosecuted. First, “[e]vidence must be sufficient to demonstrate all the elements of the crime (typification) and the existence of facts showing 'probable responsibility,' the equivalent of probable cause in United States extradition jurisprudence,” and second, that the suspect committed the crime set forth in the request for extradition. Id.
71 See id.
72 See id.
73 See id. at 545.
74 See Zagaris & Peralta, supra note 61, at 545.
75 See id.
76 See id. at 548.
rests with the Ministry of Foreign Affairs. In fact, they are not obligated to follow the judge's recommendation. Also, when dealing with a request for surrender of a Mexican national, Mexican authorities generally exercise the broad discretion allocated to them to deny this type of request.

Finally, the requested offender is either surrendered to U.S. authorities or released from custody.

V. ARGUMENTS AGAINST EXTRADITION OF NATIONALS

The general theory behind refusing to extradite nationals to another state dates back to medieval times and the relationship between a feudal ruler and his subjects. Under this feudal system, the subjects were given the right not to be withdrawn from the jurisdiction of local courts, in return for allegiance and service. By the middle of the nineteenth century, most European nations had adopted this principle, and it persists today in Europe and Latin America.

In the 1970s, absolute exceptions to the extradition of nationals to a requesting state were commonly included in the majority of international extradition treaties. Today, most civil law countries still refuse to surrender their own nationals, while common law nations generally allow their own nationals to be extradited to other countries.

This disparity in practice may stem from the differences in the way the two legal systems generally view the status of their nationals. In civil law countries, the citizens are considered compatriots, who deserve the protection of the laws of their state. On the other hand, in common law countries, citizens who are accused of committing crimes are viewed as just that: criminals who deserve to be punished. That is, their status as citizens of the nation is viewed as secondary to their status as criminals. This view was

77 See id.
78 See id.
79 See U.S. Mexico Extradition Treaty, supra note 17, at art. 14(3).
80 See Spector, supra note 4, at 1017.
81 See Plachta, supra note 4, at 82.
82 See id.
83 See id. at 84.
84 See I.A. SHEARER, EXTRADITION IN INTERNATIONAL LAW, app. 2, at 219-23 (1971).
86 See Plachta, supra note 4, at 94 (citing A.L. Melai, Les conventions Europeennes et le traite Benelux d'entr'aide judiciare en matiere penale et d'extradition, in LE DROIT PENAL INTERNATIONAL 91, 103 (1965)).
87 See id.
expressed in a 1968 declaration by the Chairman of the English House of Commons: "We don't feel outraged honour at the thought of delivering an Englishman into the hands of foreign judges. He is first of all a criminal and only after that an Englishman." 88

However, the refusal to extradite nationals is not only a result of the different legal systems. Several traditional arguments against the practice of extraditing nationals have been advanced.

First, countries refusing to extradite nationals often base their reluctance on their belief that their domestic courts are competent to prosecute and punish the offenders. 89 In other words, they do not contest the culpability of the offender, but instead believe that there is no reason to submit the offender to the courts of a foreign nation if justice can be served domestically. Furthermore, according to Mexican law, Mexican courts have jurisdiction over all crimes committed by Mexican citizens, regardless of where the offense takes place. 90 This is a major argument advanced by Mexico in justifying their refusal to surrender Mexican nationals to the U.S. courts.

A second argument is based on fears of the requested state that their national, if extradited, will be mistreated or will be denied a fair trial in the requesting state. 91 These fears stem from the inherent mistrust a state has for the justice systems of foreign nations, and from the ethnic or racial biases that may arise when a national is subjected to the court of another state. 92 It is generally not unreasonable to assume that a foreign defendant may be subject to discrimination in legal proceedings occurring outside of the defendant’s country of residence. Thus, "[i]f justice as administered in other States is not to be trusted, then there should be no extradition at all." 93

Third, opponents of the extradition of nationals point to the fact that "it is a serious disadvantage for a man to be tried in a foreign language, and where he is separated from his friends and his resources and from those who could bear witness to his previous life and character." 94 Thus, the offender may be denied the support and protection afforded to him by a trial in his own country in the form of moral and evidentiary support. Also, the defendant would be

88 Id.
89 See Abramschmitt, supra note 7, at 128-29.
90 See id. at 128 (citing MODERN LEGAL SYSTEMS CYCLOPEDIA: THE LEGAL SYSTEM OF MEXICO § 1.30.52 (1988)).
91 See Plachta, supra note 4, at 87.
92 See id. at 87.
93 Id. (quoting Harvard Research in International Law, Draft Convention on Extradition, 29 AM. J. INT’L L. 15, 296 (Supp. 1935)).
94 Id. at 87.
further disadvantaged by his unfamiliarity with the criminal procedures of a foreign nation, and thus would be hindered in his efforts to defend himself during trial.\textsuperscript{95}

A fourth argument relates to the concept of national dignity. Countries refusing to extradite their own nationals often justify their refusal based on the idea that no citizen “should be compelled to bow his head in obedience to the commands of a foreign authority.”\textsuperscript{96} Similarly, a country which extradites its own nationals may be viewed by its own citizens as weak. That is, public confidence in the government may be eroded by a perception that it is incapable of properly administering justice within its territory. This argument is closely related to the notion of national sovereignty. States believe that to allow another state to enforce its criminal laws extraterritorially would be a violation of the requested state’s national sovereignty.

