

Prof. Dr. G.A.M. Strijards LLM

International Criminal Law

Groningen University

International Co-operation in Criminal Matters

Principals, distinctions and rules of Interstatal Co-operation

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A helping hand

- *The rendering of a helping hand*
- *of one State to Another*
 - *in order to make it possible for the latter to exercise effectively*
 - *its national jurisdiction and*
 - *its penal enforcement power*

request

- A “request” of the administered State is not necessary.
- But mostly, such a request has been made.

Nevertheless, the administering Party can act “*motu proprio*”

- There are two varieties of this interstatal cooperation;
 - primary cooperation
 - secondary cooperation

primary cooperation

- In the case of primary cooperation, the administering State recognizes the jurisdictional power of the administered State **as more justified than its own**.

The forwarding of the cooperation implies an irrevocable renunciation of the jurisdictional power by the administering State.

- Examples:
 - Transfer of criminal procedures
 - Positive recognition of a sentence
 - Transfer of the enforcement of penalties
 - Specially within the EU-framework



SCOTTISH COURT SERVICE



secondary cooperation

- In a case of secondary cooperation the administering State is willing to help **without the implicit recognition of the priority** of the jurisdictional power of the administered Party
- Extradition
- Surrender
- Enforcement of an EU-warrant for arrest (See Reader pp 211-265)
- Other forms of secondary cooperation:
 - Transnational arresting of criminals
 - International rogatory commissions
 - Transnational observation
 - Transnational seizure
 - Transnational disfranchisement
 - Admission of hot pursuit
 - Establishment of Joint Investigation Teams



extradition

- The most classical form of secondary cooperation is extradition:
 - the delivery
 - of a prosecuted individual
 - to a State
 - at its request
 - by a State
 - on whose territory the individual is staying at the time the request came in
 - to have the administering State using its penal enforcement power



Hugo Grotius



Hugo Grotius:

- there is a natural obligation incumbent on States to extradite or to punish: *dedere aut iudicare* in case the criminal committed crimes the heinousness to hardly to challenge amongst civilised nations
- This has never been recognised as part of *ius cogens*
- States have always upheld their competence to grant asylum unless they were treaty bound to comply with a request for extradition

overarching principles

Three overarching principles in the interstatal framework of cooperation:

- the principle of non-collision
- the principle of internal and external statal sovereignty
- the una via-principle
- All modalities of interstatal cooperation should answer to those principles:
mandatory international law