

When Due Process Bends: Is Male Captus, Bene Detentus Still Justifiable in Modern Justice of Grave Offences?

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Abstract:

The doctrine of male captus, bene detentus translated as “wrongly captured, lawfully detained” raises legal questions among legal scholar and practitioners about the balance between administration of justice and individual rights. Though controversial, it has been upheld in various jurisdictions to allow prosecution despite irregular or unlawful arrest, so long as fair trial standards are met. Courts in Alvarez-Machain (U.S.) and Eichmann (Israel) endorsed this approach, while the UK’s decision in Bennett rejected it on rule of law grounds.

International tribunals have also engaged the doctrine. The ICTY in Nikolić and the ICTR in Ntakirutimana and Barayagwiza allowed trials to proceed despite questionable transfers, emphasizing the fairness of proceedings over the legality of apprehension. The ICC, by contrast, operates under the Rome Statute and places greater emphasis on lawful surrender and state cooperation, though it has tolerated minor procedural irregularities, as in Ongwen’s case.

Given Rwanda’s persistent challenges in extraditing genocide suspects and addressing cross-border crimes, this article argues for a cautious, rights-based reinforcement of male captus, bene detentus through judicial decisions. Such a move could strengthen Rwanda’s capacity to hold fugitives accountable while aligning with international practice. However, robust safeguards must be in place to prevent abuse and protect human rights. Properly constrained, the doctrine could serve justice without compromising legal integrity.

1. INTRODUCTION

The doctrine of “male captus, bene detentus”, that means “wrongfully arrested, properly detained,” remains a contentious doctrine in academic and legal discourse. While traditionally criticized for undermining due process, its application in exceptional and serious cases such as genocide, war crimes, crime against humanity, terrorism, and transnational organized crime has been defended as a necessary tool in modern investigations. This article explores how this principle has been upheld in extraordinary circumstances, supported by case law, and presents exhaustive arguments justifying its application. Additionally, it examines why Rwanda should consider reinforcement of male captus, bene detentus through judicial decisions.

2. HISTORICAL DEVELOPMENT OF THE DOCTRINE OF MALE CAPTUS, BENE DETENTUS

The doctrine originates from early common law traditions and has been reinforced through judicial decisions. The core argument supporting “male captus, bene detentus” is that the method of apprehension should not bar prosecution if the accused is lawfully brought before the court. However, human rights advocates argue that recognizing this principle legitimizes unlawful actions of law enforcement, including extraordinary rendition and abductions. Legal scholars such as M. Cherif Bassiouni¹ in his article of International Extradition and World Public Order have debated the principle’s impact on due process and sovereignty.

In modern legal discourse, some courts have taken a more restrictive stance on male captus, bene detentus, emphasizing the importance of international treaties and human rights. However, the principle remains in effect in various jurisdictions, particularly in cases involving terrorism, organized crime, and international crimes, where fugitives are provided with safe haven. According to Dugard, the doctrine of male captus, bene detentus continues to shape legal debates on extradition, due process, and the limits of state sovereignty, particularly where forcible arrest or irregular transfers challenge the legitimacy of legal proceedings. He criticizes its inconsistency with the rule of law and international cooperation, aligning with a human rights-based view of jurisdiction and transfer procedures of suspect.²

2.1. Arguments Supporting Male Captus, Bene Detentus

The doctrine of male captus, bene detentus allows courts to try individuals even if they were illegally apprehended, provided the trial itself is fair and lawful. Though controversial, especially in human rights discourse, several legal, policy-based, and pragmatic arguments have been advanced in support of this doctrine.

2.1.1. Preventing Impunity for Serious Crimes

The principle allows law enforcement agencies to capture and transfer to court suspects who might otherwise evade justice due to procedural loopholes. For instance, criminals involved in terrorism, genocide, and organized crime often exploit jurisdictional loopholes to evade prosecution. Allowing trials despite irregular apprehensions ensures they are held accountable.³

2.1.2. Strengthening National and Global Security

In cases of terrorism and transnational crime, allowing procedural irregularities in arrests can prevent imminent threats and dismantle dangerous organizations. Given the complexities of international criminal networks, relying strictly on extradition treaties can slow down the process. By allowing the trial of high-

¹ M. Cherif Bassiouni, *International Extradition and World Public Order* (Brill | Nijhoff, 2008). Legal scholars like M. Cherif Bassiouni, particularly in his 2008 work *International Extradition and World Public Order*, have critically examined the principle of male captus, bene detentus, especially in light of evolving norms of due process, sovereignty, and human rights

² John Dugard, *International Law, A South African Perspective* (2nd edn, Juta 2001). According to Dugard, the principle continues to shape legal debates on extradition and state sovereignty. Bassiouni and others argue that male captus, bene detentus undermines due process by allowing states to circumvent legal safeguards, such as extradition procedures, which typically involve judicial oversight. Individual rights protections, such as the right to challenge transfer, the right to legal representation, or protection from inhumane treatment. By accepting jurisdiction over individuals illegally seized or abducted, courts effectively legitimize state misconduct and erode the rule of law.