Finally, although the Extradition Treaty specifically prevents the requesting state from enforcing the imposition of the death penalty on offenders if the laws of the requested state prohibit it from doing so, Mexico still fears the possibility of harsher sentences for Mexican nationals in the United States.\textsuperscript{97} Mexico believes that their citizens deserve the protection of the laws of Mexico, including the sentencing laws.\textsuperscript{98} A state’s sentencing laws reflect what the state considers to be the degree of culpability of an offender. When another state imposes stricter sentences, it is effectively imputing a higher degree of culpability on the offender. These arguments against extraditing nationals form the theoretical basis for Mexico’s past refusals to comply with U.S. extradition requests when the offender is a Mexican national.

VI. ARGUMENTS IN FAVOR OF EXTRADITING NATIONALS

The main argument in favor of extraditing nationals is based on the belief that a person residing or conducting business in another country owes obedience to the laws of that country.\textsuperscript{99} This view was expressed by the U.S. Supreme Court in Justice Harlan’s majority opinion in \textit{Neely v. Henkel}.\textsuperscript{100}

\textsuperscript{95} \textit{See} NADELMANN, \textit{supra} note 85, at 427.
\textsuperscript{96} Plachta, \textit{supra} note 4, at 93.
\textsuperscript{97} \textit{See}, e.g., U.S. Mexico Extradition Treaty, \textit{supra} note 17, at art. 8.
\textsuperscript{99} \textit{See} Plachta, \textit{supra} note 4, at 86-87 (citing Royal Commission on Extradition, Report of the Commissioners, 1878, C. 2039, at 6 (Gr. Brit.)).
\textsuperscript{100} \textit{See} Neely v. Henkel, 180 U.S. 109, 123 (1900).
When an American citizen commits a crime in a foreign country, he cannot complain if required to submit to such modes of trial and to such modes of punishment as the laws of that country may prescribe for its own people, unless a different mode be provided for by treaty stipulations between that country and the United States.  

Another argument, primarily advanced in the context of extradition of narcotics traffickers from Mexico to the United States, is that the courts of Mexico are often incompetent to prosecute the offender domestically. 

Narco-traffickers wield enormous amounts of influence in the Mexican judicial institutions in the form of bribery and threats to the lives of those who attempt to interfere with their business. Thus, domestic prosecution of drug traffickers is often not a viable option in Mexico.  

As a result of this widespread corruption, many proponents of extradition of Mexican nationals contend that, "extradition [to the U.S.] is less susceptible to undue influence than prosecution and incarceration in Mexico, because there are fewer stages at which undue influence can be asserted." This is so because two important stages of prosecution that are the most vulnerable to corruption, the criminal trial and the sentencing and imprisonment, will no longer be controlled by Mexican judges. And since Mexican nationals, as opposed to non-nationals, are in the best position to exert this influence, their extradition will prove to be a more effective means of serving justice.

Furthermore, if narcotics traffickers are imprisoned in Mexico, they often enjoy luxurious living conditions, such as jacuzzis and unlimited access to prostitutes. Also, some prisoners are allowed access to personal cellular telephone service. This allows drug lords to continue directing the operation of their organizations from inside prisons. Thus, in the rare case domestic prosecution is successful, the sentences imposed can hardly be expected to deter future narcotics traffickers from engaging in the trade.

---

101 Id.
102 See Spector, supra note 4, at 1007.
103 See Fineman & Rotella, supra note 13, at A1.
104 Spector, supra note 4, at 1034.
105 See id.
107 See id.
108 See id.
Another argument advanced by proponents of extradition of nationals is that the practice would deter cross-border crime. If a criminal is aware that he could face prosecution in another country, he will be less likely to commit the crime. Being tried in another country has many implications, some of which are addressed in the arguments against the practice of surrendering nationals to other countries. For example, a person facing trial in another country will be separated from his friends and family. He will not be afforded the protections of the laws of his state, and will have to defend himself in a different language in a legal system with different criminal procedures. Furthermore, in the U.S.-Mexico context, he will most likely face harsher sentences. These factors lend support to the argument that the possibility of facing trial in a foreign country will deter cross-border crime.

A related argument is premised on the concept of reciprocity. The U.S. believes that it is in the interest of both countries to prosecute a criminal where he or she has committed the crime, thus deterring future violations of the law. There are numerous United States citizens whom the Mexican government would like to prosecute. Thus, by allowing extradition of these U.S. nationals, the United States hopes to induce Mexican authorities to surrender Mexican nationals accused of crimes in the United States, thereby furthering the national interests of both countries.

Finally, some Mexican proponents of extradition argue that surrendering Mexican criminals to the courts of the United States is not a violation of sovereignty at all. Rather, the process of extradition involves a complex, legitimate legal process. Furthermore, since the Mexican Supreme Court’s approval of the process, extraditing Mexican nationals to stand trial in the United States is considered constitutional. Thus, the practice does not violate the sovereignty of Mexico, but rather is a tool of cooperation.

As evidenced by the events of the past year, it seems that the Mexican authorities have been persuaded by at least some of these theoretical arguments.

---

109 See Spector, supra note 4, at 1025.
110 See Caldwell, supra note 5, at G1.
111 See id.; see also Zagaris & Peralta, supra note 61, at 593-94.
113 See id.
114 See id.
VII. RECENT EXTRADITION CASES FROM MEXICO TO THE UNITED STATES

Between 1984 and 1996, the United States submitted a total of 151 requests for extradition to the Mexican authorities. According to the Mexican Attorney General, extradition to the United States was granted for thirty-nine U.S. and third country citizens from 1988 to 1996. However, it was not until 1996 that any offenders of possible Mexican nationality were extradited.

