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INTERNATIONAL TREATIES AS SOURCES OF THE OBLIGATION TO EXTRADITE OR PROSECUTE

The article examines the treaties enshrining the clause *aut dedere aut judicare*. The methodological approach of this study incorporates a diverse range of methods, such as historical and legal analysis, comparative legal analysis, systemic analysis, and analytical interpretation of legal norms. It is emphasized that the clause *aut dedere aut judicare* is one of the effective tools to achieve the goal of fighting impunity for international crimes and transnational crimes. It is established that the clause *aut dedere aut judicare* can be considered a key element of a number of international treaties. The article considers the issue of classification of treaties that contain an *aut dedere aut judicare* clause; the position of the International Law Commission regarding the classification of treaties containing the *aut dedere aut judicare* clause is highlighted; a general analysis of four groups of conventions containing the obligations of extradition or prosecution is carried out. The author concludes that the obligation *aut dedere aut judicare* is enshrined in conventions of various natures: these conventions can relate to both international crimes and ordinary crimes of international concern; these can be universal and regional conventions, as well as bilateral extradition treaties; these can be both substantive treaties and procedural conventions. It is established that the *aut dedere aut judicare* mechanism has its weaknesses, in particular, the content of the conventions does not always make it possible to determine a clear legal basis for the state facing the choice of extradition or prosecution; the clause *aut dedere aut judicare* is not agreed upon between conventions that include this provision.

Keywords: the obligation to extradite or prosecute, *dedere aut judicare* clause, international treaties, 'Hague formula', international cooperation to fight impunity, International Law Commission, jurisdiction.

Introduction

The principle *aut dedere aut judicare*¹ is one of the basic principles of extradition² and international criminal law as a whole. The core objective of this principle is to guarantee that individuals who have committed 'particularly serious crimes'³ are held accountable for their actions. It achieves this by ensuring that individuals can be effectively prosecuted and punished under the jurisdiction of competent authorities. Particularly serious crimes (genocide, war crimes, crimes against humanity, as well as other grave violations of international humanitarian law and human rights law) are not condoned, and impunity is not accepted. The perpetrators of these crimes are brought to justice through 'national mechanisms or, where

¹ The phrase "*aut dedere aut judicare*" is a contemporary rephrasing of a concept introduced by Hugo Grotius "*aut dedere aut punire*" See: Bassiouni, M. Ch., Wise, E. M. (1995). *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law*. Dordrecht: Martinus Nijhoff, 4.

² Extradition can be considered as a form of international legal assistance in criminal cases based on international treaties, generally recognized principles of international law and norms of domestic law, which consists in handing over the accused for the administration of justice or the carrying out of a sentence provided by the state in whose territory the requested person is located at the request of the state that has grounds for exercising its jurisdiction.

³ See: United Nations (1996). *Draft Code of Crimes against the Peace and Security of Mankind with commentaries Commentary to Article 8. Para. 3. International Law Commission. Report of the International Law Commission on the Work of its Forty-Eighth Session. U.N. Doc. A/51/10* <untreaty.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf> (2023, June, 07).

appropriate, regional or international mechanisms¹. Thus, the *aut dedere aut judicare* clause constitutes “an effective instrument to achieve the aim of the fight against impunity”², without such prohibitions, addressing and preventing unlawful conduct would be inadequate.

Over time, the obligation to extradite or prosecute has been formalized through international treaties. As a result, the *aut dedere aut judicare* principle has become a fundamental component within wide range of international treaties³. By including this clause in treaties, states affirm their commitment to combatting impunity and upholding accountability for grave violations of international law. According to Amnesty International’s research, a minimum of 37 international or regional agreements incorporate the *aut dedere aut judicare* obligation. Additionally, several bilateral extradition agreements also include this obligation, further clarifying its essence and extent⁴.

The purpose of research is to analyze the treaties enshrining the clause *aut dedere aut judicare*. The purpose of the work entails the revelation of such questions: models of classification of treaties that contain the *aut dedere aut judicare* clause; the position of the International Law Commission regarding the classification of treaties containing the *aut dedere aut judicare* clause and general analysis of four groups of treaties of such classification; consideration the scope of the obligation to extradite or prosecute in different models of conventions; and highlighting shortcomings in the treaties establishing of the *aut dedere aut judicare* principle.

