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APPREHENSION OF WAR CRIMES INDICTEES: SHOULD THE UNITED NATIONS' COURTS OUTSOURCE PRIVATE ACTORS TO CATCH THEM?

Mary Alice Kovac

The past decade has witnessed an unprecedented increase both in international and intranational conflicts resulting in the commission of egregious human rights violations, war crimes, and even genocide. To date, the most notable international response to these continuing atrocities is the United Nations (UN) Security Council’s establishment of ad hoc tribunals for the former Yugoslavia and Rwanda. However, various nations continue to call for additional tribunals to try those accused of similar crimes in Iraq, East Timor, Cambodia, and Sierra Leone.1

1. See Samuel P. Huntington, The Clash of Civilizations and the Remaking of World Order 28 (1996) (attributing the increase in the intensity and occurrence of dangerous conflicts to being “between peoples belonging to different cultural entities”).


The need for a continuing forum to try such alleged criminals is so apparent that for the first time in history, the establishment of a permanent International Criminal Court (ICC) has progressed beyond theoretical speculation and is on its way to realization.

Despite the clamor for such a forum, a continuing thorn in the side of the tribunals, undermining both their credibility and the international rule of law, is the inability to apprehend indictees so that they may stand trial. The experience of the ad hoc tribunals illustrates how this received sufficient documentary evidence to support the prosecution of five top Iraqis for war crimes).


6. See U.N. Endorses Tribunal for Khmer Rouge War Crimes Trial, at http://www.cnn.com/World/asia-pcf/9903/06/cambodia.01 (Mar. 6, 1999). The United Nations chief war crimes prosecutor, Louise Arbour, claims that because of the "involvement by high level officials" in wide spread abuses, an international tribunal is necessary. Id.

7. See Anthony Goodman, Mixed Court Proposed to Try S. Leone War Criminals, at http://www.my.aol.com/news/story/html#CYCLE (July 27, 2000) (on file with author) (reporting that U.S. ambassador Richard Holbrooke dismissed the ability of Sierra Leone to establish its own court based on a 1999 amnesty law, claiming the need for an international tribunal given that the "United Nations did not accept the amnesty under international law").

8. See Peter Charles Choharis, Wanted: A New Way to Judge the Crimes of War, Wash. Post, July 23, 2000, at B4 (citing a need for the United States to be engaged in the development of the ICC process); David J. Scheffer, Ambassador-at-Large for War Crimes Issues, U.S. Department of State, Perspectives on the Enforcement of International Humanitarian Law, the Fifth Annual Hauser Lecture on International Humanitarian Law (Feb. 3, 1999), available at http://www.mtholyoke.edu/acad/intrel/persp.htm (recounting his personal experience with humanitarian crimes in Rwanda, Bosnia, Cambodia, and Kuwait as demonstrating the urgent need for codification of such crimes); Barbara Crossette, U.S. Gains a Compromise on War Crimes Tribunal, N.Y. Times, June 30, 2000, at A6 (reporting efforts of the United States' Ambassador-at-Large for War Crimes, David Scheffer, to make the ICC more acceptable to domestic critics, stating that "[t]he international system simply cannot continue to deal with these problems in an ad hoc manner indefinitely").

9. See Yann Tessier, Interview-U.N. Tribal Chief Wants More War Crimes Arrests, at http://www.my.aol.com/news/story.html#CYCLE (July 27, 2000) (on file with author) (citing the shortcomings of the current system relying on cooperation of NATO countries as the reason that the International Tribunal for Yugoslavia still has "too many people at large").

problem will plague the new ICC as well, to the continued detriment of justice, reconciliation, and deterrence.\textsuperscript{11}

The international court system needs an additional tool beyond those it presently uses and acknowledges as legitimate in order to apprehend effectively indicted war criminals.\textsuperscript{12} When traditional means to apprehend war crimes indictees have failed, it may be appropriate for the international community, pursuant to the authority of the United Nations as reposed in the appropriate tribunals (\textit{ad hoc} or permanent), to establish a rewards program for the apprehension of indictees by private individuals.\textsuperscript{13}

This Comment reviews both international and domestic treatment of extraterritorial abduction in the context of state sponsored action, because indictees of war crimes will, for a variety of reasons, most often act extraterritorially. Next, this Comment distinguishes the treatment of extraterritorial abduction of ordinary criminals from alleged war criminals. This Comment then examines exceptions for alleged terrorists and how their legal bases might be extended to war crimes indictees. Finally, this Comment examines problems inherent in other methods of apprehension encountered by the \textit{ad hoc} tribunals. This Comment argues that an internationally sponsored rewards program for private actors will assist the ICC in prosecuting its objectives by comparing and

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{11} See \textsc{Center For International Programs, Bringing War Criminals to Justice: Obligations, Options, Recommendations} 2-4 (1997), available at http://www.udayton.edu/cip/publications/boswar.htm (discussing the need for an effective criminal tribunal for Yugoslavia in order to further justice for both victims and Yugoslavia “by assigning specific guilt and thereby avoid[ing] collective guilt,” deterring future potential criminals, and “remov[ing] a key source of violence . . . and in so doing . . . foster[ing] peace and the establishment of democracy”); see also David J. Scheffer, Ambassador-at-Large for War Crimes Issues, U.S. Department of State, Address at Twelfth Annual U.S. Pacific Command International Military Operations and Law Conference, Deterrence of War Crimes in the 21st Century, (Feb. 23, 1999), at http://www.state.gov/www/policyRemarks/1999/ (addressing the work of the international tribunals established for Yugoslavia and Rwanda and observing that “[n]othing would serve deterrence better than the swift . . . apprehension of those indictees who remain at large” and that “[i]t is critical, for deterrence purposes, that these crimes enjoy . . . no weakening in the resolve of the international community to bring all indictees into custody”).
  \item \textsuperscript{12} See \textsc{U.N. Prosecutor Frustrated that Karadzic Still Free}, at http:// www. my. aol.com/news/story.html\#CYCLE, (Aug. 22, 2000) (on file with author). Carla Del Ponte, the chief prosecutor for the International Criminal Tribunal “was quoted . . . as saying that she was frustrated at the failure of NATO-led forces” to apprehend indicted war criminals. \textsc{Id}.
\end{itemize}
\end{footnotesize}
analogizing the U.S. intranational bounty system and how it applies to
the proposed international program.

I. RELEVANT INTERNATIONAL LAW

Unlike national legal systems, there is no formal “code” of
international law proposed by a legislature, enforced by an executive,
and adjudicated by a judiciary.\textsuperscript{14} Rather, international law “consists of
rules and principles of general application” between states and
international organizations derived from various sources.\textsuperscript{15} These
sources of international law include international custom, treaties, and
case law.\textsuperscript{16}

A. International Custom and Practice

Custom as a source for international law arises when there “is a clear
and continuous habit of doing certain actions which has grown up under
the aegis of the conviction that these actions are, according to
international law, obligatory or right.”\textsuperscript{17} States’ continuous “habit” or
practice may become a rule of customary international law, but only if
the states “follow the practice from a sense of legal obligation.”\textsuperscript{18}

As embodied in customary international law, the term “sovereignty”
describes the power of a state to exercise supreme legal authority over all
persons and activities within its borders, independent of any other
authority.\textsuperscript{19} A state’s activities within the borders of another state

\textsuperscript{14} MALCOLM N. SHAW, INTERNATIONAL LAW 3 (4th ed. 1997) (advancing the
United Nations General Assembly, the United Nations Security Council, and the
International Court of Justice as appearing to have some of the characteristics of a
legislature, an executive branch, and a judiciary and pointing out their individual
shortcomings when compared to a national system).

\textsuperscript{15} 1 RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED
STATES § 101 (1987); see also SHAW, supra note 14, at 55-56 (discussing the absence of
“hard and fast” sources and the disagreements of various writers regarding
categorization).

\textsuperscript{16} 1 OPPENHEIM'S INTERNATIONAL LAW § 9, at 24 (Sir Robert Jennings & Sir
Arthur Watts eds., 9th ed. 1992); see also RESTATEMENT, supra note 15, § 102; SHAW,
supra note 14, at 56-70.

\textsuperscript{17} OPPENHEIM'S INTERNATIONAL LAW, supra note 16, § 10, at 27 (identifying
practice and \textit{opinio juris} as the two essential elements of custom).

\textsuperscript{18} RESTATEMENT, supra note 15, § 102; see also OPPENHEIM'S INTERNATIONAL
LAW, supra note 16, § 10, at 27 (stating that a practice consists of “a clear and continuous
habit of doing certain actions which has grown up under the aegis of the conviction that
these actions are, according to international law, obligatory or right”).

\textsuperscript{19} OPPENHEIM'S INTERNATIONAL LAW, supra note 16, § 34, at 120-22 (requiring
that there indeed must be “a state” that contains a people, a defined territory, and a
government, and that this government must be sovereign, meaning a “legal authority
typically require the host state’s consent, and if conducted without it, such actions are violative of the host state’s sovereignty. As a result, customary international law generally proscribes extraterritorial abduction by a state’s law enforcement officers without the host state’s consent because such abduction infringes on the host state’s sovereignty.

Another important principle of customary international law influences when states may exercise subject matter jurisdiction. The principle of

which is not in law dependent on any other earthly authority”); see also SHAW, supra note 14, at 143 (maintaining that the essential factor in determining whether a state actually exists is independence).