In January 1996, Mexican authorities granted extradition for Juan Garcia Abrego, who was flown to Houston after already being indicted on charges of cocaine possession, importation, and distribution, and money laundering. Garcia Abrego was considered by U.S. law enforcement agencies as one of the world’s most wanted drug kingpins. Abrego was also linked to high-level government pay-offs and to the 1994 assassination of Luis Donaldo Colosio, the PRI’s presidential candidate. However, Mexico was still able to uphold its policy against extraditing Mexican nationals by classifying Abrego as a foreigner based on his status as a dual citizen of the United States and Mexico. Using a provision of the Mexican Constitution, Mexico was allowed to deport Abrego due to his status as a foreigner, and thereby circumvent the lengthy extradition process.

Next, in April 1996, Mexico authorized the extradition of Francisco Gamez Garcia and Aaron Morel LeBaron. Gamez had already been convicted in Arizona state court for sexual abuse and sexual misconduct with a minor, and was on provisional release when he fled to Mexico. Even though Gamez Garcia was a Mexican national, Mexico was once again able to justify his extradition on other grounds. Since he had already been convicted in the United States, Mexico was not able to prosecute him for those crimes because it would violate the principle of double jeopardy, or non bis in idem. This

115 See Zagaris & Peralta, supra note 61, at 532.
116 See id.
117 See id. at 611-12; see also Sam Dillon, Mexico Arrests Top Suspect in Drug Trade, N.Y. TIMES, Jan. 16, 1996, at A1.
118 See Dillon, supra note 117, at A1.
119 See id.
120 See Andrew Reding, Narco-Politics in Mexico, NATION, July 10, 1995, at 50, 51.
121 See Dillon, supra note 117, at A1.
122 See id. at A2.
123 See Zagaris & Peralta, supra note 61, at 611.
124 See id.
125 See id.
principle of criminal law prevents an offender from being prosecuted for the same crime twice. 126

LeBaron was extradited in connection with charges of conspiracy to commit murder, racketeering, and participation in a corrupt organization (RICO). 127 It was alleged that LeBaron was the head of a religious sect that murders any member who tries to leave the sect. He allegedly ordered the murders of four members, one of which was an eight year-old girl.128

Although the Mexican Ministry of Foreign Affairs extradited LeBaron in accordance with the treaty, taking into account the deplorable nature of the crime, the United States classified him as a U.S. citizen due to the fact that both his parents were U.S. citizens. 129 This facilitated his extradition by helping the Mexican authorities based their decision on citizenship, rather than on "extraordinary" circumstances. 130

Thus, although these cases of extradition seemed promising at the time, in each case Mexico managed to uphold its longstanding policy against extraditing Mexican nationals to the United States. It was not until more than four years later that Mexico authorized the extradition of major Mexican narcotics traffickers without attempting to justify the extradition on other grounds.

On November 8, 1997, thirty-three year-old Edverardo Arturo Paez Martinez (Paez), a principal lieutenant in the Tijuana-based Arellano Felix Organization, was arrested by Mexican police while dining at a Japanese restaurant in Tijuana. 131 Paez was indicted in the United States for conspiring to distribute more than a ton of cocaine that he arranged to smuggle into the United States from 1988 to 1996. 132 Privately, the U.S. Government claims that he supervised the smuggling of more than twenty tons of cocaine into the United States. 133 The Government of then President Ernest Zedillo was formally pursuing extradition, but Paez's armada of attorneys have been resisting, claiming that extradition would violate the Mexican Constitution. 134

According to a former senior Justice Department official, the Paez case is "the

126 See id. at 611 (noting that this principle is set forth in Article 23 of the Mexican Constitution, and Article 6 of the extradition treaty).
127 See id. at 612.
128 See id.
129 See Zagaris & Peralta, supra note 61, at 612.
130 See id.
131 See Caldwell, supra note 5, at G1.
132 See id.
133 See id.
134 See id.
centerpiece of the idea of actually having a key drug lord who is purely a Mexican citizen extradited to the United States.'" Paez's extradition case went before the Mexican Supreme Court, and on January 18, 2001, the court, in a 10-1 ruling, authorized his extradition to the United States, saying that the Mexican government has discretionary power to extradite nationals to the United States, provided that they be sentenced in accordance with Mexican sentencing guidelines. Paez was extradited to the United States in May 2001. This represented a major change in Mexico's extradition policy.

Since the January Mexican Supreme Court ruling, other narcotics traffickers have been extradited as well. On March 2, 2001, Fernando Farias was extradited to the United States, where he faced charges for the possession and distribution of five kilograms of cocaine and marijuana. He was the first Mexican national extradited since the ruling.

In addition, Miguel Angel Martinez-Martinez and Francisco Rafael Camarena Macias were extradited on drug charges. Angel Martinez, a member of the Sinaloa-based Guzman cartel, was responsible for smuggling tons of narcotics into the United States, and for attempting to build a 1452 foot tunnel from Tijuana to Otay Mesa in California. Macias was responsible for successfully building a tunnel from Mexico to Arizona, through which flowed approximately two tons of cocaine per day.

Furthermore, on September 20, 2001, Mexico extradited two more suspects to the United States, Isaias Hernandez Garcia, and Juan Hernandez Ibarra. Garcia was wanted for cocaine smuggling in California, while Ibarra was wanted for heroin distribution in Colorado.

---

135 Id.
136 See id.
138 See Diane Feinstein, Senator Feinstein Urges that the Certification Process with Mexico be Suspended for Three Years, GOV'T PRESS RELEASES BY FED. DOCUMENT CLEARINGHOUSE, Sept. 6, 2001.
139 See Mexican Deputy Attorney General Affirms 'Extradition Prevents Impunity', supra note 112.
140 See Feinstein, supra note 138.
141 See id.
142 See id.
144 See id.
Although the theoretical arguments set forth by Mexican opponents of extradition constitute a major obstacle to increased extradition, several practical obstacles also exist. These must be addressed in order to fully reverse the trend against extraditing Mexican nationals accused of trafficking narcotics to the United States.

