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A Collapse of International Extradition: The Lo Dolce Case

NOTE

A COLLAPSE OF INTERNATIONAL EXTRADITION: THE LO DOLCE CASE

International extradition "may be sufficiently defined to be the surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory, and within the territorial jurisdiction of the other, which, being competent to try and to punish him, demands the surrender."[1] When the United States through some person designated by statute or treaty is confronted with the request of a foreign government for the extradition[2] of some person accused or convicted of a crime,[3] it first must ascertain whether it has an extradition treaty with that government. If there is no treaty, there will be no extradition.[4] Where such a treaty exists, the right of the requesting government to demand the surrender of that person under the treaty is contingent upon the presence of three conditions: (1) the crime charged must be one covered by the treaty;[5] (2) the evidence presented must be sufficient to justify the apprehension and trial of the person charged with the alleged crime had it been committed in

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[1]Terlinden v. Ames, 184 U. S. 270, 289, 22 S. Ct. 484, 492, 46 L. ed. 534, 545 (1901).

[2]Under the international extradition practice of the United States, the requesting foreign government must sometime either before, during, or just after an extradition proceeding address a formal requisition to the Secretary of State before the surrender of the sought-after person will be made. 62 Stat. 822 (1948), 18 U. S. C. A. § 3184 (1951); Grin v. Shine, 187 U. S. 181, 194, 23 S. Ct. 98, 103, 47 L. ed. 130, 138 (1902).

[3]A distinction has been drawn between a person who was before the court and convicted but later escaped, and one who was tried and convicted in absentia. The latter is treated as if he were only charged with a crime; therefore, the evidence presented for his extradition must be of the same nature as of that given where the person has not been tried. 4 Hackworth, Digest of International Law (1942) 52.

[4]The "principles of international law recognize no right to extradition apart from treaty." Factor v. Laubenheimer, 290 U. S. 276, 287, 54 S. Ct. 191, 193, 78 L. ed. 315, 320 (1933); Valentine, Police Commissioner of New York City v. United States ex rel. Neidecker, 299 U. S. 5, 9, 57 S. Ct. 100, 102, 81 L. ed. 5, 8 (1936); 2 Hyde, International Law (2nd rev. ed. 1947) 1015.

[5]62 Stat. 822 (1948), 18 U. S. C. A. § 3184 (1951); 4 Hackworth, Digest of International Law (1942) 41. A person who has been surrendered to the requesting government "can only be tried for one of the offenses described in that treaty...." United States v. Rauscher, 119 U. S. 407, 430, 7 S. Ct. 234, 246, 30 L. ed. 425, 432 (1886). And when the executive department and the courts of the asylum country decided that the crime was within the treaty between it and the demanding nation, that decision is conclusive and is not subject to review in the courts of the extraditing state. Greene v. United States, 154 Fed. 401, 410 (C. C. A. 5th, 1907).

the country of asylum;[6] and (3) the requesting government must have had justification over the accused person at the time when the offense is alleged to have occurred.[7]

The intense interest which was occasioned by the attempt of the Italian government to extradite Carl Lo Dolce from the United States in the extradition proceeding of *In re Lo Dolce*[8] has been revived by the conclusion of Lo Dolce's murder trial *in absentia* in Italy, November 6, 1953, the appeal that was taken from this decision, November 25, 1954,[9] and a recently reported grand jury investigation which may result in a reopening of the case.[10] In the extradition proceedings of *In re Lo Dolce,* Italy vainly attempted to obtain the extradition of Lo Dolce so as effectively to carry out on the person of the accused any possible conviction which might result (and did) from the prosecution of him in the courts of that country for the murder of his commanding officer while both were operating with a United States Army mission in 1944 behind the German lines in northern Italy.

The facts of the case revealed a gruesome and almost unbelievable story. During World War II, Major William V. Holohan, com-

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[6]The scope or sufficiency of the evidence is involved, not the admissibility or nature of the evidence; and such scope apparently will be met if there is "reasonable ground to suppose him [the accused] guilty as to make it proper that he should be tried...." Glucksman v. Henkel, 221 U. S. 508, 512, 31 S. Ct. 704, 705, 55 L. ed. 830, 833 (1911); Collins v. Loisel, 259 U. S. 309, 42 S. Ct. 469, 66 L. ed. 956 (1921).