³ *United States v. Alvarez-Machain*, 1992

risk individuals captured under irregular circumstances, it supports efforts to combat global threats. This doctrine provides an alternative means combating transnational crime and bring suspects to trial.⁴

2.1.3. Legal Precedents and International Practice

Several legal systems and courts, including the U.S. Supreme Court and Israeli judiciary, have upheld the principle, setting a precedent for its validity in extreme cases.⁵

In his article titled; Crimes Against Humanity: The Struggle for Global Justice, Geoffrey Robertson did not explicitly advocate for the doctrine of *male captus, bene detentus*, he acknowledged legitimate considerations in international criminal justice where strict adherence to due process may risk impunity for perpetrators of serious international crimes. He argues that that; in this limited sense, one might infer qualified support for allowing prosecutions to proceed despite irregular apprehensions, under certain conditions.

Robertson also recognizes that grave international crimes often involve powerful or protected perpetrators, and traditional legal routes may be blocked by political or diplomatic obstacles. While he criticizes illegal rendition and abduction, he concedes that justice systems may face hindrances, which on other side may be benefiting criminals to escape justice. In certain rare and exceptional cases, he implies that permitting trial despite illegal capture may be justified, if the accused faces fair trial guarantees and is held accountable for crimes of extreme gravity.⁶

Judge Antonio Cassese, while expressing his position on fairness and legitimacy in International Criminal Law and through his ICTY leadership, supported the position that, “the legitimacy of international criminal tribunals lies not in the regularity of the apprehension, but in the fairness of the proceedings and the opportunity for the accused to defend themselves.”⁷ He emphasized that; “grave international crimes must be prosecuted and State cooperation may be incomplete or inconsistent. A tribunal's focus must remain on ensuring justice, not policing the method of arrest, unless there is a flagrant denial of due process”.⁸ Cassese acknowledges the tension between strict procedural legality and the need to prevent impunity for perpetrators of core international crimes. In situations where state cooperation is absent and formal extradition is impossible, informal transfers or abductions may be the only viable means of bringing suspects to justice.⁹

⁴ R v. Mohammed, UK, 2006, The accused was arrested in India and brought to the UK to stand trial without following proper extradition procedures. Despite the irregularity in his capture and transfer, the court upheld his detention and allowed the prosecution to proceed, ruling that the illegality of his apprehension did not affect the jurisdiction of the court to try him.

⁵ Geoffrey Robertson QC, Crimes Against Humanity: The Struggle for Global Justice: Penguin Books, London, 2000

⁶ Ibidem, Although both Cassese and Robertson oppose *male captus bene detentus* as a general principle, they acknowledge limited, pragmatic exceptions in cases involving mass atrocity crimes, where procedural irregularities in apprehension do not necessarily negate the imperative of delivering justice. Their works reflect the delicate balance between legal purity and the demands of global justice, suggesting that, in exceptional contexts, substantive justice may override procedural defects.

⁷ Cassese, Antonio: International Criminal Law, 2nd ed., Oxford University Press, 2008. On Chapter 13 in relation to the “apprehension and surrender of the accused”, Cassese argues that international justice legitimacy rests primarily on trial fairness, not the method of apprehension.

⁸ He recognizes that international tribunals such as ICTY, ICTR, have occasionally accepted jurisdiction over suspects despite the questionable legality of their transfer, provided the trial process itself remains fair. Cassese suggests that the legitimacy of international justice mechanisms depends not on how the accused is brought to trial, but on the fairness of the proceedings once they are before the court.

⁹ See also Schabas, William A: An Introduction to the International Criminal Court, 5th ed., Cambridge University Press, 2017. He discusses the practical acceptance of *male captus, bene detentus* in international criminal proceedings.