A. The 'Exceptional' Problem

The first and most obvious obstacle to increased extradition of Mexican nationals is the Mexican law permitting extradition of nationals only under "exceptional" circumstances.145 The law states, "No Mexican shall be surrendered to a foreign state, save in cases considered exceptional by the executive, who may so determine." This issue is also embodied in Article 9 of the Extradition Treaty which indicates that neither country is obligated to surrender its own nationals to the other country. Although the Mexican Supreme Court has construed this clause as authorizing, and not prohibiting, extradition of Mexican nationals at their discretion, previous Mexican Executives have been less than cooperative in this area.

Some commentators have expressed the need to amend the wording of the Mexican law to lower the threshold and allow more discretion to the Executive. For example, an amended article 14 could read, 'A Mexican will be surrendered to a foreign state when the Executive deems appropriate.' Through the use of this less restrictive language, more discretion could be afforded to the Mexican Executive in determining when to extradite a cartel kingpin.

However, the proposals of these commentators are largely moot at this point because the Mexican Executive has decided to consider the extradition of Mexican narcotics traffickers "appropriate," and has thus authorized the extradition of numerous Mexican nationals.

145 See Spector, supra note 4, at 1028.
146 Id.
147 See U.S. Mexico Extradition Treaty, supra note 17, at art. 9.
148 See Plachta, supra note 4, at 143-44.
149 See Spector, supra note 4, at 1035.
150 Id.
B. Corruption of Mexican Law Enforcement

The second major obstacle to increased extradition of Mexican nationals is corruption in the Mexican law enforcement agencies. While it is certainly possible that corruption in Mexico may actually increase the chances of Mexico extraditing its nationals to the United States, due to the ineffectiveness of domestic prosecution, one must distinguish between the different levels in which corruption occurs.

Corruption in the judiciary will inevitably lead to more acquittals and dismissals, and thus, may cause some to cite it as a reason for increased extradition. However, it is corruption in the anti-narcotics law enforcement agencies of Mexico that stands as a major impediment to increased extradition because, in order for the issue of extradition to arise, the alleged offender must first be arrested and taken into custody by local officials.

However, due to the enormous amounts of influence wielded by the cartel leaders, this is a very rare occasion. Widespread, endemic corruption plagues the law enforcement institutions of Mexico. As a result, drug kingpins enjoy a virtual immunity from arrest or molestation. An estimated $20 billion a year in drug profits enrich the Mexican cartels and allow them to finance their campaign of bribery, intimidation, and murder. The Mexican government has found it virtually impossible to compete with such high funding. According to a study done by the Universidad Nacional Autonoma de Mexico (National Autonomous University of Mexico) (UNAM), the Mexican Federal Attorney General’s annual budget is only $200 million, while the drug cartels spend as much as $500 million bribing officials. According to estimates by American officials, the Tijuana-based Arellano Felix Organization (AFO) spends approximately $1 million each week bribing federal, state, and local officials. Evidently, $17 million was required to bribe Mexico’s former top

---

151 See Plachta, supra note 4, at 129.
153 See Fineman & Rotella, supra note 13, at A1 (citing recent study by UNAM).

On April 30, 1997, Jorge Madrazo, Mexico's Attorney General dismantled the Esfuerzo Nacional en el Combate al Narcotrafico (Institute for Combatting Drugs) (INCD) after it became known that its director, General Gutierrez Rebollo, and many of its agents were accepting bribes from drug traffickers. The INCD, which was created in 1993, sought to replace other corrupt drug-fighting organizations.

While large payments are required for high-level drug enforcement officials, an amount like that paid to Massieu is not necessary in most cases. The immense resources possessed by drug cartels, coupled with comparatively meager salaries for lower-level law enforcement officials, make accepting bribes almost irresistible for Mexican police officers. In 1997, the typical Mexican police officer earned approximately $300 per month, while the typical cartel bodyguard earned approximately $2000-$3000 per week.

Low-salaried law enforcement officials can hardly resist the temptation of kickbacks in return for merely turning their heads the other way. Also, if they refuse the bribe, they or their families will be threatened or killed. According to a common Mexican saying, "Take the Plata o Plomo," which means "take the silver or the lead," Mexican police officers have very little choice in the matter.

Low salaries are not the only factor that encourages corruption in Mexico's law enforcement institutions. Active drug control strategies, especially those aimed at curbing drug supply (crop destruction, interdiction, etc.), can also enhance corruption. First, simple economics dictates that by decreasing the supply of narcotics in the United States, prices and profits for the cartels increase. This gives the cartels more resources with which to bribe officials. Second, the more pressure is exerted on cartels, the more pressure they will be forced to exert on local officials to maintain their status and business.

158 See id.
159 See id.
160 See NADELMAN, supra note 85, at 258.
"Greater effectiveness in drug control leads to greater incentives on the part of traffickers to invest in the corruption and manipulation of drug control agents."162

Widespread corruption in the Mexican law enforcement community has also had an adverse effect on cooperative efforts between the Mexican officials and their U.S. counterparts.163 Knowledge that many of the Mexican police officers are accepting bribes breeds mistrust between the officials of both countries, as it is difficult to differentiate between which officials are honest, and which ones are secretly working for the cartels. According to one member of the National Border Control Council, "It’s hard for our agents to feel comfortable working with people on the south side when there’s this level of corruption and distrust."164 Indeed, even Mexico’s President Vicente Fox acknowledges the existence of mistrust in the context of U.S.-Mexican relations: "Bad blood and distrust ran deep on both sides of the border, making collaboration on many issues difficult if not impossible."165

Furthermore, U.S. law enforcement officials often withhold information from their Mexican counterparts that they fear will be leaked to the cartels by corrupt Mexican agents or prosecutors.166