[7]United States law on international extradition expressly provides that the person sought can only be arrested or examined after it has been shown that that person committed the crime charged within the jurisdiction of the requesting government. 62 Stat. 822 (1948), 18 U. S. C. A. § 3184 (1951); 4 Hackworth, Digest of International Law (1942) 69-76.

[8]106 F. Supp. 455 (W. D. N. Y. 1952).

[9]Lo Dolce was found guilty and was sentenced to seventeen years imprisonment, which he need never fear serving unless he returns to Italy. N. Y. Times, Nov. 7, 1953, p. 1, col. 5. Another American party to the crime, Aldo Icardi, was given a life sentence; three Italians were acquitted. N. Y. Times, supra. Two Italian lawyers appealed the Icardi and Lo Dolce in absentia convictions without their consent or knowledge. N. Y. Times, Nov. 23, 1954, p. 5, col. 4. The Turin Court of Appeals upheld Icardi's life sentence, and Lo Dolce's seventeen-year sentence was increased five years. N. Y. Times, Nov. 26, 1954, p. 2, col. 7.

[10]A further development in the case is reported in N. Y. Times, Aug. 21, 1955, p. 6E, cols. 1-3: "A Federal grand jury in Washington is investigating one of the most bizarre cloak-and-dagger dramas to come out of World War II.... The grand jury inquiry, now progressing in utmost secrecy, is apparently an effort to find out whether the two Americans can be, or should be, tried again over here...."

An Associated Press report of Aug. 29, 1955, reports that the federal grand jury has indicted Aldo Icardi, Major Holohan's second in command, for perjury in falsely testifying before a House armed services subcommittee investigating the case in March, 1933. Lo Dolce did not testify before the subcommittee. See Richmond Times-Dispatch, Aug. 30, 1955, p. 7, cols. 5-7.

manding officer of a unit of the United States Army called The Chrysler Mission, operated for several months behind enemy lines in Northern Italy. Carl Lo Dolce and Aldo Icardi, a sergeant and lieutenant, respectively, were under the Major's command on this mission. Friction grew up between Major Holohan and Lieutenant Icardi as to how the mission should be conducted. As a result, Icardi and Lo Dolce decided to murder Major Holohan. They procured some potassium cyanide, and on the evening of December 6, 1944, a portion of this deadly poison was placed in the Major's soup. He became ill and retired to his room. Fearful that their murder plans might be thwarted, Lo Dolce and his cohort flipped a coin to determine who should shoot Major Holohan. Lo Dolce lost on the flip; he took a revolver, went to the Major's room and shot him twice through the head. The body was placed in a bag, weighted and thrown into a nearby lake. The recovery from a lake of the victim's body in 1950, coupled with the written confessions of Lo Dolce and others implicated in the crime and various other items of evidence, induced the Italian government to request Lo Dolce's surrender for trial.[11]

The Secretary of State issued a certificate authorizing the apprehension of Lo Dolce and the institution of the extradition proceedings which were then brought by the authorized complainant of Italy, James Battistoni, Consular Agent for the Republic of Italy,[12] before the Federal District Court for the Western District of New York.[13] The

[11]Because both Icardi and Lo Dolce had been honorably discharged before the discovery of the crime, they could not be tried by Army court martial; and because the murder took place in Italy, they could not be tried by an American civilian court. Today both are free men. For a more detailed account of the facts of the crime see In re Lo Dolce, 106 F. Supp. 455 (W. D. N. Y. 1952), and the following editions of the New York Times: N. Y. Times, May 28, 1953, p. 1, col. 7; Aug. 8, 1953, p. 4, col. 3; Oct. 4, 1953, p. 4, col. 1; Oct. 17, 1953, p. 4, col. 8; Oct. 20, 1953, p. 13, col. 6; Oct. 21, 1953, p. 19, col. 1; Oct. 22, 1953, p. 16, col. 1; Oct. 23, 1953, p. 9, col. 1; Oct. 24, 1953, p. 9, col. 2; Oct. 27, 1953, p. 17, col. 2; Oct. 29, 1953, p. 3. col. 4; Oct. 30, 1953, p. 5, col. 5; Oct. 31, 1953, p. 7, col. 7; Nov. 1, 1953, p. 29, col. 5; Nov. 4, 1953, p. 12, Col. 4; Nov. 6, 1953, p. 10, col. 4; Nov. 7, 1953, p. 1, col. 5; Nov. 8, 1953, § IV, p. 2, col. 4; July 26, 1953, p. 15, col. 1.