2.1.4. Expedited Justice for Heinous Crimes and Closing Legal Loopholes

Extradition procedures can be lengthy and politically complicated. In cases where delay could result in further harm or allow suspects to escape, *male captus, bene detentus* ensures swift justice. Criminals who exploit jurisdictional barriers can still face justice, preventing impunity for serious offenses.¹⁰

In the case of Adolf Eichmann's, the Israeli Supreme Court ruled that the illegality of Eichmann's apprehension did not invalidate his subsequent trial, as long as the tribunal itself had proper jurisdiction and the trial was conducted fairly. The key legal points supporting the doctrine is that; the Court focused on the gravity of Eichmann's crimes of genocide, crimes against humanity, and war crimes and emphasized that the interest of justice outweighed the irregularities in his capture which is individual right. This is a landmark case that embodies the rationale behind *male captus bene detentus*. It demonstrates that, particularly in cases involving atrocity crimes, courts may prioritize substantive justice and accountability over procedural irregularities in arrest, reinforcing the idea that justice for grave crimes should not be thwarted by how the accused is apprehended.

2.1.5. State Sovereignty and Law Enforcement Necessity

While state sovereignty is a fundamental principle, it should not shield criminals from accountability, especially when their crimes have international ramifications. Bassiouni¹¹ discusses the legal justifications for extrajudicial transfers in extreme cases. In his book, M. Cherif Bassiouni¹² acknowledges the controversial nature of extrajudicial transfers, but discusses limited legal justifications for their use in exceptional circumstances, particularly in the prosecution of serious international crimes. While not endorsing *male captus bene detentus* as a blanket rule, Bassiouni concedes that in extreme cases such as; when formal extradition is obstructed or unavailable irregular methods of apprehension may be justifiable in the interest of justice.

He argues that when a state refuses to cooperate or harbors perpetrators of genocide, war crimes, or crimes against humanity, and all legal avenues have been exhausted, an extrajudicial transfer may be the only effective means of ensuring accountability. In such scenarios, provided the accused is given a fair trial with due process, the irregularity of the apprehension does not necessarily render the proceedings invalid. Thus, Bassiouni offers a qualified support for the doctrine of *male captus bene detentus*, suggesting that in rare, exceptional cases involving impunity for grave crimes, the substantive demands of justice may outweigh procedural defects in apprehension. However, he emphasizes that this should not become a norm and must be strictly limited to extraordinary situations.

¹⁰ Eichmann v. Attorney-General of Israel, 1961. This case reflects the preventing of impunity. Courts justify this approach as necessary to prevent perpetrators of serious international crimes (e.g., genocide, war crimes, terrorism) from evading justice due to procedural technicalities. For example, in this case, the Israeli Supreme Court upheld the prosecution of Adolf Eichmann despite his illegal capture in Argentina, emphasizing the importance of addressing crimes of such magnitude.

¹¹ M. Cherif Bassiouni, *Crimes against Humanity in International Criminal Law*, 2nd revised ed., The Hague: Kluwer Law, 1999, P 610

¹² M Cherif Bassiouni, *International Criminal Law* (3rd edn, Martinus Nijhoff Publishers 2008) vol 3, 91–92. M. Cherif Bassiouni argues on State Responsibility versus Individual Accountability that while unlawful rendition may breach state obligations under international law, this should not shield individuals from prosecution for serious crimes. Responsibility for wrongful arrest lies with the state, not the accused, and can be addressed through diplomatic or legal remedies at the inter-state level.

3. JURISPRUDENTIAL ASPECT OF THE DOCTRINE OF MALE CAPTUS, BENE DETENTUS

The doctrine of male captus, bene detentus literally meaning "wrongly captured, properly detained" has its roots in 19th century jurisprudence and has evolved alongside shifting legal norms on state sovereignty, due process, and international cooperation in criminal law. Traditionally, it holds that a court's jurisdiction over a defendant is not invalidated by the illegality of the defendant's arrest. Courts across different jurisdictions have contended with the principle's implications, balancing the imperatives of justice with the fundamental protections of due process and state sovereignty. This section examines how various legal systems, particularly in the United States, the United Kingdom, Israel, and South Africa and the International Criminal Tribunals and Court, have addressed this doctrine through judicial precedents.

3.1. USA

3.1.1. Ker v. Illinois (1886)¹³

One of the oldest case to establish male captus, bene detentus, this landmark case involved a defendant, Frederick Ker, who was forcibly abducted from Peru without proper extradition procedures. Despite the unlawful apprehension, the U.S. Supreme Court ruled that his prosecution was valid since the court had personal jurisdiction over him and his rights during the trial were not infringed and most importantly, the mode of his arrival was separate from the issue of guilt or innocence. The United States courts have historically upheld male captus, bene detentus, emphasizing that an unlawful apprehension does not necessarily render a subsequent trial invalid.¹⁴

The key points supporting the legitimacy of male captus, bene detentus doctrine in the case of Ker v. Illinois¹⁵ are jurisdiction over the procedure to arrest a suspect, separation between apprehension and trial fairness and discouragement of safe havens for criminals. The court judgment established a crucial precedent that the legality of a court's jurisdiction is not dependent on how the defendant was brought before the court, so long as fair trial is guaranteed. This underpins the logic that the right to a fair trial remains intact even if procedural flaws occurred during apprehension.