C. Abduction of Dr. Humberto Alvarez-Machain

Another major obstacle that has hampered efforts to extradite Mexican nationals is rooted in the Mexican government’s resentment and mistrust of the U.S. government.167 Although this climate has existed for decades, its strength was renewed by the U.S. abduction of Dr. Alvarez-Machain. The need to curtail the massive amounts of international drug trafficking and the U.S. government’s growing frustration over Mexico’s refusal to extradite nationals prompted the U.S. government to resort to the process of “irregular rendition.”168

162 Raustiala, supra note 161, at 101.
163 See Vicente Fox, Now Trust is the Basis for Mexico-U.S. Cooperation, Seattle Post-Intelligencer, Sept. 5, 2001, at B4.
165 Fox, supra note 1, at B4.
167 See Fox, supra note 1, at B4.
168 See Kosmetatos, supra note 12, at 1066.
Irregular rendition is "the forceful abduction of an individual from one country by agents of another country, principally without the knowledge or consent of the former." However, rather than alleviating the situation, the event, and the Supreme Court's subsequent approval of the tactic, caused outrage in the Mexican government and in the international community. To opponents of the decision, the abduction undermined a central purpose of the U.S. Mexican Extradition Treaty—to preclude unilateral abductions in foreign territory.

In reaction to the event, the Mexican government temporarily suspended government cooperation with DEA agents working in Mexico. The international community was similarly outraged. Governments around the world condemned the decision as a blatant violation of international law, and sent formal protests to the U.S. government. Other Latin American governments reacted by refusing to comply with U.S. extradition requests. Upon request from leaders throughout the region, the Inter-American Juridical Committee of the OAS issued an opinion calling the abduction a serious violation of international law and "an impermissible transgression of Mexico's territorial sovereignty." Opponents also warned of retaliations against U.S. citizens by foreign nations seeking extradition from the United States. It seemed that by resorting to irregular rendition, the United States was effectively condoning the practice as a valid means of bringing foreign defendants to justice.

The abduction of Dr. Alvarez-Machain thus further hindered U.S. efforts to curb the flow of illegal narcotics into the country. Furthermore, it increased the level of mistrust that already existed in the relations between the two

170 See Kosmetatos, supra note 12, at 1084-91.
171 See id. at 1090.
173 See Kosmetatos, supra note 12, at 1087-88.
175 See id.
176 See Kosmetatos, supra note 12, at 1088 (citing Legal Opinion of the Inter-American Juridical Committee on the Decision of the U.S. Supreme Court in the Alvarez-Machain Case, reprinted in 13 HUM. RTS. L. J. 395 (1992)).
178 See id.
countries. However, the event also lead to the signing of the Transborder Abduction Treaty in 1994, which will be discussed more fully in the following section.

IX. PROSPECTS FOR INCREASED EXTRADITION OF MEXICAN NATIONALS

Despite the existence of several major practical obstacles, there are also several prospects for increased extradition of Mexican nationals to the United States.

A. Recent Mexican Supreme Court Decision

The decision by the Mexican Supreme Court in January 2001 with regards to extradition to the United States represents a major change in Mexico’s longstanding policy against the extradition of Mexican nationals. According to U.S. officials, the ruling is seen as a test of Mexico’s willingness to cooperate in the war on drugs. The ruling also adds judicial legitimacy to the theory that extradition is essential to the battle against the cartels of Mexico. The ruling constitutes a major breakthrough in U.S.-Mexican extradition relations.

B. Difficulties in Stemming Institutional Corruption

On July 2, 2000, Vicente Fox was elected as the new president of Mexico, ending over seventy years of dominance by the PRI. One of Fox’s main campaign promises was to crack down on corruption in Mexico’s police forces, and he has already outlined a bold anti-drug agenda. Just three days after his victory, he vowed to reorganize federal law enforcement and attack police corruption in Mexico.

However, Fox’s chances of achieving such a lofty goal are slim considering past failed attempts to curtail corruption. According to DEA administrator

179 See Laflin, supra note 169, at 330.
181 See Caldwell, supra note 152, at G1. The PRI, while promoting stability in Mexico through their dominance of the nation’s institutions, was often seen as being in collusion with the cartels. See Joel Estudillo Rendon, Drugs, Sexenios, and Rocky Roads, BUS. MEX., Vol. 11, Issue 3, Mar. 1, 2001, available at 2001 WL 7670889.
182 See Caldwell, supra note 152, at G1.
183 See id.
184 See generally Saavedra, supra note 164.
Donnie Marshall, who met with Fox briefly after his election, Fox faces an "uphill battle." Marshall said he was "not happy with the results we have seen out of Mexico." "They have not been able to really dismantle any of the major drug trafficking organizations on their own."

Since taking office, Fox has had some successes in attempting to battle corruption and arrest traffickers. In April 2001, Mexican authorities arrested Gilberto Garcia and nineteen of his subordinates. "The arrest mark[ed] Mexico's new administration's first major success in apprehending a purported high-ranking drug lord." But this success has been limited. A major blow to Fox's attempts to curb corruption came in January 2001, when one of the country's most notorious narcotics traffickers, Joaquin Guzman, escaped from a maximum security prison in Guadalajara. The Mexican Attorney General has charged seventy-three prison officials and guards with aiding the drug lord's escape.

The obstacles faced by previous executives, will surely surface in Fox's fight against corruption in Mexico's police force. Furthermore, making progress in this area, while not totally impossible, will take time. "Things are not going to be transformed overnight," said Tom Umberg, a former deputy U.S. drug czar, "It's only possible if (Fox) recognizes it's a long-term project that will require a generation to transform."