20. OPPENHEIM’S INTERNATIONAL LAW, supra note 16, § 119, at 385 (enunciating the responsibility “correlative to the corresponding rights” of other states).

21. RESTATEMENT, supra note 15, § 432(2) (“A state’s law enforcement officers may exercise their functions in the territory of another state only with the consent of the other state, given by duly authorized officials of that state.”); see also Corfu Channel (U.K. v. Alb.), 1949 I.C.J. 4, 35 (Apr. 9) (“Between independent States, respect for territorial sovereignty is an essential foundation of international relations.”). But see OPPENHEIM’S INTERNATIONAL LAW, supra note 16, § 131, at 439 (introducing circumstances that may justify intervention under international law). The authors stress that the actions taken must be consistent

with the prohibition against the use or threat of force laid down in the United Nations Charter . . . proportional to the circumstances . . . and other means of remedying the situation (such as diplomatic representations) must be shown to have failed or be so unlikely to succeed as to make recourse to them unnecessary.

Id. But see also BENJAMIN B. FERENCZ, 2 AN INTERNATIONAL CRIMINAL COURT, A STEP TOWARDS WORLD PEACE 96-97 (1980) (discussing the ultimate incongruity between national sovereignty and prosecution of international crime). Professor Ferencz states:

Although peoples are moving toward the acceptance of concerted action as a matter of economic or military necessity, there are still wide divergencies in the norms that regulate human behavior . . . (t)here has not yet been sufficient recognition that all values are relative and cannot be asserted in a vacuum. Freedom of the press only becomes relevant [sic] after one has learned to read and, as we know, freedom of speech has its limits in a crowded theater. So too with national sovereignty - that most revered of foundation stones in the world edifice. For States as well as for individuals the right of each must be limited by the rights of others. States should not be free to exercise their sovereignty in ways that ignore or violate the needs of the international community. Nations cannot be allowed to create conditions where the only options are kill or be killed. National needs must be subordinate to international needs. Any system that allows the parties to interpret the law and do so as they see fit is unworthy of respect because it is no system at all.

Id.

22. RESTATEMENT, supra note 15, §§ 404, 423 (explaining that “[a] state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community as of universal concern” and supporting the authority to exercise jurisdiction); see also OPPENHEIM’S INTERNATIONAL LAW, supra note 16, § 139, at 469-70 (describing
universality provides that a state may exercise jurisdiction over “certain offenses 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,” even in the absence of a connection between the state and the offense. In the absence of an international criminal tribunal, the punishment of such an offender is usually left to the state that seizes the offender.

The protective principle of jurisdiction also recognizes the rights of states to punish some other limited offenses committed outside their territory by persons who are not nationals. These offenses typically include those directed against a state’s security, such as espionage, counterfeiting, and conspiracy to violate immigration laws.

In recognition of a state’s right to punish these crimes, the passive personality principle, another customary international law principle, recognizes that a nation may punish persons who are not its nationals and who are outside its territory where the state has an especially strong

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23. RESTATEMENT, supra note 15, § 404; see also JORDAN J. PAUST, INTERNATIONAL LAW AS LAW OF THE UNITED STATES 405 (1996) (discussing the universality principle and the enforcement obligation of states). Professor Paust states that “[w]ith respect to war crimes in particular, there has been a long history of expectation that war crimes are offenses against humankind over which there is universal jurisdiction and a universal duty to prosecute” exists. Id.; see also SHAW, supra note 14, at 470-73 (describing a long-held consensus that war crimes and piracy “clearly belong” under the umbrella of universal jurisdiction, but arguing that other crimes, as a result of United Nations conventions and the actions of ad hoc tribunals, have now been added to those covered by universal jurisdiction as well).

24. Rome Statute of the International Criminal Court: Ratification Status as of 2 October 2000, at http://www.un.org/law/icc/statue/status.htm (stating that the treaty that created the court and was intended to fulfill the function of an international tribunal has been signed by 114 nations). However, only twenty-one countries have ratified the treaty. Id. It will enter into force “after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession.” Id.

25. RESTATEMENT, supra note 15, § 404, at 255-57 (claiming the justification that the crimes were against “all humanity”).

26. RESTATEMENT, supra note 15, § 402, at 240 (differentiating the protective principle from the “diplomatic protection” principle of jurisdiction, which is defined as “the right of a state to intercede on behalf of its nationals” through either diplomacy or suit).

27. Id. (discussing these and other examples of crimes generally accepted as being “directed against the security of the state or other offenses threatening the integrity of governmental functions”).
interest in the crime. This claim of jurisdiction applies to offenses committed abroad that may affect the nationals of a state but occur outside its territory.

**B. Treaties and Covenants Relevant to State Sovereignty and Individual Human Rights**

Customary international law is augmented by treaties, covenants, and other international agreements. As the keystone document in this category, the UN Charter recognizes state sovereignty as the general rule, but it specifically reserves the right of states to defend themselves. Various regional agreements incorporate similar principles that protect the sovereignty of nations. However, the UN’s

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28. *Id.*

29. *Shaw, supra* note 14, at 467-68 (examining the United States’ use of this claim of jurisdiction, particularly in combatting terrorism).

30. *See generally Paul C. Szasz, General Law-Making Progress, in The United Nations and International Law 29-33 (Christopher C. Joyner ed., 1997)* (identifying treaties as “hard law” with the effect and obligation of a contract; while covenants are characterized as instruments of “soft-law” and “international non-law,” neither of which can be considered binding, as they lack the obligatory language associated with treaties and other international agreements); *see also Paust, supra* note 23, at 3-4 (discussing the UN conventions and codes as being considered by U.S. courts as sources augmenting international law, as well as UN resolutions used by “U.S. courts as aids in identifying the content of customary international law”).

31. *See Oscar Schachter, The UN Legal Order – An Overview, in The United Nations and International Law at 3-4 (Christopher C. Joyner ed., 1997)* (asserting that the UN system that has emerged from the Charter has resulted in the development of “new law and legal regimes” that “have affected virtually every area of human life” and interstate relations).

32. *U.N. Charter* art. 2, para. 4 (declaring that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”).

33. *U.N. Charter* art. 51. The Charter states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

*Id.*

34. *See, e.g., OAS Charter* art. 17. The Organization of American States Charter 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 whatever. No territorial acquisitions or
commitment to the principle of sovereignty has not always deterred it from authorizing the violation of a member state’s sovereignty to prevent human rights abuses.\textsuperscript{35}

The UN Charter also articulates concern for human rights.\textsuperscript{36} Several declarations and conventions have sought to codify certain human rights that were originally expressed in the UN Charter.\textsuperscript{37} However, none of the international human rights conventions to date prohibit abduction as

special advantages obtained either by force or by other means of coercion shall be recognized.

\textit{Id.}


36. U.N. \textit{CHARTER} art. 13, para. 1 (stating that the UN will “assist[ ] in the realization of human rights and fundamental freedoms”); see also U.N. \textit{CHARTER} art. 55 (demonstrating that the UN is self-tasked to promote “universal respect for, and observance of, human rights”).

37. \textit{See} Hurst Hannum, Human Rights, in \textit{THE UNITED NATIONS AND INTERNATIONAL LAW}, 137-38 (Christopher C. Joyner ed., 1997) (assessing the process as intended to result in “the adoption of legally binding human rights norms” and stating that some of the principles set forth in this manner have indeed “ripened into customary international law, binding on all states”).
a violation of international human rights law.\textsuperscript{38} Despite the absence of explicit prohibitions, certain sections might be invoked to support such a view.\textsuperscript{39}

Of the treaties that form the basis of international law, extradition treaties are the most relevant to this article.\textsuperscript{40} Extradition treaties are the usual legal mechanism used to transfer alleged criminals between states.\textsuperscript{41} Disputes regarding extraterritorial abduction typically arise in the absence or disregard of such treaties.\textsuperscript{42}

\textit{C. International Courts and Tribunals}

Unlike sovereign nations, which in most cases have established legal systems to enforce laws, international law lacks a court with "general, comprehensive and compulsory jurisdiction."\textsuperscript{43} There are, however, international courts and tribunals with a more limited jurisdiction and authority that resolve certain conflicts between governments and that periodically hold war criminals individually accountable for their crimes.\textsuperscript{44}