[12]It does not matter what person makes the complaint under oath so long as that individual has been duly authorized to bring such complaint by the foreign government asking for extradition. President of the United States ex. rel. Caputo v. Kelly, 92 F. (2d) 603 (C. C. A. 2d, 1937). Ex parte Sternaman, 77 Fed. 595 (N. D. N. Y. 1896). In re Herres, 33 Fed. 165 (C. C. D. C. Minn. 1887); In re Kelly, 26 Fed. 852 (C. C. D. C. Minn. 1886).

[13]When brought in a federal court the proceeding is to be initiated before a judge or commissioner of the district court nearest to the place where the accused was found. This generally means that the proceeding will be held in a district court of the United States of the state where the person sought resides. Pettit v Walshe, 194 U. S. 205, 24 S. Ct. 657, 48 L. ed. 938 (1903); In re Mitchell, 171 Fed. 289 (S. D. N. Y. 1909).

court refused to grant the request of Italy, holding that the Peace Treaty of 1947 between the two nations,[14] which reestablished the extradition treaty of 1868,[15] and taken in relation therewith, failed to apply because the requesting government did not have jurisdiction of the accused when the crime was committed. The court in reaching its decision based its holding upon two grounds: (1) the immunity of United States military forces in enemy territory from the laws and tribunals of the occupied hostile country, and (2) the lack of jurisdiction of the Italian government over northern Italy at the time of the alleged crime because of her absence of physical control and authority over the area.

According to the court, notwithstanding the suspension of hostilities with Italy by armistice on September 8, 1943, a state of war continued to exist between the United States and Italy until the signing of the Peace Treaty of 1947.[16] Therefore, Italy was still the enemy of the United States at the time of the commission of the alleged crime. If this conclusion was correct, then the court was on firm footing in adopting as its precedent the case of *Coleman v. Tennessee*,[17] which soundly anchored the obvious principle that American troops were not to be subjected to the judicial jurisdiction of an enemy

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[14]Actually, this was a multilateral treaty of peace between Italy and the Allied Countries, signed in Paris, France, February 10. 1947, which became effective between Italy and the United States on September 15, 1947. 61 Stat. 1245 (1947). The English text of the treaty begins at 61 Stat. 1369 (1947). Throughout the remainder of this Note, whenever this treaty of peace is cited, page numbers 1245 and 1369 will be given together in one citation.

[15]Article 44 of 61 Stat. 1245, 1369 (1947), "expressly provided that the Allied or Associated Power would notify Italy (within six months of September 15, 1947) which of the pre-war bilateral treaties it desired to keep and by note dated February 6, 1948, the Department of State listed the (Extradition) Treaty of 1868 [15 Stat. 629 (1868)] as one which it desired to keep in force." In re Lo Dolce, 106 F. Supp. 455, 458 (W. D. N. Y. 1952). Extradition treaties are retroactive and include offenses that were committed prior to their conclusion or existence unless a specific clause expressly precludes such prior crimes. United States ex rel. Oppenheim v. Hecht, 16 F. (2d) 955 (C. C. A. 2d, 1927); In De Giacomo, 12 Blatch. 391, 21 Int. Rev. Rec. 205, Fed Cas. No. 3747 (C. C. S. D. N. Y. 1874). And the Treaty of Extradition of 1868 was said to have a retroactive effect, In re Lo Dolce, supra; however, it was not made applicable by the Treaty of Peace of 1947 with Italy to the crime in question because that country lacked jurisdiction of the crime when it occurred.