Careful study of the nature of the *aut dedere aut judicare* principle requires serious scientific support. Certain issues concerning the *aut dedere aut judicare clause* attracted and continue to attract the attention of scientists and practitioners and become the subject of publication: Bassiouni M. Ch., Caligiuri A., Kenneth S. Gallant, Geoff G., Mitchell C., Plachta M., Michael P. Scharf, Wise E.M. and others. A core contribution to the development of issues related to the *aut dedere aut judicare* principle was made by the International Law Commission.

The works of many scientists, who made a significant contribution to the development of applying the *aut dedere aut judicare* principle and became the fundamental basis for our research, do not exhaust this multifaceted problem. A separate study is required for the to examination of treaties as a source of the principle *aut dedere aut judicare*.

Main results of the research. Multilateral conventions containing provisions *aut dedere aut judicare* may be classified according to different criteria, “none of which, however, fully succeeds to draw the complexity of convention practice in this regard”, – A. Caligiuri writes. Caligiuri A. proposes the following classification: ‘*Aut dedere aut judicare*’ Model; ‘*Primo dedere secundo judicare*’ Model; Model with a ‘Third Option’⁵. In Fourth Report on the obligation to extradite or prosecute (*aut dedere aut judicare*)⁶ mentioned four models of classification of treaties that contain the clause in question: (a) the classification of Bassiouni and Wise; (b) the classification of Amnesty International; (c) the classification of Mitchell and d) the classification of the Secretariat of the International Law Commission⁷.

¹ United Nations (2012). *Resolution 67/1*, 22 <[https://regnet.anu.edu.au/sites/default/files/files/ROL/A-RES-67-1\(1\).pdf](https://regnet.anu.edu.au/sites/default/files/files/ROL/A-RES-67-1(1).pdf)> (2023, June, 22).

² Caligiuri, A. (2018). Governing International Cooperation in Criminal Matters: The Role of the *aut dedere aut judicare* Principle. *International Criminal Law Review*, 18(02), 257.

³ This list “includes international humanitarian law treaties and treaties against genocide, apartheid, enslavement, the prostitution of others, piracy, the hijacking of aircraft, drug trafficking and terrorism”. See: Mattarollo, R. (1998). Impunity and international law. *Revue québécoise de droit international*, 11(1), 88 <https://www.sqdi.org/wp-content/uploads/11.1_-_mattarollo.pdf> (2023, June, 25).

M.C. Bassiouni’s work “Crimes against humanity in international law and practice” contains the list of treaties ies that include the “prosecute or extradite” provision.

⁴ See: Amnesty International Publications (2009). *International Law Commission: The Obligation To Extradite Or Prosecute (Aut Dedere Aut Judicare)*, 22-23.

⁵ See: Caligiuri, A. (2018). Governing International Cooperation in Criminal Matters: The Role of the *aut dedere aut judicare* Principle. *International Criminal Law Review*, 18(02), 247-254.

⁶ United Nations Office of Legal Affairs (2011). *Sixty-third session. Fourth report on the obligation to extradite or prosecute (aut dedere aut judicare) by Zdzislaw Galicki, Special Rapporteur. A/CN.4/648*. <https://legal.un.org/ilc/documentation/english/a_cn4_648.pdf> (2023, June, 24).

⁷ Caligiuri, A. (2018). Governing International Cooperation in Criminal Matters: The Role of the *aut dedere aut judicare* Principle. *International Criminal Law Review*, 18(02), 246.

Let's consider the classification proposed by the International Law Commission¹ as the main body responsible for developing the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)".

Conventions including provisions on the obligation to extradite or prosecute have been classified into the following four categories²: (1) The International Convention for the Suppression of Counterfeiting Currency; (2) The Geneva Conventions for the protection of war victims and the Protocol additional to the Geneva Conventions of 12 August 1949, and Protocol I; (3) Regional conventions on extradition; (4) The Convention for the Suppression of Unlawful Seizure of Aircraft and other conventions that adopt a similar approach.