\begin{itemize}
\item \textsuperscript{38} \textit{Restatement}, supra note 15, § 432 note 1, at 330 (stating that "[n]one of the international human rights conventions to date . . . provides that forcible abduction or irregular extradition are violations of international human rights law").
\item \textsuperscript{39} See, e.g., International Covenant on Civil and Political Rights, Mar. 23, 1976, art. 9(1), 999 U.N.T.S. 171, 175 (prohibiting "arbitrary arrest or detention"); see also Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810 (1948); \textit{Restatement}, supra note 15, § 432 note 1, at 330 (stating that "Articles 3, 5, and 9 of the Universal Declaration of Human Rights, as well as Articles 7, 9 and 10 of the International Covenant on Civil and Political Rights might be invoked in support" of the view that forcible abduction is prohibited under international human rights law).
\item \textsuperscript{40} \textit{Gilbert}, supra note 22, at 20 (identifying bilateral treaties "as the first method to be used to conclude extradition relations").
\item \textsuperscript{41} \textit{Id.} at 17 (identifying the "principle of reciprocity" as being that in which each state agrees that similar actions will meet with similar responses in corresponding situations).
\item \textsuperscript{42} \textit{Restatement}, supra note 15, at § 432 note 3, at 331-32 (indicating the circumstances under which conflicts have arisen between states).
\item \textsuperscript{43} See \textit{id.} at 17 (discussing the International Court of Justice as deciding only cases submitted voluntarily to it and its other functions being restricted to "render[ing] advisory opinions"); see also Christopher C. Joyner, \textit{Conclusion: The United Nations as International Law Giver, in The United Nations and International Law,} 436-37 (Christopher C. Joyner ed., 1997) (discussing the limited number of cases reviewed by the International Court of Justice, averaging two per year since its creation, and the reluctance of states to bring matters to the court, preferring "[p]ersistent political stalemate" to the possibility of losing a case before the court); \textit{Shaw, supra} note 14, at 754 (explaining that private individuals have no standing before the International Court of Justice).
\item \textsuperscript{44} See generally \textit{Shaw, supra} note 14, at 37-39 (assessing the Nuremberg and Tokyo War Crimes Tribunals as recognizing "individual responsibility under international law without the usual interposition of the state") (emphasis added); see also Joyner, supra note
The International Court of Justice was established at The Hague pursuant to the UN Charter to adjudicate disputes between nations. Several *ad hoc* tribunals have been established for limited periods to try accused war criminals, including Nuremberg and Tokyo after World War II, as well as Yugoslavia and Rwanda in the last ten years.

Additionally, the new ICC will provide a permanent forum to try individuals accused of genocide, war crimes, and crimes against humanity. Unlike other international courts to date, the ICC is based on the principle of complementarity; that is, generally, national courts will have the first option to try such indictees within their jurisdiction. The ICC exerts jurisdiction over an individual only when the requisite

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43. at 437-38 (discussing the Rwanda and Yugoslavia International Criminal Tribunals and asserting that, despite their limited jurisdiction, both will establish significant precedents for the formation of the ICC).


47. Special Proclamation: Establishment of an International Military Tribunal for the Far East, Jan. 19, 1946, T.I.A.S. No. 1589 (asserting jurisdiction over “persons charged individually, or as members of organizations, or in both capacities, with offenses which include crimes against peace”); see also 2 THE TOKYO MAJOR WAR CRIMES TRIAL xxii-lviii (R. John Pritchard ed., 1998) (discussing the background and development of the tribunal and the impact of international politics on its activities).


Crimes within the jurisdiction of the Court are genocide, war crimes and crimes against humanity, such as widespread or systematic extermination of civilians, enslavement, torture, rape, forced pregnancy, persecution on political, racial, ethnic or religious grounds, and enforced disappearances. The Court’s Statute lists and defines all these crimes to avoid ambiguity.

Id.

50. J. OPPENHEIM & W. VAN DER WOLF, WAR CRIMES TRIBUNALS IN FUTURE 58 (2000) (claiming that the ICC is not intended to replace the jurisdiction of functioning national judicial systems).
national court refuses to try the individual, chooses to transfer him to the ICC, or conducts a sham trial.\textsuperscript{51}

The problem of physical apprehension of such indictees is a critical factor negatively affecting both the current effectiveness of the \textit{ad hoc} tribunals and the potential efficacy of the ICC.\textsuperscript{52} As the number of such indictments via the \textit{ad hoc} tribunals has increased, the tools currently available to the international community to apprehend indictees in the face of custodial states’ refusal to cooperate have often proved insufficient.\textsuperscript{53} The inefficacy has resulted in many indictees remaining at large for protracted periods of time.\textsuperscript{54}

\begin{enumerate}
\item Rome Statute, \textit{supra} note 49, at art. 17. The Statute states:
\begin{enumerate}
\item Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
\begin{enumerate}
\item The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable to genuinely carry out the investigation or prosecution;
\item The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
\item The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
\item The case is not of sufficient gravity to justify further action by the Court.
\end{enumerate}
\item In order to determine the unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
\begin{enumerate}
\item The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
\item There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
\item The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.
\end{enumerate}
\item In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.
\end{enumerate}
\textit{Id.}
\item Scheffer, \textit{supra} note 11 (discussing universal jurisdiction of the ICC and concluding that “\ldots without custody \ldots a \ldots claim of universal jurisdiction necessarily and rightly is limited”).
\item \textsc{Bringing War Criminals to Justice}, \textit{supra} note 11, at iv (discussing the fact that sixty-seven indicted war criminals have been permitted by NATO inaction to roam free asserting that “[t]he time has come to arrest and apprehend these individuals,” and summarizing fifty recommendations to accomplish the International Criminal Tribunal for
D. International Case Law

The Permanent Court of International Justice, the predecessor to the International Court of Justice, stated in S.S. *Lotus* that "there is no rule of international law which prohibits a state from exercising jurisdiction over a foreigner in respect of an offense committed outside its territory." The court found that international law did not prohibit states from extending "the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory . . . . The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty." Although the judgment of the court is met with lingering criticism, it is an important precedent that highlights the continuing controversy regarding the legal status of a state’s exercise of extraterritorial jurisdiction.

In 1949, the International Court of Justice ruled on a dispute between the United Kingdom and Albania. The dispute arose when mines laid in Albanian waters in the North Corfu Channel damaged two British ships, killing several British crew members. The court found in *Corfu Channel* that the British ships did not violate Albania’s territorial sovereignty because their passage through the strait was for the purpose of innocent navigation. Although the court found that Britain’s subsequent minesweeping operation *did* violate Albania’s sovereignty because it was conducted without Albania’s consent, the court nevertheless held Albania monetarily responsible for the damages Britain incurred because Albania had failed to warn of the hazard, as

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54. *BRINGING WAR CRIMINALS TO JUSTICE*, supra note 11, at iv; see also *GILBERT*, supra note 22, at 222.


56. *OPPENHEIM’S INTERNATIONAL LAW*, supra note 16, § 139, at 468 (clarifying that even states that maintain an “almost exclusively territorial approach to criminal jurisdiction” extend jurisdiction to include offenses committed by non-nationals outside of their sovereign borders in certain cases).


58. *OPPENHEIM’S INTERNATIONAL LAW*, supra note 16, § 140 at 478-79; see also *GILBERT*, supra note 22, at 222 (discussing the dissenting opinion of Judge Moore in *Lotus Steamship* as not applicable in cases of war crimes and crimes against humanity, and that his “strictures are not determinative in these circumstances”).


60. *Id.* at 30-32 (asserting that the intent of Great Britain, which was indeed to test Albania’s response, was not relevant to the determination that the channel was open to all navigation).
required by international law. However, the only penalty the court imposed on Britain, regarding the minesweeping operation, was the judgment itself, which found a violation of Albania’s territorial sovereignty.

The abduction of Adolf Eichmann, an alleged war criminal, is the most notable incident involving an infringement of a state’s territorial sovereignty resulting from the use of this extraterritorial apprehension method. On May 11, 1960, Israeli agents, or “volunteers,” abducted Adolf Eichmann from his home in Argentina and took him to Israel to stand trial for crimes committed in Germany during the Holocaust. The Argentinian government protested that Israel’s action violated Argentina’s territorial sovereignty, demanded Eichmann’s return, and requested punishment of the individuals responsible for violating Argentinian law. Israel apologized but refused to return Eichmann to Argentina. Argentina then filed a complaint with the Security Council of the United Nations that alleged the violation of its territorial sovereignty by Israel via its exercise of authority within Argentinian territory and demanded reparation. The UN Security Council passed a resolution that expressed disapproval of Israel’s action, but it did not require Eichmann’s return. Israel subsequently tried, convicted, and executed Eichmann.

61. *Id.* at 23 (stating that notifying all inbound shipping, as well as all nations, of the hazard caused by the mining was a more important responsibility).
62. *Id.* at 36 (holding that “the United Kingdom violated the sovereignty of the People’s Republic of Albania, and that this declaration by the Court constitutes in itself appropriate satisfaction”) (emphasis added).
64. *Id.* at 57-59 (explaining that the defense claimed that the abductors were “agents of the State of Israel” and that the prosecutor avoided the characterization).
65. *Id.* at 5-6 (asserting Israeli approval as proof of Israeli State responsibility).
66. *Id.* at 6 (stating that Prime Minister Ben Gurion’s letter expressed regret over the violation of sovereignty but referred to higher motives and historical reasons for not returning Eichmann).
67. *Id.*

The Security Council,

*Having examined* the complaint that the transfer of Adolf Eichmann to the territory of Israel constitutes a violation of the sovereignty of the Argentine Republic,

*Considering* that the violation of the sovereignty of a Member State is incompatible with the Charter of the United Nations,
The French case *Re: Argoud* demonstrates that extraterritorial abduction has not been restricted to the state of Israel. In 1961, pursuant to a French arrest warrant, a French citizen named Antoine Argoud was abducted from Munich by unknown persons and taken to Paris. French police then found and arrested him after an anonymous telephone call informed them of his location. Argoud argued on appeal of his conviction to the Court of Cassation (a criminal appeals court) that the Court of State Security lacked personal jurisdiction over him due to the irregular method used to procure his arrest. The Court of Cassation denied his appeal and pronounced the lower court's jurisdiction sound.

