

AUT DEDERE AUT JUDICARE: A RESPONSE TO IMPUNITY IN INTERNATIONAL CRIMINAL LAW?

Carlo Tiribelli *

ABSTRACT

This Article focuses on the analysis of the concept aut dedere aut judicare (to extradite or to prosecute), which may be seen as a pillar of the fight that international criminal law leads against impunity. The attempt is to demonstrate that this concept, due to its legal background casts a compulsory duty and not just a moral duty towards States.

This Article also analyzes the sometime abused concept of universal jurisdiction in parallel with that of aut dedere aut judicare. In fact, whether aut dedere aut judicare has long roots in the history of international criminal law, yet its aura has been often shadowed by that of universal jurisdiction seen as a more versatile and of general application instrument. The discussion will be focused on the jus cogens or at least customary relevance vested by aut dedere aut judicare.

Emphasis will be put on the fact that it is aut dedere aut judicare that imposes an alternative, yet compulsory choice, in the sense that a State subject to this obligation is bound to adopt one choice: it must extradite if it does not prosecute, and prosecute if it does not extradite. In addition, it will be attempted to demonstrate via the analysis of the international body of laws, via the case-law and via a consistent part of the doctrine that aut dedere aut judicare plays a paramount role to be always exploited.

In sum, this Article will try to depict the universality of the concept of aut dedere aut judicare.

*LL.M (Utrecht University), Attorney-at-law at the Padova & Antwerp Bars