A brief overview of each of the four convention groups is provided below.

(1) The International Convention for the Suppression of Counterfeiting Currency (1929)³ encompasses provisions on extradition and prosecution, setting an illustrious example for a series of subsequent treaties dedicated to suppression of international offenses (for instance, Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950; Single Convention on Narcotic Drugs of 1961, and Convention on Psychotropic Substances of 1971).

Article 9 of the International Convention for the Suppression of Counterfeiting Currency states: "Foreigners who have committed abroad any offence referred to in Article 3, and who are in the territory of a country whose internal legislation recognises as a general rule the principle of the prosecution of offences committed abroad, should be punishable in the same way as if the offence had been committed in the territory of that country."

The obligation to take proceedings is subject to the condition that extradition has been requested and that the country to which application is made cannot hand over the person accused for some reason which has no connection with the offence".

The mechanism embraced within the framework of the Convention was widely regarded as an indispensable manifestation of the fundamental principle that counterfeiting currency must be met with unequivocal punishment, leaving no room for impunity anywhere across the globe.

(2) Four Geneva Convention 1949 encompass war crimes classified as 'grave breaches' and contain an identical provision regarding the repression of 'grave breaches' of international humanitarian law (Convention I at Art. 49, Convention II at Art. 50, Convention III at art.129 and Convention IV at Art. 146). For instance, Article 49 of the Convention I states: "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article."

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case..."

¹ The International Law Commission as early as 1949 initiated its examination of the principle of "prosecute or extradite," focusing on the jurisdiction concerning crimes committed beyond a state's borders. This obligation was specifically addressed in its report to the General Assembly concerning the 1996 Draft code of crimes against Peace and Security of Mankind. In 2004 the ILC included the topic in its long-term programme and in 2005 it appointed Galicki as Special rapporteur on the obligation to extradite and prosecute. Galicki produced four reports between 2006 and 2011. In 2014 the final report of the working Group on the obligation to extradite or Prosecute (*aut dedere aut judicare*) was presented. See: Barrie, G. (2016). A Synopsis of the International Law Commission's Final Report on the Obligation to Extradite or Prosecute. *South African Yearbook of International Law*, 41, 203-214. <<https://unisapressjournals.co.za/index.php/SAYIL/article/view/8825>> (2023, June, 28).

² United Nations Office of Legal Affairs (2010). *The obligation to extradite or prosecute (aut dedere aut judicare). Survey of multilateral instruments which may be of relevance for the work of the International Law Commission on the topic "The obligation to extradite or prosecute (aut dedere aut judicare)". A/CN.4/630*, 323 <https://legal.un.org/ilc/documentation/english/a_cn4_630.pdf> (2023, July, 03).

³ UN iLibrary (2001). International Convention for the suppression of counterfeiting currency 1929. Treaty Series 1911, 418-418 <<https://www.un-ilibrary.org/content/books/9789210454414s004-c007>> (2023, July, 03).

The underlying principle for the mechanism enshrined in the Geneva Conventions is “the establishment of universal jurisdiction over grave breaches of the Conventions”¹. The imperative to implement measures against an alleged offender remains unencumbered by any jurisdictional constraints imposed by individual states. In addition to this, the mechanism also provides an obligation to prosecute and as an alternative, the accused may be extradited. An alleged offender is obliged to be prosecuted regardless of whether or not another party seeks extradition.

(3) Extradition and prosecution are offered as options under a number of regional extradition conventions. These conventions are concluded between states “agreeing to extradite persons for ordinary crimes or to submit them to their own system for prosecution”².

Regional treaties on extradition are often concluded in addition to bilateral treaties. Regional conventions on extradition can change, supplement bilateral treaties, and impose obligations on the parties to amend national legislation. The conclusion of regional conventions on extradition contributes to the harmonization of national extradition legal systems.