*Having regard* to the fact that reciprocal respect for and the mutual protection of the sovereign rights of States are an essential condition for their harmonious coexistence,

*Noting* that the repetition of acts such as that giving rise to this situation would involve a breach of the principles upon which international order is founded creating an atmosphere of insecurity and distrust incompatible with the preservation of peace,

*Mindful* of the universal condemnation of the persecution of the Jews under the Nazis and of the concern of people in all countries that Eichmann should be brought to appropriate justice for the crimes of which he is accused,

*Noting at the same time* that this resolution should in no way be interpreted as condoning the odious crimes of which Eichmann is accused,

1. * Declares* that acts such as that under consideration, which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security;

2. *Requests* the Government of Israel to make appropriate reparation in accordance with the Charter of the United Nations and the rules of international law;

3. *Expresses the hope* that the traditionally friendly relations between Argentina and Israel will be advanced.

*Id.* (emphasis in the original).


70. 45 I.L.R. 90 (Cr. of Cass. 1964).


72. *Argoud*, 45 I.L.R. at 90 (stating that Argoud was found by police, based on information received in the anonymous telephone call, in a van parked in Paris, handcuffed and showing signs of mistreatment).

73. *Id.* at 98 (characterizing the forcible nature of his seizure, in the absence of extradition proceedings, as warranting relief).

74. *Id.* at 92 (requesting that the court return Argoud to the Federal Republic of Germany).

75. *Id.* at 90 (holding that the abduction, although perhaps a violation of sovereignty, did not invalidate Argoud’s prosecution).
Another example of extraterritorial abduction occurred in South Africa in 1976, in *Ndhlovu & Another v. Minister of Justice & Others.*76 South African police arrested two South African citizens living in the Kingdom of Swaziland, where they had been granted political asylum.77 The South African citizens appealed for their return to Swaziland on the grounds that their arrest violated Swaziland sovereignty.78 The South African Natal Provincial Division Court held that it had jurisdiction to try persons "arrested in violation of public international law for an offence committed against the laws of that State."79

II. UNITED STATES LAW

A. Extraterritorial Abduction Case Law

Although various nations engage in extraterritorial abduction as discussed above, the United States has one of the longest lines of case law in this area.80 These cases assert jurisdiction regardless of the method used to apprehend suspects and also proclaim the right to seize suspects extraterritorially in certain cases regardless of international custom.81

One such case, *Ker v. Illinois,*82 arose when Frederick M. Ker, a U.S. citizen wanted for larceny and embezzlement in Illinois,83 was kidnapped from Lima, Peru, by Henry G. Julian and brought to the United States.84 Although there was an extradition treaty between the United States and Peru,85 Mr. Julian failed to present the extradition request to the

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77. *Id.* at 8 (stating that the applicants were granted political asylum in the 1960s).
78. *Id.* (requesting that the South African citizens "be returned, or be permitted to return" and that the criminal proceedings be dropped or withdrawn until a proper extradition from Swaziland could be effected).
79. *Id.* at 13-14.
80. M. CHERIF BASSIOUNI, 2 INTERNATIONAL CRIMINAL LAW 411 n.22 (1986).
81. *Id.* at 411 (maintaining that "[t]he United States . . . still allows unlawful seizures of persons to be valid . . . and does not disqualify different forms of disguised extradition and fraudulent or forceful means" contrary to the "modern view" of international law).
82. 119 U.S. 436 (1886).
83. *Id.* at 437. His actual route took Ker from Peru to Hawaii by steamship, and then via a second steamship voyage from Hawaii to California. *Id.* at 438. Ker was transferred from California to Illinois via an extradition petition from the Governor of Illinois and the extradition was so ordered by the Governor of California. *Id.*
84. *Id.* at 438, 442-43 (citing the fact that the extradition treaty would not have imparted any rights to Ker as he had not formally sought asylum in Peru following his flight there).
85. Extradition Convention between Peru and the United States, Sept. 12, 1870, art II, 18 Stat. 719-21 (listing both larceny and embezzlement as extraditable crimes); see also
Peruvian authorities and acted without authority to apprehend and remove Mr. Ker, who was then subsequently extradited to Illinois and tried. When Ker appealed based on his irregular apprehension, the Supreme Court of Illinois held that the illegal apprehension did not render his subsequent trial and conviction invalid.

Sixty-six years after Ker, in Frisbie v. Collins, the U.S. Supreme Court reinforced the Supreme Court of Illinois when it held that “forcible abduction” from one state to another in violation of the Federal Kidnapping Act did not vitiate a subsequent conviction in the second state on the grounds of lack of due process. The holdings from Ker and Frisbie became known as the Ker-Frisbie doctrine and this doctrine established that extraterritorial abduction does not negate an American court’s jurisdiction over a defendant.

Although the Supreme Court established the suppression doctrine in Weeks v. United States, which provides that evidence seized in violation of the Fourth Amendment may not be used at trial, the Court has repeatedly refused to extend the doctrine to people who have been illegally seized. Thus, the illegal apprehension of individuals by

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**CLIVE PARRY, 142 THE CONSOLIDATED TREATY SERIES 40 n.a (1977) (noting that the "treaty was terminated March 31, 1886, on notice given by Peru”).**

86. Ker v. Illinois, 119 U.S. 436, 441-42; see also Ker v. Illinois, 110 Ill. 627 (1884) (reporting that the Secretary of State had provided a copy of the warrant to the U.S. Counsel in Peru “to procure the executive of Peru to surrender [the] defendant” to Julian). Id. at 635. However, the Counsel was never contacted by Julian during his time in Lima. Id.

87. Ker, 119 U.S. at 442-45 (commenting on the appeal in general, the Court characterized the proposition that Ker should be released based on his claim of violation of asylum as absurd).


89. See id. at 522-23 (asserting that “[t]his court has never departed from the rule announced in Ker . . . that the power of a court to try a person for [a] crime is not impaired by the fact that he had been brought within the court’s jurisdiction by reason of a ‘forcible abduction’” and that no additional “persuasive reasons” had been raised in Frisbie’s appeal to warrant a change).


91. 232 U.S. 383 (1914).

92. Id. at 386-89. Weeks appealed his conviction on a violation of the use of the mails by transporting lottery tickets, as the tickets had been illegally seized during an unwarranted search. Id. at 386.

93. Gerstein v. Pugh, 420 U.S. 103, 119 (1975) (declining to “retreat from the established rule that illegal arrest or detention does not void a subsequent conviction”); see also United States v. Crews, 445 U.S. 463, 474 (1980) (holding an illegally arrested defendant “is not himself a suppressible ‘fruit,’ and the illegality of his detention cannot
abduction, whether intra- or international, does not result in suppression of the individual's person at trial.\footnote{4}

The Second Circuit Court of Appeals established the outer limit of the \textit{Ker-Frisbie} doctrine in \textit{United States v. Toscanino}.\footnote{5} In this case, the Second Circuit held that, if proven, U.S. government-sponsored torture of a foreign national who was kidnapped from Uruguay and subsequently convicted in the United States would extraterritorially violate the due process of a foreign national.\footnote{6} The \textit{Toscanino} holding marks the first substantive limitation of the \textit{Ker-Frisbie} doctrine because a federal court had not previously allowed rehearings in cases of apprehension by abduction for any reason.\footnote{7}

Despite its extension of due process protections in \textit{Toscanino} to abuses that "shock the conscience,"\footnote{8} the U.S. Supreme Court effectively reinforced the \textit{Ker-Frisbie} doctrine in \textit{United States v. Alvarez-Machain}.\footnote{9} In this case, a Mexican doctor was abducted from Mexico and taken to Texas for his participation in the torture and murder of a Drug Enforcement Administration agent and his pilot.\footnote{10} Despite the existence of an extradition treaty between Mexico and the United States, the Court held that the treaty did not explicitly prohibit international abductions, and that the district court had jurisdiction to try the Mexican national, even though he had been forcibly abducted and brought to the United States.\footnote{11}
Applying the *Ker-Frisbie* doctrine to an international abduction by American law enforcement agents in 1985, the U.S. government conducted its first overseas arrest of a suspected terrorist wanted for violations of U.S. laws. Fawaz Yunis, a Lebanese man wanted for the 1985 taking of U.S. hostages, as well as the hijacking and explosive destruction of a Jordanian airliner in Beirut, was apprehended in international waters of the Mediterranean after being lured aboard a yacht by U.S. agents under the pretense of making a drug sale.

Yunis was subsequently convicted in the United States District Court for the District of Columbia. On appeal, the District of Columbia Circuit held, in *United States v. Yunis*, that international law could not preclude exercise of personal jurisdiction over the defendant. The appellate court also held that the universality principle of international law, under which states may prescribe and prosecute certain offenses recognized by the international community as meriting universal concern, established subject matter jurisdiction over Yunis' offenses. The court found no evidence of the sort of "intentional, outrageous government conduct necessary" to sustain Yunis' jurisdictional argument under the "very limited exception to the general rule" from *Toscanino*.

agents who abducted him, alleging civil rights violations, Federal Tort Claims Act claims, and violation of the Torture Victim Protection Act).


103. Id. (statement by Attorney General Edwin Meese) (alleging that Yunis was the spokesman for "five Shiite Moslem [sic] terrorists" who seized a Royal Jordanian Airlines passenger aircraft and its sixty-five passengers, including four Americans).

104. Id. (describing Yunis as "voluntarily board[ing] a boat being operated ... by disguised FBI agents" in an apparent "sting").