Proponents of increased extradition hope that Fox's bold and apparently sincere stance on curbing narcotics trafficking, coupled with his recognition that ending corruption in Mexico will take a long time, may lead to increased extradition. That is, Fox may realize that for the time being, domestic prosecution is not a viable option, and that in order to attack the rampant drug trafficking problem in Mexico, he must ensure that narco-traffickers receive strict prison sentences. This can only be accomplished by extraditing offenders to the United States. Proponents point to Fox's recent extradition requests as signs of his recognition of this fact.

185 See Gregory A. Gross, All Eyes on Fox, DEA official says—Next Mexican Chief's Drug Stance Awaited, SAN DIEGO UNION-TRIB., Nov. 15, 2000, at A13.
186 Id.
187 Id.
189 Id.
191 See id.
192 Saavedra, supra note 164.
Furthermore, in order to maintain the strength of his political base, he must follow through on his campaign promises. According to Marshall, extradition "would send a message [to drug cartels] that they are no longer immune to arrest and prosecution in Mexico."193

C. U.N. and World Support for Extradition of Nationals

Another major prospect comes in the form of U.N. and world support for the abolition of the practice of refusing extradition based on the nationality of the offender.194

In 1992, Libya refused extradition of two nationals suspected of involvement in the planting of a bomb which exploded aboard a Pan Am flight 103 over Lockerbie, Scotland, killing 270 civilians.195 In response, the U.N. Security Council adopted Resolutions 731 and 748, which urged Libya to respond to the requests of the United States, United Kingdom and France to extradite the suspects for prosecution before a Scottish court in the Netherlands.196 The Resolution also imposed sanctions on Libya for their failure to cooperate with earlier requests.197

In response to these Resolutions, Libya went to the International Court of Justice (ICJ) seeking to prevent the United States and the United Kingdom from compelling it to surrender the alleged offenders.198 However, to the dismay of Libyan officials, the court confirmed the validity of the Resolutions.199 With the assistance of statesman Nelson Mandela, Libya eventually surrendered the suspects for prosecution in the Netherlands.200

However, one must realize that the crimes of aircraft piracy, and international terrorism in general have long been accorded the status of universal

193 Gross, supra note 185, at A13.
194 See Laflin, supra note 169, at 334.
198 See BASSIOUNI, supra note 19, at 365.
199 See id.
A universal crime is one that has been "recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism." But, controversy still exists as to whether the crime of narcotics trafficking has been accorded that status yet. This could indicate that the Security Council’s forceful actions in this situation were prompted by the universal nature of the crime, rather than their intent to abolish the practice of refusing extradition based on the nationality of the offender.

But, since the resolutions involving Libya, the United Nations has continued to support the abolition of non-extradition of nationals in the criminal context. In 1997, the U.N. Commission on Crime Prevention and Criminal Justice adopted a proposal in which it was agreed that in the long term, members should not base refusals to extradite on the nationality of the alleged offender.

The United Nations has also specifically addressed the extradition of narcotics traffickers in numerous multilateral conventions on narcotics, and has imposed a duty to extradite in these instances. However, these conventions specifically allow nations to refuse to extradite persons accused of narcotics trafficking if extradition would be contrary to the laws of the requested states. Thus, prior to the January 2001 decision of the Mexican Supreme Court, Mexico could plausibly refuse to extradite Mexican narcotics traffickers, and still be in compliance with the Convention. But now, these conventions have imposed a duty upon Mexico to extradite Mexican narcotics traffickers to the United States, as they can no longer rely on the prohibition contained in Mexican law. However, some opponents of extradition may

---

202 United States v. Yunis, 924 F.2d 1086, 1091 (1991); see also BASSIOUNI, supra note 19, at 568-72 (providing a more comprehensive list of international or universal crimes).
203 But see BASSIOUNI, supra note 19, at 570-71.
204 See Laflin, supra note 169, at 334 (theorizing that the U.N. was merely “supplementing the system with the recourse to intervene in exceptional situations, especially when the traditional treaty model proves unworkable.”) Id.
207 See Single Convention, supra note 206, at art. 6(5) (stating “Extradition shall be subject to the conditions provided for by the laws of the requested Party or by applicable extradition treaties including grounds upon which the requested Party may refuse extradition.”); U.N. Convention Against Illicit Traffic in Narcotic Drugs, supra note 206, at art. 36(2)(a)(iv).
argue that they still may be able to rely on Article 9 of the U.S. Mexico Extradition Treaty, but this provision only gives discretion to the Executive, not to the Judiciary. Due to the fact that the Executive has since deemed requests by the United States to extradite "exceptional circumstances," it is unlikely that Mexico could rely on Article 9 in the future.

To some, the U.N.'s actions regarding narcotics trafficking demonstrate the world's recognition of the need to extradite nationals in the interests of justice. This shift in global attitude may serve as an impetus for increased extradition of Mexican nationals in the fight against narcotics trafficking.

D. Corruption in the Judiciary Signals the Need to Extradite

Corruption in the judiciary is a problem that has plagued the governments of Latin America for years, Mexico in particular. It has had the effect of solidifying the virtual immunity from prosecution and incarceration enjoyed by Mexican drug kingpins. It also has created a disincentive to foreign investment, as an effective judiciary is key to a stable investment climate. Potential investors need assurance that their assets will be afforded the protection of the law.

