

# Extradition treaties abound but unlawful seizures continue

By C. V. Cole

When an individual is wanted in a country other than the one in which he is located either because he is an escaped criminal or for prosecution for an offence, the recourse is normally to seek his return through well-established extradition procedures governed by a large network of treaties. Canada has at present extradition treaties with 41 other countries. In addition, there is the fugitive-offender legislation providing for the return of offenders between Commonwealth countries. Even in the absence of such treaties, certain countries, including Canada (subject to proclamation in specific cases), have legislation on their statute books providing for the extradition of certain offenders.

Many of the Canadian extradition treaties were entered into by Britain during the nineteenth and early twentieth centuries and made applicable to other parts of the then British Empire. Thus the series of extradition treaties with the United States dates back to the offences specified in Article X of the Webster-Ashburton Treaty of 1842 — perhaps the most famous of Canada's extradition arrangements. The list of extraditable offences specified in that treaty has been added to by the supplementary conventions with the U.S.A. of July 12, 1889, December 13, 1900, April 12, 1905, May 15, 1922, January 8, 1925, and October 26, 1951. A new Canada-U.S. Extradition Treaty was signed in Washington on December 3, 1971, but has yet to be ratified and is therefore not in force. Article 18(2)

of the new treaty provides that it "shall terminate and replace any extradition agreements and provisions on extradition in any other agreement in force between the United States and Canada; except that the crimes listed in such agreement and committed prior to entry into force of this Treaty shall be subject to extradition pursuant to the provisions of such agreements". The new treaty is designed to consolidate the existing arrangements between Canada and the United States in a single instrument and at the same time revise and update the list of extraditable crimes.

## Unlawful seizure

From the standpoint of international law, the extradition treaties and fugitive-offender legislation in force in various Commonwealth countries provide the correct processes for interstate rendition of criminals and fugitive offenders. However, there are numerous instances in which police and other authorities have not made use of these procedures. Instead, they have resorted to unlawful seizure and return of wanted persons by agents or unauthorized persons on the territory of another state. Perhaps the most famous of these cases in recent years is that of Adolf Eichmann, for whom certain survivors of concentration camps had been searching for years. When he was discovered living in Argentina under an assumed name, he was seized by Israeli agents and taken to Israel where he was tried and executed. Argentina protested and the Security Council of the United Nations criticized Israel for Eichmann's kidnapping.

There have been a number of cases reported in which individuals have been seized on Canadian or U.S. territory and returned without use of extradition procedures to the other country. Hackworth's *Digest of International Law* describes the case of Adelard Lafond, who, while in jail in Winnipeg in 1908, complained to the U.S. consulate in that city that he had been kidnapped in Illinois and taken to

*Extradition dates back to Empire treaties*

*Mr. Cole was a member of the Legal Advisory Division of the Department of External Affairs at the time of preparation of this article. Before joining the Department, he practised law in New Brunswick and was a member of the law faculty of the University of Saskatchewan, where he taught international law. He served at the Canadian missions in Pakistan, Czechoslovakia and South Africa, and is now a member of the Department's South Asia Division.*