Within the third group, we will consider the conventions concluded within the American (“Bustamante Code” 1928, Inter-American Convention on Extradition 1981, Inter-American Convention on Forced Disappearance of Persons 1994) and European (European Convention on Extradition 1957) contexts, the League of Arab States Convention on the Extradition 1952, ECOWAS Convention on Extradition of 1994.

The conventions concluded within the American and European regional systems “appear to be the most influential”³.

The American conventions relating to extradition appear to be among the first to provide for a combination of extradition and prosecution options. The Convention on Private International Law (“Bustamante Code”)⁴ in Article 344 establishes:

“In order to render effective the international judicial competence in penal matters, each of the contracting States shall accede to the request of any of the others for the delivery of persons convicted or accused of crime, if in conformity with the provisions of this title, subject to the dispositions of the international treaties and conventions containing a list of penal infractions which authorize the extradition”. Article 345 stipulates: “The contracting States are not obliged to hand over their own nationals. The nation which refuses to give up one of its citizens shall try him”.

The 1981 Inter-American Convention on Extradition⁵ holds that a state refusing to accede to extradition requests shall, in turn, prosecute the accused within its own jurisdiction “when its laws or other treaties so permit”.

Article 8 “Prosecution by the Requested State” states: “If, when extradition is applicable, a State does not deliver the person sought, the requested State shall, when its laws or other treaties so permit, be obligated to prosecute him for the offense with which he is charged, just as if it had been committed within its territory, and shall inform the requesting State of the judgement handed down”. This requires a state “to use any of its ordinary jurisdictional bases to prosecute a person for whom extradition is refused”⁶.

The Inter-American Convention on Forced Disappearance of Persons⁷, while addressing various repercussions of enforced disappearance, provides for the obligation to extradite or prosecute.

¹ United Nations Office of Legal Affairs (2010). *The obligation to extradite or prosecute (aut dedere aut judicare). Survey of multilateral instruments which may be of relevance for the work of the International Law Commission on the topic “The obligation to extradite or prosecute (aut dedere aut judicare)”*. A/CN.4/630, 329. <https://legal.un.org/ilc/documentation/english/a_cn4_630.pdf> (2023, July, 03).

² Gallant, K. S. (2022). *International Criminal Jurisdiction-Whose Law Must We Obey?* Oxford: Oxford University Press, 523.

³ United Nations Office of Legal Affairs (2010). *The obligation to extradite or prosecute (aut dedere aut judicare). Survey of multilateral instruments which may be of relevance for the work of the International Law Commission on the topic “The obligation to extradite or prosecute (aut dedere aut judicare)”*. A/CN.4/630, 332. <https://legal.un.org/ilc/documentation/english/a_cn4_630.pdf> (2023, July, 03).

⁴ Convention of Private International Law of 1928 (Bustamante Code). OAS. Treaty Series, 23.

⁵ OAS (1981). Inter-American Convention on Extradition. *WhatConvention.Org* <<https://www.whatconvention.org/en/ratifications/298>> (2023, July, 03).

⁶ Gallant, K. S. (2022). *International Criminal Jurisdiction-Whose Law Must We Obey?* Oxford: Oxford University Press, 523.

⁷ OAS (1994). Inter-American Convention on Forced Disappearance of Persons. *UN Digital Library*. <<https://digitallibrary.un.org/record/483546>> (2023, July, 02).

Article IV of the Convention contains a provision that “Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him”.

Article VI of this Convention provides that if a “State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the offense had been committed within its jurisdiction, for the purposes of investigation and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the state that has requested the extradition”.

The European Convention on Extradition¹ incorporates provision combining the options of extradition and prosecution.

Article 1 of the European Convention enshrines the obligation to extradite: “The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order”.

Article 6 contains an *aut dedere aut judicare* clause, imposing the following: “If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge... The requesting Party shall be informed of the result of its request”.

The Economic Community of West African States (ECOWAS) Convention on Extradition of 1994² is also based on the general obligation of States Parties to extradite individuals at the request of the requesting State (Article 2). Extradition may be refused, for example, if the request concerns a national of the requested State. If extradition is denied, there is an alternative obligation to prosecute the alleged perpetrator.