[16]A cessation of hostilities by armistice or other agreement does not end a war. Ludecke v. Watkins, 335 U. S. 160, 68 S. Ct. 1429, 92 L. ed. 1881 (1947); Woods v. Miller Co., 333 U. S. 138, 69 S. Ct. 421, 92 L. ed. 596 (1947); Hamilton v. Kentucky Distilleries and Warehouse Co., 251 U. S. 146, 40 S. Ct. 106, 64 L. ed. 194 (1919); United States v. Anderson, 9 Wall. 56, 19 L. ed. 615 (1869).

[17]97 U. S. 509, 24 L. ed. 1118 (1878).

when within the enemy's country.[18] But counsel for Italy contended before the court that the *Coleman* case should have no authoritative bearing upon the decision of the *Lo Dolce* proceeding because in October, 1943, Italy had declared war on Germany and therefore was not an enemy of, but a co-belligerent with, the United States against Germany when the alleged offense was committed in 1944.[19] Thus, it was argued that Italy's status as an enemy was only of a theoretical nature, whereas the *Coleman* case test for the application of that rule should be "enmity in point of fact."[20] In rejecting the argument, the opinion of the court implied in effect that even if the invaded territory of Italy is here to be regarded as that of a friendly nation, there would be no possible way in which she could apply her own law to United States troops upon Italian territory without endangering the effective operation of the United States army or mission in the area.[21] The court declined to accept the Italian government's contention that the exemption of amicable troops from the laws of the occupied nation should apply only when necessary to the maintenance of discipline and cohesiveness in the army.[22]

However, even had it been held that Italian law could apply to American troops within Italy, Lo Dolce still would not have been subject to extradition under the court's decision. For the Italian government was said to be without jurisdiction over the offense within the extradition treaty terms because "the demanding government was not then, with its armies or otherwise, physically in control of the place of the crime."[23] So saying, without any further development, analysis, or citations of authority, the court dispensed with discussion upon this interpretation of jurisdiction. The Italian government had

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[18]Dow v. Johnson, 100 U. S. 158, 25 L. ed. 632 (1879); Hamilton v. McClaughry, 136 Fed. 445 (D. C. Kan. 1905); Notes (1953) 6 Fla. L. Rev. 254; (1953) 66 Harv. L. Rev. 1136.

[19]Italy declared war on Germany on October 13, 1943. According to the Peace Treaty of 1947, by that declaration Italy also became a co-belligerent of the Allies against Germany. 61 Stat. 1245, 1369 (1947).

[20]For this argument of counsel for the Italian government, see Fink and Schwartz, International Extradition. The Holohan Murder Case (1953) 39 A. B. A. J. 297, 347.

[21]"It is well settled that a foreign army permitted to march through a friendly country, or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place." In re Lo Dolce, 106 F. Supp. 455, 459 (W. D. N. Y. 1952), quoting Coleman v. Tennessee, 97 U. S. 509, 515, 24 L. ed. 1118, 1122 (1878). The rule embodied within this quote was first expounded by Chief Justice Marshall in the case of Schooner Exchange v. M'Fadden, 7 Cranch 116, 2 Curtis 478, 3 L. ed. 287 (1812).

[22]For this contention see Fink and Schwartz, International Extradition: The Holohan Murder Case (1953) 39 A. B. A. J. 297, 347.

[23]In re Lo Dolce, 106 F. Supp. 455, 460 (W. D. N. Y. 1952).

argued that the term "jurisdiction" for the purposes of extradition should be interpreted to mean *sovereignty,* and not tangible *control* over a territory. Under that view, it was reasoned that since the crime was committed upon Italian territory within the *sovereignty* of Italy, it was committed within her jurisdiction and therefore extradition should be granted.[24] Perhaps the case of *United States v. Rice,*[25] which holds that while an enemy force occupies foreign soil it has full sovereign rights over the territory and that the jurisdiction of the invaded country does not act retroactively over the affected area after withdrawal of the invaders, may be authority to support the position making jurisdiction depend on physical control.[26]