105. United States v. Yunis, 924 F.2d 1086, 1088 (D.C. Cir. 1991) (reporting the result of the district court trial of Yunis as "convicted ... of conspiracy, aircraft piracy and hostage taking").

106. Id. at 1090-91 (concluding that the intent of Congress and treaty obligations of the United States could permit no other determination).

107. Id. at 1091 (appealing the jurisdiction of the United States relying on *Restatement (Third) of the Foreign Relations Law of the United States* §§ 404 & 423 (1987), a position vehemently rejected by the Court).

108. Id.

109. Id. (claiming the crime itself, "even absent any special connection between the state and the offense," as being sufficient for jurisdiction).

110. Id. at 1093 (admitting that the actions of government agents in the arrest of Yunis may not have been "'picture perfect' nor 'a model for law enforcement behavior'").

111. Id. at 1092 (specifically reinforcing the *Ker-Frisbie* doctrine).
Most recently, the Supreme Court again endorsed the Ker-Frisbie doctrine when it rejected, without comment, Mir Aimal Kasi's appeal\textsuperscript{112} that his arrest by FBI agents in Pakistan violated the Fourth Amendment's ban on unreasonable seizures.\textsuperscript{113} Kasi was arrested, tried, and sentenced to death for the 1993 shootings of two federal workers outside CIA headquarters.\textsuperscript{114} Speculation persists that Kasi was actually apprehended in Afghanistan by either U.S. or Pakistani agents who then transported him across the border into Pakistan where the arrest was officially made by U.S. agents, after which, he was flown to the United States.\textsuperscript{115}

B. A Brief Overview of the U.S. Bounty System

Bounty hunters have become an integral part of the American pretrial process.\textsuperscript{116} Once most criminal defendants are arraigned, they hire a bail bondsman who posts bail with the court in order for them to be released from jail pending trial.\textsuperscript{117} Once the bondsman posts bail, the state delivers legal custody of the defendant to the bondsman, who then has roughly the same powers of arrest as a police officer concerning the particular defendant.\textsuperscript{118}

If the defendant "jumps bail," thereby potentially forfeiting the bondsman's posted bail, the bondsman's broad powers of arrest may be conferred by the bondsman to a bounty hunter, who may act as the bondsman's agent and recapture the defendant.\textsuperscript{119} Because bounty hunters have typically been deemed private rather than state actors,
constitutional protections do not apply to their actions, although some commentators have suggested government regulation.

III. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR YUGOSLAVIA CONFRONTS THE ISSUE OF EXTRATERRITORIAL ABDUCTION

The International Criminal Tribunal for Yugoslavia has begun to indict and prosecute war criminals from the former Yugoslavia. Several of the cases, however, have raised the issue of jurisdiction based upon allegations of extraterritorial abduction.

Slavko Dokmanovic first raised the defense of illegal apprehension in Prosecutor v. Mrkšić, Radic, Šljivancanin & Dokmanovic. UN forces arrested Dokmanovic in 1997, in Croatia, pursuant to his indictment for charges related to killing unarmed civilians. He had previously fled to Serbia, where he was allegedly lured back to Croatia and into the custody of waiting UN soldiers. In a pretrial motion for release, Dokmanovic

120. Id. at 739 (asserting that “[c]ourts generally have held that their powers do not make them state actors”) (emphasis added).
121. See generally Gregory Townsend, State Responsibility for Acts of de facto Agents, 14 ARIZ. J. INT'L & COMP. L. 635 (1997) (discussing the activities of de facto agents in association with international tribunals); see also Drimmer, supra note 116, at 778-793 (urging the need for regulation of bounty hunters in the U.S. court system for the protection of the population).
122. ICTY Q&A, supra note 10 (summarizing the arrests and convictions to date).
123. UN Wire, Bosnia: Capture of War Crimes Suspect Could be Ruled Illegal, United Nations Foundation, Aug. 18, 2000, available at http://www.unfoundation.org/ unwire/archives/UNWIRE000818.cfm (discussing the claims of Deyan Rankon Brashich, defense attorney to indicted war criminal Stevan Todorovic, that the arrest of his client “broke international law” and that Todorovic “should be returned to Serbia, adding that ‘a defendant who has been unlawfully abducted must be returned to the place of abduction’”); see also Serb Court Charges Abductors of War Crimes Suspect, REUTERS, Aug. 24, 2000, available at http://www.my.aol.com/news/story/html#CYCLE (on file with author) (describing a Serbian regional court’s accusations charging seven Serbian civilian men with the abduction of war crimes indictees Stevan Todorovic and Dragan Nikolic in collusion with NATO’s SFOR troops).
124. Prosecutor v. Mrkšić, Radic, Šljivancanin & Dokmanovic, 111 I.L.R. 458, 461 (Int’l Crim. Trib. for the Former Yugoslavia 1997) (Decision on the Motion for Release by the Accused Slavko Dokmanovic) (finding that the method of arrest, the use of a ruse to persuade Dokmanovic to enter a vehicle which then transported him to an area of Croatia under United Nations control, was not equivalent to a “forcible abduction or kidnapping”); see also Prosecutor v. Mrkšić, Radic, Šljivancanin and Dokmanovic (July 15, 1998), (Order Terminating Proceedings Against Slavko Dokmanovic) available at http://www.un.org/icty/dokmanovic/ trialc2/order-e/80715MS2.htm (reporting that charges were dropped as a result of Dokmanovic’s suicide at The Hague before any appeal could be made on the court’s determination that Dokmanovic’s arrest had not violated international law).
125. Mrkšić, 111 I.L.R. at 462.
126. Id. at 467-68.
argued that the circumstances of his arrest, which he claimed were tantamount to kidnapping, were illegal violations of Serbian sovereignty and international law.\footnote{Id. at 469 (arguing that he “was arrested in a ‘tricky way’ which can only be interpreted as ‘kidnapping’”).} The court found Dokmanovic’s motion on this basis meritless.\footnote{Id. at 471-74 (finding that the method of arrest, use of a ruse to encourage Dokmanovic to enter a vehicle which took him into an area of Croatia under United Nations control, was not equivalent to a “forcible abduction or kidnapping”).} Dokmanovic subsequently committed suicide in prison and therefore scholars can only speculate on the outcome of further appeals.\footnote{Mrkšić Order, supra note 124 (reporting that charges were dropped as a result of his suicide).}

Another indictee, Stevan Todorovic, raised similar questions, which the court seriously considered in \textit{Prosecutor v. Simic}.\footnote{No. IT-95-9 (ICTY 1995) (pending) available at http://www.un.org/icty/ind-e.htm (last visited Sept. 28, 2000).} Todorovic was indicted for the murder and rape of Croatian and Muslim civilians in Bosnia and alleged that a British Special Air Service team seized him from Serbia.\footnote{ICTY Q&A, supra note 10.} The International Criminal Tribunal for Yugoslavia Trial Chamber III had decided to support Todorovic’s request for judicial assistance, directing NATO and NATO’s Stabilization Force (SFOR) to provide “documents, items and material” relating to his arrest.\footnote{Tom Walker, \textit{SAS Carried Out Serb Raid}, \textit{TIMES} (London), Nov. 11, 1998, at 15, available at http://www.bosnet.org/archive/bosnet.w3archive/9811/msg00030.html (reporting Todorovic’s allegations that he was seized from a cabin fifty miles from the border, transported to Bosnia, and turned over to U.S. personnel).} However, a subsequent plea bargain resulting in Todorovic pleading guilty to one out of the twenty-seven counts against him preempted the issue.\footnote{Press Release, The Hague, Decision on Todorovic’s Motion for Judicial Assistance (Oct. 20, 2000), XT/P.I.S./536-e, available at http://www.un.org/icty/pressreal/p536-e.htm (directing that all information related to the events surrounding Todorovic’s arrest and transport be provided to the defense and describing issuance of a subpoena for relevant testimony and evidence from the current U.S. Army Chief of Staff and former commander of SFOR, General Shinseki, “as an individual with personal knowledge of the events of which the complaint is made”).} The plea agreement required Todorovic to withdraw all motions pending before the Trial Chamber “in which the accused sought an evidentiary hearing regarding the circumstances of his
arrest. Although the court provided no direct rationale to justify the plea bargain, Deputy Prosecutor Graham Blewitt admitted that Todorovic's ongoing appeal had resulted in a decline in arrests preceding the plea agreement. Todorovic was ultimately sentenced to ten years in prison on one count of "persecution."

The case of Dragan Nikolic, indicted in Prosecutor v. Nikolic, is pending. Nikolic is accused of murder and other "crimes against humanity" while running a detention camp in Bosnia. The circumstances surrounding Nikolic's apprehension are allegedly similar to those of Todorovic; however, similar appeals have not yet been filed because the Nikolic case is still in preliminary stages.

IV. STATE PRACTICE IS EXTRATERRITORIAL ABDUCTION IN VIOLATION OF STATE SOVEREIGNTY IN CERTAIN CASES

Having reviewed merely a sampling of the international case law, it may be credibly argued that customary international law has evolved to incorporate an exception to the general prohibition against extraterritorial abduction as a violation of sovereignty for war criminals, terrorists, and others who pose a threat to either a particular nation's or the international community's peace and security.