Article 10 of the ECOWAS Convention on Extradition establishes: „1. The extradition of a national of the requested State shall be left to the discretion of that State. National status is assessed at the time of the commission of the offense for which extradition is requested. 2. The requested State which does not extradite its national shall, at the request of the requesting State, submit the case to the competent authorities so that legal proceedings can be instituted if necessary. To this end, the files, information and objects relating to the offense will be transmitted free of charge either by diplomatic means or by any other means which will be agreed between the States concerned. The requesting State will be informed of the follow-up which will have been given to its request“.

A similar provision is contained in the League of Arab States Convention on the Extradition of 1952. Article 7 of the Convention provides for the possibility of refusing to extradite own citizen, but with the condition that such a person be prosecuted by requested state³.

(4)The fourth category of conventions containing an *aut dedere aut judicare* clause, according to the classification proposed by ILC, are conventions that establish clear obligations for member states to detain a criminal suspect on their territory and either extradite him or refer the case to their own authorities for criminal prosecution (“the Hague Convention formula”).

This principle is formulated in Art. 7 of the Convention for the Suppression of Unlawful Seizure of Aircraft 1970⁴, Art. 7 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971⁵, Art. 7 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents 1973⁶.

¹ Council of Europe (1957). *European Convention on Extradition*, 24 <<https://rm.coe.int/1680064587>> (2023, July, 22).

² The Economic Community of West African States (1994). *Convention on Extradition*. *Journal Officiel de la CEDEAO* <http://65.52.131.71/bndgtcp/opac_css/daril/A-PI-8-94.pdf> (2023, July, 22).

³ The League of Arab States (1952). *Convention on the Extradition* <https://haqqi.s3.eu-north-1.amazonaws.com/2014-04/HRIDRL0142_ArabCriminalExtradition_.pdf> (2023, July, 22).

⁴ United Nations (1970). *Convention for the Suppression of Unlawful Seizure of Aircraft*, 860, 105. <<https://treaties.un.org/doc/db/terrorism/conv2-english.pdf>> (2023, July, 22).

⁵ United Nations (1971). *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, 974, 178. <<https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-english.pdf>> (2023, July, 22).

⁶ United Nations (1973). *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents*, 1035, 167. <https://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf> (2023, July, 22).

Thus, Article 7 of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed in the Hague on 16 December 1970, sets out that: “The Contracting State in the territory of which the alleged offender is found, shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.” The Hague Convention for the Suppression of Unlawful Seizure of Aircraft explicitly establishes the obligation of the state in which the accused is located to initiate prosecution if extradition is not carried out.

As Plachta M. pointed out, the Hague Convention formula can be categorized into two distinct variants: “(a) the alternative obligation to submit a case for prosecution is subject, where a foreigner is involved, to whether a State has elected to authorize the exercise of extraterritorial jurisdiction; (b) the obligation to submit a case for prosecution only arises when a request for extradition has been refused”¹.

The majority of treaties incorporating the Hague formula also incorporate a clause stipulating that the “authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State party”. This provision was included to avoid the possibility of invoking political grounds, which could lead to misunderstandings between states. Therefore, the usual procedures relating to serious crimes, both in relation to extradition and criminal proceedings, are subject to application.

Based on the analysis of the conventions containing the *aut dedere aut judicare* clause, two main groups can be distinguished depending on the relationship between the obligations to extradite or prosecute. The first group of conventions includes provisions that impose an obligation to extradite, and criminal prosecution is an obligation only in case of refusal to extradite. Therefore, in this case, priority is given to extradition. Examples of such conventions can be the International Convention for the Suppression of Counterfeiting Currency of 1929 (Article 9), the African Union Convention on the Prevention and Combating of Corruption (Article 15).

The second group of conventions includes provisions that impose an obligation to prosecute. Extradition is also a possible option in this case, however, extradition is obligatory if the state will not prosecute. Examples of such conventions are: the Hague Convention on the Suppression of Unlawful Seizure of Aircraft (Article 7), the Convention Against Torture (Article 7). For instance, the obligation to prosecute an alleged perpetrator of acts of torture is independent of a prior request for extradition. However, the alternative provided to a State under Article 7 of the Convention is applicable only when an extradition request has been submitted. The obligation to prosecute can be absolute if no request for extradition has been received.