The court logically could have agreed with each of the contentions of the Italian government and by so doing provided the means of bringing the alleged offender to trial. In regard to other issues involving laws of the United States, jurisdiction has not been deemed to be synonymous with physical control. In the case of *United States v. Spelar,*[27] the Supreme Court found the jurisdiction of the United States to be equivalent to its sovereignty under the scope of the Federal Tort Claims Act. According to that case, by virtue of a lease agreement with Great Britain, the United States exercised full control and authority over Harman Field, Newfoundland, when and where the claim originated. Yet despite such control, it was held that the leased territory was not within the jurisdiction of the United States in respect to the Federal Tort Claims Act because Harman Field remained within the sovereignty of Great Britain and without that of the United States. Further, the decision of *Central Railroad Company*

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[24]See Fink and Schwarz, International Extradition: The Holohan Murder Case (1953) 39 A. B. A. J. 297, 347, for this argument of the Italian government.

[25]4 Wheat. 246, 4 Curtis 391, 4 L. ed. 562 (1819).

[26]This may be inferred by considering the physical control-in-jurisdiction ground as one of the "rights" which Judge Knight said were ceded by Italy during the war: "It may be true that the Italian government had not lost... its sovereignty over the boundaries which it occupied prior to the war, yet while any of the enemy armies were within such boundaries... certain of its [Italian government's] rights were given up, ceded, severed or abandoned by that sovereign for the time." In re Lo Dolce, 106 F. Supp. 455, 458 (W. D. N. Y. 1952). And since United States v. Rice, 4 Wheat. 246, 4 Curtis 391, 4 L. ed. 562 (1819) was one of the cases used to support this statement in the principal case, there would seem to be merit in reaching that inference and in citing the Rice decision as a possible authority for the proposition that jurisdiction is dependent upon physical dominion. However, if that is a fallacious inference, then it seems that this second ground of the Lo Dolce case must be accepted (if accepted at all) per se as authoritative.

[27]338 U. S. 217, 70 S. Ct. 10, 94 L. ed. 3 (1949).

of New Jersey v. Jersey City[28] could have been adopted as authority by the court to determine the meaning of jurisdiction under the treaty of extradition. Under the rule of that case, when the sovereignty of one state conflicts with the jurisdiction of another over a certain territory, the state with sovereignty prevails. Therefore, by analogy, Italy could have exerted jurisdiction over the alleged crime because its sovereignty was superior to any jurisdiction the Germans *might* have had over northern Italy. (It could be argued that through the Italian partisans, who seemingly exercised dominion over the general area wherein the crime occurred,[29] at the time of its commission the Italian government was in control of this territory, for after Italy's declaration of war against Germany in 1943, these partisans no longer were acting merely as a resistance movement, but for the post-Mussolini government of Italy.)[30] Secondly, *Coleman v. Tennessee*[31] was concerned with a crime committed in Tennessee during the Civil War by a member of the occupying Union troops. Since that state was a member state of the then still-insurgent Confederacy which continued to combat the Union forces, it remained a real enemy until the South's surrender and defeat. In contrast, for all intents and purposes Italy was no longer a foe but an ally of the United States because she had formed a new government, severed completely her Axis ties, and declared war on Germany, who from that moment on alone retained the status of an actual hostile. Therefore, Judge Knight could have held that the *Coleman* case applied only to circumstances where in reality the forces involved were enemies, thus excluding from its application the situation in the *Lo Dolce* proceeding because at the most the position of Italy was only technically that of an enemy.[32]

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[28]209 U. S. 473, 28 S. Ct. 592, 92 L. ed. 896 (1907). And the Department of State has also likened jurisdiction within an extradition treaty with sovereignty. 4 Hackworth, Digest of International Law (1942) 70.

[29]Indication of the partisan's control can be gathered from the previously cited editions of the New York Times, note 10, supra.

[30]Before the overthrow of Mussolini's fascistic government on July 25, 1943 (See N. Y. Times, July 26, 1943, p. 1, cols, 2, 4, 6-8) the partisians battled both German and Italian Fascists. However, after the Bagdolio government under King Victor Emmanuel was established (N. Y. Times, supra) and Italy had declared war on Germany (note 21, supra) the Italian government and the partisans became united in common cause against Germany and the Fascists. And by the Treaty of Peace of 1947 between the Allies and Italy, the Allied Countries considered both Italian government forces and partisan forces as constituents of the army of Italy. 61 Stat 1245, 1246, 1369, 1370 (1947).