Although many commentators insist that the prohibition against extraterritorial abduction in international law is absolute in all circumstances, state


140. Serb Court Charges Abductors, supra note 123.

141. See generally Beverly Izes, Drawing Lines in the Sand: When State-Sanctioned Abductions of War Criminals Should be Permitted, 31 COLUM. J. L. & SOC. PROBS. 1, 37 (1997) (concluding that "there is an urgent need for... ratification of rules governing state-sanctioned abductions").

142. M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER, 123 (1974) (while asserting that international abduction is a "flagrant violation of... human rights... and subvert[s] the international process," he admits that there is no
practice, and the fact that consequences for such violations are negligible or non-existent, make an absolutist stance in this regard less than convincing, especially in the types of cases pertinent to this article.\textsuperscript{143}

When an extraterritorial abduction violates a state's sovereignty and the state does not complain, there is no consequence for the state that committed the violation.\textsuperscript{144} The experiences of South Africa, France, and the United States in traditional criminal cases that laid the foundation for more germane applications exemplify this premise.\textsuperscript{145}

When South African police violated Swaziland's sovereignty to apprehend South African citizens in Ndhlovu,\textsuperscript{146} Swaziland did not officially complain about South Africa's action, and the defendants were successfully prosecuted by the South African court.\textsuperscript{147} Moreover, the South African court cited Ker and Frisbie as persuasive authority in asserting their jurisdiction in spite of the method of apprehension.\textsuperscript{148} In Argoud, Germany did not request Argoud's return despite the fact that he was clearly kidnapped from Munich and subsequently prosecuted and convicted in a French court.\textsuperscript{149} In Ker, Peru did not protest the kidnapping of an American citizen from its territory in violation of an extradition treaty between the two countries, and Ker was also successfully prosecuted.\textsuperscript{150} The holdings of these cases epitomize the
deterrent to such actions as "their consequences are allowed to produce legally valid results".\textsuperscript{151}

\begin{itemize}
  \item 143. \textit{SHAW}, \textit{supra} note 14, at 478 (finding that an extraterritorial abduction is a violation of international law and that a violation "would only be compounded by permitting the abducting state to exercise jurisdiction but international practice on the whole demonstrates otherwise") (emphasis added).
  \item 144. \textit{BASSIOUNI}, \textit{supra} note 142, at 174-75 (emphasizing that action of the injured state is required as an avenue of redress in cases of international abduction).
  \item 145. \textit{See supra} notes 72-89 and accompanying text (discussing Argoud, Ndhlovu, and Ker where no complaint was received by the court for consideration and the defendants in the cases were provided no relief by the respective courts despite their abduction).
  \item 146. 68 I.L.R. 7, 7 (S. Afr., Natal Provincial Division 1976).
  \item 147. \textit{Id.} at 9 (stating that "[t]here is some suggestion that the Swaziland authorities have demanded the return of the applicants, but . . . evidence of it is of a hearsay and inconclusive nature").
  \item 148. \textit{Id.} at 12 (incorrectly referring to Frisbie as "Brisbie, Warden v. Collins" but correctly citing it as "342 U.S. 519").
  \item 149. Re: Argoud, 45 I.L.R. 90, 94 (Ct. of Cass. 1964) (stating that "formal assurance has been given to-day by the Ministère public that the Minister for Foreign Affairs has received no note from the Government of the Federal Republic of Germany asking for the return . . . of ex-Colonel Argoud, although he has been detained in France for more than ten months").
  \item 150. \textit{See} Scott S. Evans, \textit{International Kidnapping in a Violent World: Where the United States Ought to Draw the Line}, 137 MIL. L. \textsc{rev}. 187, 213 (1992); \textit{see also} Ker v. Illinois, 119 U.S. 436, 443 (1886) (comparing the Ker holding to a recently decided case,
\end{itemize}
principle of *male captus bene detentus*,\(^\text{151}\) which recognizes a court's binding authority over a defendant within its jurisdiction despite an "illegal" method of apprehension.\(^\text{152}\) Furthermore, none of the affected states complained of the sovereignty violation, and there was no consequence to the states that committed the violations.\(^\text{153}\)

Having laid a foundation for extraterritorial abduction of ordinary criminals when it suited them in practice, states have also used this apprehension technique (arguably more justifiably) against individuals accused of offenses that may be classified under the rubric of crimes against humanity.\(^\text{154}\) In these cases, even if the offended state or the international community protested the sovereignty violation, the protests were either symbolic in nature, or completely ineffectual in achieving any meaningful redress.\(^\text{155}\)

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\(^{151}\) Indicating that a protest from Peru, if it had been received, might have resulted in a successful plea in the *Ker* appeal; United States v. Rauscher, 119 U.S. 407 (1886) (identifying the *Rauscher* case referred to by the court as "considered with" *Ker*).

\(^{152}\) See BASSIOUNI, supra note 142, at 122 (defining *male captus bene detentus* as when courts "assert in personam jurisdiction without inquiring into the means by which the presence of the accused was secured").

\(^{153}\) See id. at 121-22 (referring to any apprehension outside the framework of extradition as "rendition"). Bassiouni categorizes these rendition techniques as follows:

1. abduction and kidnapping of a person by the agents of another state;
2. informal surrender of a person by the agents of one state to another without formal or legal process;
3. the use of immigration laws as a device to directly or indirectly surrender a person or place a person in a position where he or she can be taken into custody by the agents of another state.

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> [T]he issue of consent is central to nearly every case of state-sponsored international abduction. If the asylum state permits a foreign state to exercise its police powers in the asylum state's territory, then no issue of state responsibility arises. State practice suggests that in addition to explicit consent, implicit consent may be a defense: if a competent asylum state official partakes in the arrest, even if this arrest is illegal under asylum state law, this involvement is sufficient to constitute consent and to preclude any assertion of responsibility by the asylum state.

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\(^{155}\) See generally William J. Fenrick, *Should Crimes Against Humanity Replace War Crimes?*, 37 COLUM. J. TRANSNATIONAL L. 767, 779-82 (1999) (discussing the similarity between traditionally defined war crimes and recently defined crimes against humanity, and grouping war crimes with other offenses such as terrorism).

\(^{156}\) See supra notes 147-153 and accompanying text (citing Ndhlovu, Argoud, and *Ker* in which the respective courts refused to consider redress for the defendants in the absence of a complaint); see also infra notes 156-171 and accompanying text (referring, for
The Eichmann incident set the precedent for the practice of extraterritorial apprehension of war criminals.\textsuperscript{156} Although Argentina officially protested Israel’s abduction of Eichmann to both Israel and the United Nations,\textsuperscript{157} the only consequence was the passage of a UN resolution stating that Israel’s action violated Argentinian sovereignty and requesting “reparation.”\textsuperscript{158} Since the resolution emphasized the heinous nature of Eichmann’s crimes (it also warned of the possibly destabilizing effects of such sovereignty violations if repeated), the UN resolution arguably amounted to implied conditional approval of Israel’s action, in spite of its carefully worded language to the contrary.\textsuperscript{159} Israel’s “reparation” was in the form of a joint communiqué\textsuperscript{160} with Argentina that did not negate the fact that Israel retained custody of and had jurisdiction over Eichmann.\textsuperscript{161}

For some time, the Eichmann incident stood virtually alone as an instance in which the international community in effect approved an instance of extraterritorial abduction.\textsuperscript{162} The emergence of global terrorism, used as a frightening and destabilizing weapon against a number of nations by disaffected political groups, created another seemingly credible exception to the absolute bar to extraterritorial abduction.\textsuperscript{163} The apprehension of such criminals was considered so

\begin{itemize}
  \item\textsuperscript{156} See Izes, supra note 141, at 16 (characterizing the Eichmann incident as “reflect[ing] the international law position on state-sanctioned abductions”); see also Gilbert, supra note 22, at 184 (identifying Eichmann as “[t]he leading abduction case”). But see Evans, supra note 150, at 200 (asserting that the Eichmann incident simply demonstrates the concerns raised about international abduction and its legal implications).
  \item\textsuperscript{158} S.C. Res. 196, supra note 68.
  \item\textsuperscript{159} See Izes, supra note 141, at 17 (maintaining that the absence of punitive action by the UN constituted tacit approval of Israel’s actions).
  \item\textsuperscript{160} Eichmann, 36 I.L.R. at 59. The declaration stated:
    The Governments of Argentina and Israel, animated by a desire to give effect to the resolution of the Security Council of June 23, 1960, in so far as the hope was expressed that the traditionally friendly relations between the two countries will be advanced, resolve to regard as closed the incident which arose out of the action taken by citizens of Israel, which infringed the fundamental rights of the State of Argentina.
    \textit{Id.} (emphasis added).
  \item\textsuperscript{161} See Izes, supra note 141, at 17.
  \item\textsuperscript{162} Cf. Restatement, supra note 15, § 432 (citing no other international precedent beyond Eichmann).
  \item\textsuperscript{163} Ian O. Lesser et al., Countering the New Terrorism 131 (1999) (articulating U.S. policy to apprehend terrorists “with or without the cooperation of host
\end{itemize}
important that, at times, it required sovereignty violations to ensure prosecution and prevent continued terrorist acts, because states were often unwilling or unable to prosecute terrorists within their borders. States usually justified engaging in such apprehensions by asserting the inherent right of self-defense, as provided in the UN Charter.

The United States, for example, asserted that the extraterritorial apprehensions of alleged terrorists in the Yunis and Kasi cases were justified under the self-defense rationale. The U.S. government also expressed that it will not hesitate to use this method again when measures such as extradition and diplomacy have failed.

