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Case Comments

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Cases with a variety of international aspects have been decided by the courts in recent weeks.

Extradition—Multinational Crime

United States of America ex rel. Eatessami v. Marasco, 36 U.S.L. Week (S.D.N.Y. Nov. 10, 1967)

This case appears to close what could have been an inviting gap in extradition theory and practice.

The Swiss government sought under its extradition treaty with the United States to have Mr. Eatessami delivered to the Swiss authorities for trial in connection with allegedly fraudulent loans obtained from Swiss Bank Corporation in Geneva by means of transactions initiated in New York.

Eatessami resisted extradition, contending that (1) any crime that was committed had been committed in New York where the arrangements for the loans, the presentation of counterfeit stock certificates as security, and the receipt of the proceeds had all taken place—seemingly a rather risky argument, and (2) he was not a "fugitive from justice" since he was absent from Switzerland when the crimes were alleged to have taken place.

Expressing the view that it is "unrealistic in the mid-Twentieth Century to try to assign a single place to the commission of multinational crimes such as those here charged," the court found an intent in the treaty to permit extradition whenever the extraditee is shown *prima facie* to have intended and caused the harm claimed by the demanding state. Further, the court failed to find in the treaty or the

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applicable law any requirement that the extraditee had fled the jurisdiction to avoid prosecution.

Territorial Sea—Continental Shelf

In the Matter of Section 55 of the Supreme Court Act, [1968] S.C.R. (*Supreme Court of Canada, Nov. 7, 1967*)

In what has been called the "Offshore Mineral Rights" reference case, the Supreme Court of Canada determined that the lands and mineral resources of the sea bed and subsoil from the ordinary low-water mark on the coast of the mainland and the islands of British Columbia outside inland waters to the outer limit of Canada's territorial sea are the property of Canada, not British Columbia. Canada also was determined to have jurisdiction and exploration and exploitation rights with respect to resources of the sea bed and subsoil outside Canada's territorial sea on the continental shelf. The opinion of the Court contains an extensive discussion of the status of both the territorial sea and the continental shelf in Canadian and international law.

Espionage

United States of America v. Butenko, 384 F. 2d 554 (3rd Cir. 1967)

This case illuminates some of the techniques of espionage and one or two of its rather novel legal ramifications. Defendant Butenko, a United States citizen employed in a sensitive occupation in this country, was charged with conspiracy to pass classified information to three members of the Soviet Mission to the United Nations and, further, with failure to register as an agent of a foreign government under the Foreign Agents Registration Act, a perhaps understandable oversight under the circumstances.

With regard to his non-registration as a foreign agent, Butenko argued that since he had no contractual relationship with the Soviet Union he could not be its agent. Unimpressed, the court found that the transfer of top secret information to representatives of the Soviet Mission was sufficient to bring Butenko within the scope of the statute.

The defense also contended that, since the State Department had declared the three members of the Soviet Mission involved to be *persona non grata* and had thereby caused their departure from the country, defendant had been deprived of his Sixth Amendment right to compulsory process for obtaining the attendance of witnesses.

It appeared that the State Department, pursuant to a request by defendant's counsel, had stayed the effect of its diplomatic note for three days in order that defendant might confer with the Russians but that they had not made themselves available for this purpose and were, in any event, still in possession of their diplomatic immunity, which only their own government could waive. After their departure a United States district judge signed an order granting Butenko's request to take a deposition of the three Russians, but defendant's counsel was unable to secure the cooperation of the Soviet authorities. In rejecting defendant's claim that his Sixth Amendment rights had been violated, the court held that the United States is not to be penalized for defendant's inability to summon the Russians or for the refusal of the Soviet government to permit its representatives to testify.

Recognition of Foreign Governments

In re Bielinis Estate, 36 U.S.L. Week 2327 (*N.Y. Sur. Ct., N.Y.Cty., Nov. 21, 1967*)

On practical grounds, the New York Surrogate's Court held that the refusal of the United States Government to recognize the incorporation of the Republic of Lithuania's former territory into the U.S.S.R. did not invalidate powers of attorney executed and acknowledged before a notary of the Lithuanian S.S.R.

International Organizations—Immunities

Lutcher S. A. Celulose e Papel v. Inter-American Development Bank, 382 F. 2d 454 (D.C. Cir. 1967)

In this case the district court refused an injunction sought by the plaintiff Brazilian paper company against the Inter-American Development Bank to prevent the Bank from making a proposed loan to a competitor of the plaintiff. (See 1 *International Lawyer* 153 [1966].) The basis for the district court's holding was twofold: (1) that the Bank was immune from suit (at least from the type of direct action brought against it in this instance) and (2) that the complaint did not state a claim for which relief could be granted.

The court of appeals, after a thorough review of the organic documents of the Bank and of the International Organizations Immunities Act, concluded that the Bank was amenable to suit. In so finding, the court contrasted the scope of the Inter-American Develop-

ment Bank's waiver of immunity as set forth in the Agreement establishing the Bank with the more circumscribed waiver of immunity contained in the Agreement of the Asian Development Bank, which is limited to cases arising out of or in connection with the exercise of the power to borrow money, guarantee obligations, buy and sell or underwrite the sale of securities. Despite this finding, the court of appeals reached the same result as the district court for the reason that the complaint did not set forth a cause of action.

Inheritance By Aliens

Levitt v. Krasowski—A.D. 2d—*N.Y.S. 2d*—(*3rd Dept. 1967*)

The Appellate Division affirmed an order of the Surrogate's Court granting a petition for an order directing payment to legatees in Poland of legacies previously withheld and paid into Surrogate's Court for the benefit of the legatees. The Appellate Division held that the surrogate was warranted, upon the facts and circumstances demonstrated in the case, in finding that the legatees had sustained the burden of proving that they would receive the benefit, use, and control of the money if it were sent to them in Poland, pursuant to the decree of judicial settlement of the estate and pursuant to the applicable provision of the Surrogate's Court Act.

Sovereign Immunity

S. T. Tringali Co. v. Tug Pemex XV, 274 F. Supp. 277 (S.D. Texas 1967)

A suit for damages was filed *in rem* against a tug owned by Petróleos Mexicanos (PEMEX), a government-owned corporation of the Republic of México which is engaged, *inter alia,* in the commercial production, refining, and distribution of petroleum products, and *in personam* against PEMEX. A writ of attachment was issued against a tanker also owned by PEMEX and the tanker was seized to acquire jurisdiction and security in the suit. PEMEX contended that the seizure of the tanker was unauthorized because it was property of a friendly sovereign power and thus immune from seizure for security and satisfaction of judgment. The contention was rejected in an early proceeding, the district court holding that the defense of sovereign immunity was not available to vessels engaged in private commercial activity. On trial, PEMEX urged the distinction between seizing its vessels to obtain jurisdiction and selling its vessels to satisfy

judgments against it, contending that the State Department regarded the latter as a contradiction of sovereign immunity. The court, on the facts, decided the case against Libellant, rendering the question of the seizure and the bond moot. Nevertheless, because of the question of costs and since PEMEX is constantly sending its vessels into American ports, the court felt "it might be necessary that this question be decided for the future." Thereby seized of the sovereign immunity question, the court held that PEMEX is an independent corporation engaged in a private commercial activity and that its vessels may be seized to acquire jurisdiction and may be seized and sold to satisfy a judgment.