[31]97 U. S. 509, 24 L. ed. 1118 (1878).

[32]The language of the court in the Coleman case would imply that it had in mind open hostility. "The fact that war is waged between two countries...."

Lastly, the theory behind the exemption of friendly invading troops from the invaded country's tribunals, according to *Schooner Exchange v. M'Faddon*,[33] is to prevent interference with the foreign army's military operations which are essential to the fulfillment of the purpose of the invasion. But certainly it would never be claimed that murder, especially within the ranks, is necessary to carry out that purpose, nor that murder is part of a soldier's duties. In fact, such a crime would seem to be more detrimental to the achievement of the army's function than any prosecution of the crime by the occupied territory's judiciary could ever be. Thus, to include that act of murder within the coverage of the principle set forth in the case of the *Schooner Exchange* seems to be incongruous because it is outside the scope of the reason for the exemption, and the court could have so interpreted that decision, thereby accepting Italy's proposed restriction upon the limits of the immunization of friendly troops.[34]

Then too, the practice of extradition was developed to eliminate the possibility of a crime going unpunished and to afford expression of the asylum state's regard with respect the administration of justice of the demanding state. For extradition not only shows that the asylum country itself denounces the crime and deems it preferable that the country where the act occurred should prosecute, but it also indicates a diminishing of distrust among the family of nations.[35] Had Judge Knight fully acknowledged these reasons for honoring a request of extradition when considering the arguments presented by Italy, he might more readily been have susceptible to their feasibility, thus granting the extradition of Lo Dolce.

But since Italy was not permitted to extradite Lo Dolce, he is not subject to trial or punishment unless he somehow falls into the hands of the Italian authorities in Italy. The military law of the United States existing at the time terminated the jurisdiction of the United States military authority over a serviceman as of the time of his complete separation from the military.[36] Furthermore, no criminal courts

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Coleman v. Tennessee, 97 U. S. 509, 516, 24 L. ed. 1118, 1122 (1878); and again in the same case at 517 and 1122: "Tennessee was one of the insurgent States... against which war was waged."

[33]7 Cranch 116, 2 Curtis 478, 3 L. ed. 287 (1812).

[34]See note 22, supra.

[35]2 Hyde, International Law (2nd rev. ed. 1947) 1013; Fenwick, International Law (3rd ed. 1948) 330.

[36]"The general rule is that court-martial jurisdiction... ceases on discharge or other separation from... service...." United States Army's Manual for Courts Martial (1928) par. 10, as cited in United States ex rel. Hirshberg v. Malanaphy, 168 F. (2d) 503 (C. C. A. 2nd, 1948); United States ex rel Hirshberg v. Cook, 336

of the United States were or are competent tribunals because this nation's criminal law requires the crime to be perpetrated within its territory.[37]

However, several steps have been taken to avoid any future situation in which no authority can prosecute United States military personnel for offenses committed by them while on foreign soil. Because of the passage of the *Uniform Military Code of Justice*[38] in 1951, a person who now commits one of several designated crimes during his military tenure remains subject to the jurisdiction of the military courts, "at any time without limitation," even though at the time he is charged with the offense he is no longer a member of the Armed Forces.[39] But, by virtue of the same Code, prosecution of crimes of a specified lesser nature are governed by applicable statutes of limitation effective from the moment of the crime's commission.[40] Thus, in situations involving offenses subject to such statutes, it is conceivable that someone may follow in Lo Dolce's footsteps and yet escape punishment for his offense.[41] But the United States has taken further

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U. S. 210, 216, 69 S. Ct. 530, 533, 93 L. ed. 621, 626 (1948); Ex parte Drainer, 65 F. Supp. 410 (N. D. Cal. 1946), aff'd, 158 F. (2d) 981 (C. C. A. 9th, 1947).