Although the crime in Alvarez was of a particularly gruesome and cruel nature, it did not involve a war crime or terrorist act and seemed to be a recent reinforcement of the American Ker-Frisbie doctrine which allows jurisdiction regardless of the method of apprehension. Although strongly criticized by some commentators, the ruling in Alvarez substantially reinforces Ker-Frisbie, even though the court based its holding on a very technical reading of the extradition treaty between Mexico and the United States. Alvarez proved once again that when a
custodial state refuses or is unable to prosecute or extradite such an individual, some states will choose to commit extraterritorial abduction in violation of the sovereignty principle to ensure criminal accountability.\textsuperscript{171}

V. AN IMPORTANT SHIFT IN INTERNATIONAL LAW THAT REINFORCES AN EXCEPTION TO THE RULE AGAINST EXTRATERRITORIAL ABDUCTION

In essence, the gradual encroachment of the international law principle of absolute state sovereignty, the principle that most emphatically renders extraterritorial apprehension of even the most egregious criminals illegal, is demonstrated in two ways.\textsuperscript{172} First, it is evidenced by state practice related specifically to extraterritorial apprehension in the specific classes of cases discussed above.\textsuperscript{173} Second, it is demonstrated by the codification of human rights standards in international treaties and the recognition of those standards in international case law.\textsuperscript{174}

To demonstrate this second premise, it is useful to note the different rationales for two important holdings of the International Court of Justice.\textsuperscript{175} In 1949, the court emphasized the principle of absolute sovereignty when it found that Britain had violated Albanian sovereignty in the \textit{Corfu Channel} decision.\textsuperscript{176} In contrast, in 1969, the court implied for the first time that human rights violations by a state might legally justify the international intervention in internal state affairs, regardless of the lack of state consent.\textsuperscript{177} This implication signaled an important shift in international law that deemphasized the principle of absolute

treaty was not relevant to permit relief to Alvarez despite protests by the government of Mexico).

171. \textit{See} Izes, \textit{supra} note 141, 27-28 (discussing Alvarez as representing an instance when, for certain crimes, the state must resort to state-sponsored abduction in order to achieve justice). \textit{But see} Shaw, \textit{supra} note 14, at 479-80 (delineating a slightly different approach from the U.S. model, which was used by the United Kingdom in such cases).

172. \textit{See supra} notes 145-171 and accompanying text.

173. \textit{Id.} (discussing the widespread absence of sanctions for extraterritorial abductions in courts in France, Israel, South Africa, and the United States in criminal, war crimes and terrorist trials).


177. ICJ Advisories Opinion, \textit{supra} note 174.
sovereignty by legitimizing international intervention in internal affairs for the accomplishment of certain objectives.  

VI. HAS THE UN IN EFFECT ADOPTED THE STATE PRACTICE OF EXTRATERRITORIAL APPREHENSION FOR WAR CRIMINALS?

The apparent shift in international law as applied to extraterritorial apprehension began with the UN’s treatment of the Eichmann incident, in which many nations implicitly approved Israel’s action of abducting Eichmann. Application of the Eichmann precedent has taken a significant turn prompted by recent challenges to the jurisdiction of the UN’s Tribunal for the former Yugoslavia over two Bosnian Serb war crimes indictees. The challenges were based on alleged extraterritorial abductions in violation of international law.

Although Stevan Todorovic’s plea bargain precluded further judicial inquiry into his alleged extraterritorial abduction, and Dragan Nikolic has yet to appeal his arrest on the same basis, their cases put the Tribunal on notice that it needed a legal response to this defense. Prosecutors at the Tribunal for the former Yugoslavia now find themselves in the interesting position of “dusting off the Eichmann Precedent” to counter potential future jurisdictional challenges based on extraterritorial apprehension.

178. See generally ICJ Advisory Opinion, supra note 174 (finding that South Africa’s imposition of apartheid on the inhabitants of South West Africa was a violation of customary international law because it violated inherent human rights); Interview with Morton Sklar, Professor of Law, Catholic University, Columbus School of Law, in Washington, D.C. (Sept. 26, 2000) (acknowledging the importance of the shift in international law as implied in this case).

179. See Izes, supra note 141, at 17 (elaborating on the weakness of the UN’s actions regarding the case).

180. Jerome Socolovsky, Yugoslav Prosecutors Seek Precedent, ASSOCIATED PRESS, Aug. 9, 2000, at http://www.my.aol.com/news/story/html#CYCLE (on file with author) (describing the planned use of the Eichmann precedent by prosecutors for the Yugoslavia war crimes tribunal in order to “safeguard the trials of suspects who claim they were snatched illegally”).

181. Id.

182. See Simic, supra note 135.

183. Socolovsky, supra note 180 (stating that “a tribunal legal officer” had prepared a brief for the judges on Eichmann should it be required).

184. Id. (indicating that the situation may have been raised previously following the arrest of Bosnian Croat Slavko Dokmanovic, who the tribunal admitted was “lured into an area of Croatia under U.N. control” prior to his arrest by SFOR).
Serbia has alleged that both Todorovic and Nikolic were abducted by NATO agents in Serbia and handed over to SFOR in Bosnia. NATO has denied that these men were apprehended in Serbia. However, if true, such an apprehension would be a violation of international law because, if the customary international legal standard is applied, it would constitute a violation of Serbia’s sovereignty. Prosecutors at the Tribunal have stated that regardless of the truth of the matter, the Eichmann precedent established that illegal apprehension of alleged war criminals does not vitiate jurisdiction. In addition, Graham Blewitt, deputy prosecutor for the Tribunal, publicly stated in August 2000, that “the international community should not allow Serbia to become a safe haven for war criminals.”

In a related development, two Canadians, two Britons, and four Dutch nationals were arrested in Serbia in July and August of 2000. Yugoslavia alleges that these individuals planned to abduct former Yugoslav President Slobodan Milosevic and deliver him to The Hague in the Netherlands for trial, because of his indictment for war crimes by the Tribunal for the former Yugoslavia. Although the individual defendants, as well as their respective governments, have denied the Yugoslavian allegations, at least some of the defendants have close

185. Serb Court Charges Abductors, supra note 123 (describing a Serbian regional court’s accusations charging seven Serbian civilian men with the abduction of war crimes indictees Stevan Todorovic and Dragan Nikolic in collusion with NATO’s SFOR troops).
186. Id. (describing SFOR’s claim that Nikolic was initially detained in northern Bosnia rather than in Serbia).
188. Socolovsky, supra note 180 (stating that “the Eichmann case establish[ed] that major war criminals are not protected from unlawful arrest”).
189. Id.
192. See Bukumirovic, supra note 191 (stating that the Britons claimed to be working with the Kosovo police force, while the Canadians claimed they were working for a construction firm operating in Kosovo).
193. Fletcher, supra note 190 (quoting United Kingdom and Canadian diplomats).
official ties to the UN and NATO forces, making the proposition at least theoretically credible.\textsuperscript{194}

VII. CURRENT INTERNATIONAL ENFORCEMENT TOOLS ARE OFTEN INADEQUATE TO APPREHEND WAR CRIMES OFFENDERS TO STAND TRIAL

During the past decade the international community has experimented with various methods to enforce criminal accountability for individuals accused of crimes against humanity.\textsuperscript{195} In his seminal article discussing the various enforcement tools used for the Yugoslavia Tribunal, Professor Michael P. Scharf summarizes potential enforcement measures for the ICC as: (1) condemnation of state non-cooperation by the UN General Assembly or the Security Council; (2) monetary rewards for information leading to indictee apprehension; (3) luring by deception; (4) freezing indictees’ assets; (5) economic incentives for cooperating governments; (6) diplomatic and economic sanctions; and (7) military intervention to accomplish apprehension of indictees.\textsuperscript{196}

Each of these measures is an important tool that is sometimes effectively used, alone or in combination with other tools, to effectuate apprehension of indictees.\textsuperscript{197} All too often, however, the inability or reluctance of both individual nations and the international community as a whole to use any of these measures results in virtual impunity from...
prosecution for many of the worst offenders.\textsuperscript{198} The ineffectiveness of current enforcement measures is demonstrated by the continual pleas for improved apprehension rates by successive chief prosecutors for the Yugoslavia Tribunal to the international community.\textsuperscript{199}