As a result, Latin American governments, with the aid of foreign governments, have initiated numerous judicial reforms. In fact, "a judicial reform project is underway, has been recently completed, or is currently in the planning stages in nearly every Latin American country." For example, in Mexico, former President Ernest Zedillo implemented numerous judicial reform measures upon entering office designed to combat corruption and increase efficiency. However, according to many Latin American authors and Human Rights watchdogs, these programs have been less than successful, and now many wonder where the millions of dollars in foreign aid have gone. A major reason for the failed efforts at judicial reform stems from the judiciary's

---

208 See Laflin, supra note 169, at 334-35.
209 See Nagle, infra note 212, at 360-61.
210 See id. at 355 (discussing Peruvian President Fujimori's recognition of the need for reform of the judicial infrastructure to attract foreign investment to the government sector).
211 See id.
213 See id. at 356.
214 See id. at 346.
inherent desire to preserve the status quo. The judiciary in Latin America has long been "perceived to be benefiting from the status quo and therefore unwilling to consider reform . . . those who control the judiciary enjoy a monopoly on the judicial system, they have no incentive to promote reform or act efficiently."216

This inability to remedy the inherent flaws of the judiciary may demonstrate to Mexican officials the need to extradite Mexican nationals accused of trafficking narcotics. This would effectively eliminate the opportunity for narco-traffickers to bribe judges and other judicial officials. Hence, criminals would be ensured lengthy prison sentences, which in turn, could act as a deterrent to narcotics trafficking.

Furthermore, the results of judicial reform will not occur overnight. Therefore, for the time being, Mexico will have to begin extraditing its own nationals if they want to curb narcotics trafficking and the societal evils that accompany it. Even if efforts to curb corruption in the judiciary prove to be successful, the ruthless and violent nature of the drug cartels ensures that judges and their families may still be intimidated into dismissing or acquitting.

Thus, for now, extradition is paramount. It will effectively curb the power and influence wielded by the cartel kingpins. As a result, it is possible that kingpins will have fewer resources with which to bribe and intimidate judicial officials.

E. Transborder Abduction Treaty

In the aftermath of the Alvarez-Machain incident, levels of distrust were high on both sides of the border.217 In an effort to ease tensions and increase cooperation between the two nations, the United States and Mexico signed the Transborder Abduction Treaty in 1994.218 "In return for an end to state-sponsored abductions, the U.S. government asked that Mexican officials consider extraditing their citizens to the U.S. upon request."219 Although this could have signified the start of a new trend towards increased extradition, the treaty failed to specifically address the issue of extradition of nationals, which gave Mexico no incentive to extradite.220

215 See id. at 354.
217 See Fox, supra note 1, at B4.
218 See Laflin, supra note 169, at 330.
219 Id.
220 See Laflin, supra note 169, at 330 (citing Kosmetatos, supra note 116, at 1104).
Still, some commentators believe that with improved relations could come the possibility of renegotiation of the Treaty to "require extradition where all of the applicable grounds and procedures under the agreement apply in the particular circumstance." For example, Article 3 of the proposed U.S.-Bolivia Extradition Treaty authorizes and requires the extradition of certain Bolivian nationals for certain serious offenses which are specifically listed, while affording discretion to the Bolivian Executive in cases involving more minor crimes. Drug trafficking is included in the list of serious offenses warranting extradition of a Bolivian national.

This sort of provision is absolutely necessary to increase extradition of Mexican narco-traffickers to the United States. It would preclude Mexican authorities from relying on the specific language of the Treaty when refusing extradition requests. Furthermore, an amendment to the treaty would send a signal to narco-traffickers that they can no longer evade prosecution.

F. Elimination of Certification

In order to induce Mexico to adopt a more aggressive policy towards narcotics trafficking, the U.S. president, pursuant to Section 490(b) of the Foreign Assistance Act, must certify that Mexico has cooperated with the U.S. government or has taken adequate measures on its own to combat drug trafficking. Mexico has always passed the U.S. certification tests and thus, has avoided unilateral trade sanctions. However, Mexico has always viewed the process as humiliating and unfair, and this has contributed to the feelings of resentment held by Mexican officials towards the U.S. As a result, Senator Kay Bailey Hutchinson, a Texas Republican who has been among the toughest critics of Mexico’s drug policy, introduced a bill in early February 2001 which would exempt Mexico from the annual certification process. “I think the healthiest way to start a new relationship is to not have a March 1st
test of Mexico where we have the Mexico-bashing that we have seen over the past few years," Hutchinson told reporters.\footnote{\textit{\textit{Id.}}} Furthermore, Senator Diane Feinstein (D-Calif) also supported the suspension of the certification process for three years beginning in 2001.\footnote{See Feinstein, \textit{supra} note 138.} Citing the recent extraditions of major narcotics traffickers, as well as Fox's successes in battling corruption in Mexican law enforcement, Feinstein concluded that, "the clear signs of progress made by President Fox, and the new spirit of cooperation between our two nations, merit such a suspension."\footnote{\textit{Id.}} This willingness to put an end to certification clearly signifies a change in the attitudes of both countries, and indicates an increased willingness to cooperate on the matter.

\textbf{G. Support from Other Countries}

Other nations plagued with narcotics problems seem willing to extradite their own nationals in order to combat the major societal evils that accompany the traffic of narcotics. For example, Columbia recently handed over Fabio Ochoa, a major Columbian drug lord, who was accused of supplying American users with $5 billion worth of cocaine.\footnote{See Axtman, \textit{infra} note 238.} This step may encourage Mexico to increase extradition, and may demonstrate the fact that other nations have been able to set aside longstanding apprehensions against extradition. According to William Walker of Florida International University at Miami, "It's a symbol of their willingness to limit sovereignty in pursuit of more important goals."\footnote{\textit{Id.}}