[37]United States v. Bowman, 260 U. S. 94, 43 S. Ct. 39, 67 L. ed. 149 (1922); Fenwick, International Law (3rd ed. 1948) 265; Starke, An Introduction to International Law (1947) 128, 129. But see note 10, supra.

[38]64 Stat. 107 (1950), 50 U. S. C. A. §§551-741 (1951).

[39]Article 43 (a) states: "A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation." 64 Stat. 107, 121 (1950), 50 U. S. C. A. §618 (1951).

[40]In article 43 (b), the limitation is three years after the commission of the offenses set out in articles 119 through 132 (§§713-726), and in article 43 (c), the limitation is two years in regard to punishment under article 15 (§571). However, because of article 43 (d), the periods from which the accused is not within territory over which the United States can apprehend him, or is in civil custody, or in the hands of the enemy, shall not be included within the period of limitation prescribed in 43 (b) and (c.) 64 Stat. 107, 121, 122 (1950), 50 U. S. C. A. § 618 (1951).

[41]Assuming the Code was in effect at the time, had the crime of Lo Dolce been any of those enumerated in articles 119 through 132 of the Code rather than that of murder, he would have escaped prosecution because a three-year statute of limitations would have been applicable (see note 40, supra). In April of 1946, the accused rejoined the American forces, In re Lo Dolce, 106 F. Supp. 455, 457 (W. D. N. Y. 1952); therefore, if article 43 (d) (see note 40, supra) operated to keep the statute of limitations from running until he was within the jurisdiction of the authorities of the United States, his rejoining the American forces tolled the statute of limitations. In October of 1946, Lo Dolce was honorably discharged from the service, In re Lo Dolce, supra, at 457. The earliest that any charges could have been brought against Lo Dolce was June 16, 1950, when Holohan's body was recovered from the lake. In re Lo Dolce, supra, at 456. Thus, at least a period of four years would have intervened between the running of the statute and the first possible charges. Therefore, the prosecution of Lo Dolce would have been barred by the statute of limitations.

steps in the revising of its military law. In 1951, this nation became a party to an agreement with the other North Atlantic Treaty powers governing jurisdiction over the troops of one member state stationed within another member state. With regard to the United States, this pact acted to remove a large portion of the cloak of jurisdictional immunity covering the nation's military forces stationed abroad in those friendly states by giving the occupied country not only concurrent jurisdiction over such troops but also the prerogative over this country in the first instance to exercise that right of jurisdiction.[42] However, this pact is limited in application solely to the North Atlantic Treaty nations.[43]

Nevertheless, regardless of the progress made towards precluding a future "Lo Dolce" of the military forces from evading actual punishment at the hands of justice, should a civilian citizen of the United States commit a crime in foreign territory similar in nature to that of northern Italy during the German occupation, he or she would not be amenable to that territory's jurisdiction for extradition purposes.[44] Therefore, to prevent a future result similar to that occasioned by *In re Lo Dolce*[45] regarding members of the military, and to preserve the jurisdiction of a competent tribunal in the posed case involving a civilian, Congress should expressly define the term "jurisdiction" as found in extradition treaties[46] to mean sovereignty, and thereby provide the foreign nation wherein the crime occurred with jurisdiction over the offense.

It is submitted that even in the absence of Congressional action, the United States authorities who must determine whether under an extradition treaty a requesting government has jurisdiction of an alleged offense should accept the correct definition of the term "jurisdiction" within such treaty to be sovereignty, and apply it accordingly.

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[42]Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Force, Cind. No. 8279 (1951), as cited and discussed in Note (1952) 65 Harv. L. Rev. 1072.

[43]The North Atlantic Treaty Organization and its members can be found in 63 Stat. 2241 (1949).

[44]Interpreted as "physical control" over territory, see In re Lo Dolce, 106 F. Supp. 455, 460 (W. D. N. Y. 1952). Nor would a United States court have jurisdiction over a civilian in that situation because this nation's criminal jurisdiction is confined within its own territory. See note 42, supra. As a result, a civilian would be completely free from prosecution or punishment.

[45]106 F. Supp. 455 (W. D. N. Y. 1952).

[46]See note 7, supra.