The important thing to pay attention to – the different wording of the treaties suggests that the requirement to prosecute differs between them. Furthermore, a notable distinction lies in the fact that certain treaties address crimes under universal jurisdiction, in accordance with customary international law, while others do not.

It is pertinent to acknowledge that the obligation to either extradite or prosecute under a treaty is applicable solely to events that transpired after the treaty’s entry into force for the respective State unless a divergent intention is evident from the treaty or established through other means.

Conclusions. The goal of joint efforts by States to fight impunity for international and transnational crimes committed finds practical expression in numerous conventions that, among other provisions, include the obligation to either extradite or prosecute (the *aut dedere aut judicare* principle).

The principle *aut dedere aut judicare* is enshrined in conventions of various natures: these conventions can relate to both international crimes and ordinary crimes of international concern; these can be universal and regional conventions (international humanitarian law treaties, treaties against genocide, enslavement, piracy, the hijacking of aircraft, drug trafficking, terrorism and others), as well as bilateral extradition treaties; these can be both substantive treaties and procedural conventions.

There are different classifications of treaties containing *aut dedere aut judicare* clause. According to the International Law Commission, conventions including provisions on the obligation to extradite or prosecute have been classified into the following four categories: (1) The International Convention for the Suppression of Counterfeiting Currency and other conventions following the same model; (2) The Geneva Conventions for the protection of war victims and the Protocol additional to the Geneva

¹ Plachta, M. (1999). *Aut Dedere Aut Judicare: An Overview of Modes of Implementation and Approaches*. *Maastricht Journal of European and Comparative Law*, 6(4), 360.

Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I); (3) Regional conventions on extradition; (4) The Convention for the Suppression of Unlawful Seizure of Aircraft and other conventions following the same model (“the Hague Convention formula”).

All conventions containing the the *aut dedere aut judicare* clause can be divided into two main groups, depending on the relationship between the obligations to extradite or prosecute. The first group includes provisions that impose an obligation to extradite, and criminal prosecution is an obligation only in case of refusal to extradite. Therefore, in this case, priority is given to extradition. The second group of conventions includes provisions that impose an obligation to prosecute; extradition is also a possible option in this case, however, extradition is obligatory if the state will not prosecute. The obligation to prosecute can be absolute if no request for extradition has been received.

A detailed analysis of the conventions with the *aut dedere aut judicare* clause allows to conclude that although an *aut dedere aut judicare* mechanism is one of the effective instruments in combating impunity for international and transnational crimes, it has its weaknesses. For instance, the content of the conventions does not always make it possible to identify a clear legal framework for a state facing the choice of extradition or prosecution. It is also important to acknowledge that *aut dedere aut judicare* clause is not coordinated among conventions that incorporate this provision. The comprehensive analysis of the obligation to either extradite or prosecute, as stipulated in the relevant conventions demands a thorough scrutiny of each individual scenario.

It should be noted that as a result of the conclusion of a growing number of treaties that include an *aut dedere aut judicare* clause, it would appear that the obligation to extradite or prosecute is in the process of formation under customary international law. The question of whether there is an obligation to extradite or prosecute in customary international law requires its own separate further study.

References:

1. Amnesty International Publications (2009). *International Law Commission: The Obligation To Extradite Or Prosecute (Aut Dedere Aut Judicare)*, 22-23.
2. Barrie, G. (2016). A Synopsis of the International Law Commission’s Final Report on the Obligation to Extradite or Prosecute. *South African Yearbook of International Law*, 41, 203-214. <<https://unisapressjournals.co.za/index.php/SAYIL/article/view/8825>> (2023, June, 28).
3. Bassiouni, M. Ch., Wise, E. M. (1995). *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law*. Dordrecht: Martinus Nijhoff.
4. Caligiuri, A. (2018). Governing International Cooperation in Criminal Matters: The Role of the *aut dedere aut judicare* Principle. *International Criminal Law Review*, 18(02), 246-257.
5. Caligiuri, A. (2018). Governing International Cooperation in Criminal Matters: The Role of the *aut dedere aut judicare* Principle. *International Criminal Law Review*, 18(02), 247-254.
6. Convention of Private International Law of 1928 (Bustamante Code). OAS. Treaty Series, 23.
7. Council of Europe (1957). *European Convention on Extradition*, 24 <<https://rm.coe.int/1680064587>> (2023, July, 22).
8. Gallant, K. S. (2022). *International Criminal Jurisdiction-Whose Law Must We Obey?* Oxford: Oxford University Press.
9. Mattarollo, R. (1998). Impunity and international law. *Revue québécoise de droit international*, 11(1), 88. <https://www.sqdi.org/wp-content/uploads/11.1_-_mattarollo.pdf> (2023, June, 25).
10. OAS (1981). Inter-American Convention on Extradition. *WhatConvention.Org* <<https://www.whatconvention.org/en/ratifications/298>> (2023, July, 03).
11. OAS (1994). Inter-American Convention on Forced Disappearance of Persons. *UN Digital Library*. <<https://digitallibrary.un.org/record/483546>> (2023, July, 02).
12. Plachta, M. (1999). *Aut Dedere Aut Judicare: An Overview of Modes of Implementation and Approaches*. *Maastricht Journal of European and Comparative Law*, 6(4), 360.
13. The Economic Community of West African States (1994). Convention on Extradition. *Journal Officiel de la CEDEAO* <http://65.52.131.71/bndgtcp/opac_css/daril/A-P1-8-94.pdf> (2023, July, 22).
14. The League of Arab States (1952). *Convention on the Extradition* <https://haqqi.s3.eu-north-1.amazonaws.com/2014-04/HRIDRL0142_ArabCriminalExtradition_.pdf> (2023, July, 22).
15. UN iLibrary (2001). *International Convention for the suppression of counterfeiting currency* <<https://www.un-ilibrary.org/content/books/9789210454414s004-c007>> (2023, July, 03).
16. United Nations (1970). *Convention for the Suppression of Unlawful Seizure of Aircraft* <<https://treaties.un.org/doc/db/terrorism/conv2-english.pdf>> (2023, July, 22).
17. United Nations (1971). *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* <<https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-english.pdf>> (2023, July, 22).

18. United Nations (1973). *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents* <https://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf> (2023, July, 22).
19. United Nations (1996). *Draft Code of Crimes against the Peace and Security of Mankind with commentaries Commentary to Article 8. Para. 3. International Law Commission. Report of the International Law Commission on the Work of its Forty-Eighth Session. U.N. Doc. A/51/10* <untreaty.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf> (2023, June, 07).
20. United Nations (2012). *Resolution 67/1, 22* <[https://regnet.anu.edu.au/sites/default/files/files/ROL/A-RES-67-1\(1\).pdf](https://regnet.anu.edu.au/sites/default/files/files/ROL/A-RES-67-1(1).pdf)> (2023, June, 22).
21. United Nations Office of Legal Affairs (2010). *The obligation to extradite or prosecute (aut dedere aut judicare). Survey of multilateral instruments which may be of relevance for the work of the International Law Commission on the topic "The obligation to extradite or prosecute (aut dedere aut judicare)* <https://legal.un.org/ilc/documentation/english/a_cn4_630.pdf> (2023, July, 03).
22. United Nations Office of Legal Affairs (2010). *The obligation to extradite or prosecute (aut dedere aut judicare). Survey of multilateral instruments which may be of relevance for the work of the International Law Commission on the topic "The obligation to extradite or prosecute (aut dedere aut judicare).* <https://legal.un.org/ilc/documentation/english/a_cn4_630.pdf> (2023, July, 03).
23. United Nations Office of Legal Affairs (2011). *Sixty-third session. Fourth report on the obligation to extradite or prosecute (aut dedere aut judicare) by Zdzislaw Galicki, Special Rapporteur. A/CN.4/648.* <https://legal.un.org/ilc/documentation/english/a_cn4_648.pdf> (2023, June, 24).