While the first six enforcement measures listed by Professor Scharf are the methods initially considered to accomplish apprehension,\textsuperscript{200} the seventh measure, military intervention, is logically viewed as a last resort. This is because military intervention is potentially the most expensive measure, both in terms of the lives and the political risk involved.\textsuperscript{201} Unfortunately, even the traditionally limited viability of military action has been fatally undermined in recent years. Nations, especially those that contribute troops to peacekeeping efforts, are now notoriously reluctant to engage in missions seeking the apprehension of indicted war criminals.\textsuperscript{202} The United States, the nation generally viewed as most

\begin{itemize}
\item \textsuperscript{198} See, e.g., Richard Cohen, \textit{Too Timid to Do Justice?}, WASH. POST, Sept. 14, 2000, at A35 (deploring the continued freedom of war crimes indictee Radovan Karadzic since 1995).
\item \textsuperscript{199} \textit{U.N. Prosecutor Frustrated}, supra note 12; see also Tom Hundley, \textit{A Prosecutor’s Viewpoint}, CHI. TRIB., July 19, 1998, at 3.
\item \textsuperscript{200} See Scharf, supra note 13, at 944-57 (discussing the shortcomings of the first six measures). These shortcomings include: (1) Yugoslavia consistently ignoring calls from the UN, through repeated Security Council resolutions, to cooperate with the International Criminal Tribunal for Yugoslavia; (2) identifying the bounty placed on Slobodan Milosevic by the United States as an example of how an equivalent ICC system would work, without noting that Milosevic remained at large eighteen months later; (3) noting that the luring of war criminals, like NATO direct action, has met with only limited success; (4) relating the International Criminal Tribunal for Yugoslavia’s use of an “unexpected legal interpretation” of Article 19 to freeze the assets of individuals, but relating its ultimate failure when Cyprus refused to cooperate; (5) identifying only limited success with economic incentives, which were in relation to Croatia, not Serbia; and (6) the failure of diplomacy to enforce economic sanctions to induce cooperation from the Yugoslav government. \textit{Id.}
\item \textsuperscript{201} See generally J. Bryan Hehir, \textit{NATO’s Laudable Goals and Questionable Means}, WASH. POST, May 16, 1999, at B3 (discussing just war theory and describing the costs inherent to waging war); see also France Blocks UK Army Plan to Arrest Karadzic, \textit{Telegraph Says}, BLOOMBURG NEWS, Aug. 24, 2000, available at http://www.my.aol.com/news/story/html#CYCLE (on file with author) (reporting the French military’s decision to veto plans for a British special forces operation to seize Radovan Karadzic in the French area of operations).
\item \textsuperscript{202} See, e.g., \textit{Too Timid to do Justice?}, supra note 198; see also Scharf, supra note 13, at 959 (summarizing IFOR’s “litany of excuses”). Professor Scharf describes the reasons for this reluctance as:
\begin{itemize}
\item (1) arresting war criminals would jeopardize the fragile Bosnian peace;
\item (2) arresting war criminals could damage NATO’s image of impartiality among Bosnia’s factions and invite retaliation against NATO troops;
\item (3) arresting war criminals would disrupt municipal and federal elections in Bosnia;
\end{itemize}
Capable of providing the military resources needed to accomplish this goal, has assiduously avoided such missions after the failed attempt, in 1993, to capture Somali warlord Mohamed Farah Aideed ended badly with the deaths of eighteen American soldiers.\textsuperscript{203} Other nations prove reluctant to engage in such missions for a host of political and financial reasons that are both international and domestic in scope.\textsuperscript{204}

The experience of the Yugoslavia Tribunal proves that nations cannot be relied upon to consistently extradite their own citizens who are indicted for crimes against humanity.\textsuperscript{205} Despite the existence of all of the previously described enforcement measures, many of the most notorious indictees of the Yugoslavia Tribunal remain at large.\textsuperscript{206}

\begin{itemize}
\item[(4)] arresting war criminals is the responsibility of governments in the region, not international troops;
\item[(5)] the NATO forces do not have reliable intelligence information about the whereabouts of the war criminals; and
\item[(6)] NATO troops are not trained to arrest criminal suspects.
\end{itemize}

\textit{Id.}

\textsuperscript{203} \textit{Too Timid to do Justice?}, supra note 198; see also U.S. Reportedly Drops Secret Plans to Seize War Crimes Suspect, \textsc{Reuters}, July 26, 1998, available at http://www.business-server.com/ newsroom/ ntn/ politics/ 072698/ politics7_2813 (reporting the cancellation of plans by U.S. Special Operations soldiers to seize Karadzic based upon “French officers who were reluctant to act and U.S. government officials worried about rekindling Serbian aggression” that could be caused by casualties among the Serbs); see also \textit{Daily Highlights}, United Nations Department of Public Information, \textit{Bosnia Serb War Crimes Suspect Commits Suicide During Arrest Attempt: UN Mission}, (Oct. 13, 2000), available at www.un.org/News/dh/latest.htm (describing the wounding of four SFOR personnel when Janko Janjic, a Serb indicted for rape and torture, exploded a grenade during an arrest attempt). Arrest attempts of war criminals, in what remains a war zone, can be expected to produce casualties. \textit{Id.}


\textsuperscript{205} \textit{Bosnian Serbs Accused of Aiding War Criminals}, \textsc{BBC News}, \textsc{BBC Online Network}, July 24, 1998, available at http://news.bbc.co.uk/hi/english/world/europe/newsid_1380000/138924.stm (discussing deliberate Serbian efforts to frustrate apprehensions by NATO through the issuance of false documents to suspected war criminals).

VIII. THE UNITED NATIONS SHOULD OUTSOURCE PRIVATE ACTORS IN ORDER TO APPREHEND WAR CRIMES INDICTEES

The principle of absolute sovereignty is clearly no longer absolute, as demonstrated by the recognition of human rights standards that supersede that principle.\textsuperscript{207} State practice encompasses extraterritorial apprehension under self-defense rationales.\textsuperscript{208} The UN and its organs, and in particular the tribunals, now confront the same difficulties as states in effectuating the physical apprehension of their most wanted indictees.\textsuperscript{209} Political considerations have effectively eliminated unilateral and bilateral extraterritorial apprehension missions by member states.\textsuperscript{210}

Although it stems from a different legal basis, the American bounty system suggests a possible solution to the international community's apprehension problem.\textsuperscript{211} Continuing budgetary considerations at all levels of government, as well as overcrowding within the prison systems, makes the bail/bond/bounty system in America an indispensable part of the criminal pretrial process.\textsuperscript{212} Its effectiveness suggests that an analogous model, with appropriate additional safeguards to more

\textsuperscript{207} Sklar Interview, supra note 178.

\textsuperscript{208} Compare Evans, supra note 150, at 234-38 (discussing the self-defense doctrine), with Atkins, supra note 169, at 123 (disputing the argument that either Article 51 or 52 of the UN Charter supports extraterritorial abduction as a self-defense measure).

\textsuperscript{209} Hundley, supra note 199; see also Nora Boustany, A Prosecutor in Need of Criminals, WASH. POST, Sept. 27, 2000, at A20 (quoting Carla Del Ponte, the chief prosecutor for the Tribunals for the former Yugoslavia and Rwanda, as declaring: "My perplexity as a prosecutor is I have too many fugitives").

\textsuperscript{210} See generally Scharf, supra note 13.

\textsuperscript{211} See generally Drimmer, supra note 116, at 747-50 (describing the legal basis for bounty hunting as the breach of a contract between the bondsman and the fugitive).

\textsuperscript{212} John A. Chamberlin, Note, Bounty Hunters: Can the Criminal Justice System Live Without Them?, 1998 U. ILL. L. REV. 1175, 1196-98 (1999) (discussing the positive impact of bounty hunters in relation to the criminal justice system and estimating that they account for the apprehension of over 30,000 bail jumpers at no cost to the taxpayers).
rigorously protect reasonable due process concerns, might be used to pursue indicted war criminals in carefully limited circumstances.\textsuperscript{213}

When all other measures to accomplish the apprehension of indictees such as Radovan Karadzic have failed, the tribunals and the future ICC need to consider implementing an official, public rewards program for the apprehension of these indictees by private actors.\textsuperscript{214} Such a system should only be used when the state harboring an indictee within its borders refuses to extradite or try the indictee itself, as appropriate to either the primacy of the \textit{ad hoc} tribunal or the complementarity principle of the ICC.\textsuperscript{215}

Certain safeguards must be carefully built into such a program and prerequisites must be met before the program can be implemented in an individual case. First, rules need to be developed to protect the indictee from unduly harsh or abusive apprehension methods.\textsuperscript{216} Second, a reward should not be offered for a particular individual until an international arrest warrant has been issued pursuant to an indictment.\textsuperscript{217} Such a system would provide the equivalent of a grand jury proceeding that, in itself, offers certain due process protections.\textsuperscript{218}

\section*{IX. Conclusion}

The international courts that enforce individual criminal accountability, whether \textit{ad hoc} or permanent, need a new method to ensure physical apprehension of persons indicted for crimes pursuant to the courts' statutes. Such indictees are, by definition, accused of terrible crimes magnified by the scale on which they are typically committed. To allow them to remain at large, in the face of such an indictment, seriously

\begin{itemize}
\item \textsuperscript{213} Cf. Drimmer, supra note 116, at 739 (stating that the government’s reluctance to impose regulations on bounty hunters has led to abuses curable by treating the bounty hunters legally as state actors, as well as by implementing a regulatory system).
\item \textsuperscript{214} Cf. Scharf, supra note 13, at 949-51 (describing the potential effectiveness of a rewards program for information leading to the apprehension of war crimes indictees).
\item \textsuperscript{215} See The Rome Statute, supra note 49.
\item \textsuperscript{216} See, e.g., Code of Conduct for Law Enforcement Officials, G.A. Res. 169, U.N. GAOR, 34th Sess. (1979) (delineating rules of conduct for law enforcement officials that could be used as models for private actors as conditions of receiving the reward offered for apprehension, thereby guarding indictees’ due process rights).
\item \textsuperscript{218} Id. at 515-16 (discussing the similarity between the Yugoslavia Tribunal’s Rule 61 and the American grand jury proceeding).
\end{itemize}
undermines the rule of law, as well as the courts’ credibility. Using private actors as an additional apprehension measure, with appropriate controls and in limited circumstances, is a viable solution.