\textbf{H. Increased Trust Among U.S. and Mexican Law Enforcement}

Mistrust on both sides of the border of the two nations' law enforcement agencies has, in the past, constituted a major obstacle to cooperation in the fight against narcotics trafficking.\footnote{\textit{Id.}} In an attempt to dispel this climate of mistrust, President Vicente Fox recently authorized increased access to U.S. law enforcement agencies to perform security checks on their Mexican counterparts.\footnote{See Fox, \textit{supra} note 1, at B4.} This move stems from the recognition that U.S. officials need to trust Mexican authorities in order to cooperate more fully on the apprehension and eventual extradition of Mexican narcotics traffickers.

\begin{footnotes}
\item[228] \textit{Id.}
\item[229] See Feinstein, \textit{supra} note 138.
\item[230] \textit{Id.}
\item[231] See Axtman, \textit{infra} note 238.
\item[232] \textit{Id.}
\item[233] See Fox, \textit{supra} note 1, at B4.
\end{footnotes}
Indeed recent attempts at rebuilding this trust have proven to be rather successful. For example, U.S. and Mexican authorities collaborated on a raid in Mexico in June 2001. In a break from past practice, U.S. officials shared critical information with their Mexican counterparts without any leakage by the Mexicans to the targets of the raid. According to Fox, this signified new progress in Mexican attempts to stem corruption in their law enforcement agencies, and thus to increase cooperation with their northern neighbors.

X. Effects of Increased Extradition

A. Continued Narcotics Trafficking

Some commentators have noted that the focus of extradition on individual narco-traffickers has produced some negative effects. For example, the United States and Columbia attacks on the Cali and Medellin cartels have caused the emergence of smaller narcotics trafficking organizations, "making the players harder to pinpoint and the activity harder to monitor." To facilitate this replacement process, the major Mexican cartels developed a new structure three years ago, which divides territories into cells, and allows each cartel to assist other cartels in their operations.

According to the head of Mexico's drug enforcement agency, this new structure "makes it more difficult to weaken a cartel through the arrest of a key leader."

235 See Fox, supra note 1, at B4.
236 See id.
237 See id.
238 See Kris Axtman, For U.S., A Stronger Hand in Extraditing Drug Lords, CHRISTIAN SCIENCE MONITOR, Sept. 25, 2001 (pg. unavail.).
239 Id.
240 See id.
242 Id.
B. Instability in Mexico

The recent extraditions of Mexican narcotics traffickers from Mexico to the United States have caused a major backlash in many segments of society, and threaten stability in the nation as a whole. This backlash has come in the form of recent unsettling events. These include the assassinations of two top prison officials, the escape of Joaquin Guzman, and a surge of violence in areas under the traffickers’ control.²⁴³

Under the PRI, the existence of institutional corruption and control of the country’s officials by the cartels presented a major problem, but it never really put the nation’s stability or the regime’s institutions at risk.²⁴⁴ The criminal organizations were given room to operate, and the complicity with the PRI helped maintain a certain degree of control over the situation.²⁴⁵

However, now, “with the arrival of a new political group in the executive Branch... the web of complicity between authorities and drug cartels is now at risk of being uncovered and dismantled.”²⁴⁶ This may help explain the recent acts of retaliation by the cartels, and demonstrate one of the effects of increased extradition of Mexican nationals.

As a result, the cartels have stepped up their campaign of intimidation against civilians and officials alike. For example, the attorney who represented Paez for three years in opposing his extradition, was murdered after eventually failing.²⁴⁷ Also, cartels have recently put out a $200,000 bounty on the heads of U.S. agents.²⁴⁸

This problem is exacerbated when one considers the potential effects of decreasing the supply of narcotics to the United States. As noted before, this results in an increase in prices in the United States, thus making it more profitable for the traffickers to do business. This provides the cartels with more resources with which to bribe, intimidate and murder.

XI. CONCLUSION

By examining all the prospects for and obstacles against increased extradition of Mexican nationals, it is clear that despite the existence of several major obstacles, a new trend in the direction of increased cooperation is on the

²⁴³ See Lloyd, supra note 106.
²⁴⁴ See Rendon, supra note 181.
²⁴⁵ See id.
²⁴⁶ Id.
²⁴⁷ See Feinstein, supra note 138.
²⁴⁸ See Saavedra, supra note 164.
Horizon. However, many proponents of the practice of denying extradition based on nationality must be persuaded to discard the deep-seeded ideological and theoretical justifications which have hampered efforts at curbing the flow of narcotics to the U.S. thus far.

While efforts at curbing corruption will definitely take a long time to exhibit results, in the meantime, Mexico's only chance of effectively combating drug trafficking lies in extradition to the United States. The recent Mexican Supreme Court ruling may reflect the judiciary's realization of this fact. But more change is needed.

For example, while judicial recognition of the constitutionality of extradition is certainly helpful, an amendment to the U.S.-Mexico Extradition Treaty would be ideal. An amendment of Article 9, which pertains to extradition of nationals, would represent a major breakthrough for the two nations, and would have the effect of codifying the new trend towards extradition.

Also, an elimination of the controversial certification process would set the stage for increased cooperation between the two nations. More importantly, it would ease the levels of tension and mistrust that have characterized relations between the law enforcement agencies of both countries. This is essential to increased cooperation, and with time, it would lead to a greater control over the narcotics trafficking industry.

At the same time, some commentators have suggested that the United States take active legislative measures to make narcotics trafficking less lucrative for the cartels, i.e., decriminalize and regulate the production and importation of certain narcotics. This would not only lessen the profits of narcotics traffickers, but would also decrease their need to circumvent the law, and hence reduce corruption.

The adoption of these measures will contribute greatly to the fight against narcotics trafficking along the southern border of the United States.

Therefore, despite the recent signs of increased cooperation on this matter, the existence of several practical and theoretical obstacles stand in the way of making the extradition of Mexican narcotics traffickers a common practice.

---


250 See id.