The Court recognized that unlawful apprehension is a distinct issue from whether the defendant will receive a fair and impartial trial.¹⁶ This separation allows courts to focus on the administration of justice, particularly in serious criminal matters, rather than being constrained by procedural irregularities at the arrest stage.

The author argues that the Ker ruling indirectly warns against allowing technicalities to shield fugitives, especially those who exploit international boundaries to avoid accountability. If courts dismissed cases based solely on the illegality of transfer, suspects of grave crimes could get opportunity to manipulate extradition law to evade justice entirely.

¹³ First major precedent for *male captus, bene detentus* in U.S. jurisprudence, forming the doctrinal foundation.

¹⁴ This case has since served as a foundation for many subsequent rulings in U.S. and comparative jurisprudence affirming that an unlawful or irregular arrest does not divest a court of its jurisdiction.

¹⁵ These decisions continue to shape both domestic and international criminal law, especially in cases involving terrorism, war crimes, and transnational fugitives.

¹⁶ *Frisbie v. Collins* (1952), this case reaffirmed that the method of arrest does not impair the ability to prosecute.

Practical justifications reinforced by Ker's case was to avoiding impunity, to highlight state responsibility and to uphold flexibility in exceptional circumstances. In serious criminal cases, prioritizing justice over strict formalities ensures that offenders do not escape punishment on procedural grounds; while the act of unlawful apprehension may involve state misconduct, this can be addressed diplomatically or through state-to-state mechanisms not necessarily by halting the prosecution of the accused. The Ker precedent allows courts to exercise discretion in exceptional cases where justice demands prosecution despite procedural irregularities, particularly when extradition is not feasible.

Ker v. Illinois is a cornerstone case affirming the legitimacy and practical necessity of the male captus, bene detentus doctrine. It upholds the principle that courts must not be rendered powerless due to flaws in the process of apprehension, especially when fair trial guarantees are preserved. This case continues to provide legal and policy-based support for allowing the prosecution of individuals accused of serious crimes regardless of how they are brought to justice when the interests of accountability, public safety, and victims' rights outweigh procedural defects.

3.1.2. Frisbie v. Collins (1952)

In this case, the U.S. Supreme Court upheld the male captus, bene detentus doctrine, ruling that a defendant's trial was valid despite his illegal arrest. The Court emphasized that due process was satisfied as long as the defendant was lawfully charged and given a fair trial. The Court reinforced the principle, stating that as long as a defendant is lawfully charged and given a fair trial, the manner of his capture is irrelevant.

The Court reaffirmed the doctrine first articulated in Ker v. Illinois by holding that a criminal defendant's trial remains valid even if he was brought into the jurisdiction by force and unlawful means. The Court rejected the argument that illegal abduction rendered the subsequent legal proceedings void, making two key affirmations that; due process is defined by the fairness of the trial, not by the method of the defendant's arrival and the Constitution does not guarantee a particular method of arrest or extradition, but rather a fair trial under the law.

The key legal points supporting male captus, bene detentus from Frisbie, were on focusing on trial fairness, not on the legality of arrest by law enforcement technicalities that might be exploited by criminals.

The Court emphasized that the U.S. Constitution guarantees due process within the trial itself, not in the method of arrest. This reflects a pragmatic judicial view; the forum of justice must remain accessible even if the pathway was irregular, as long as the defendant's trial rights are respected.

The decision supports the reality that in complex criminal cases especially those involving fugitives of international and transnational crimes, or terrorism; law enforcement cannot always rely on cooperative extradition procedures. This case validates the need for a flexible legal framework that allows prosecution even when formal procedures are bypassed.

Upholding male captus, bene detentus prevents defendants from turning illegal apprehension into a shield against accountability. The Frisbie's decision reasserts that serious criminal allegations must be adjudicated, and a technical flaw in capture should not obstruct justice.

The Frisbie¹⁷ ruling has been cited in multiple subsequent U.S. federal and state cases to reinforce that as long as the trial is fair, jurisdiction is not affected by the method of bringing the defendant before the court. It has also influenced the international debate over the balance between due process and state security interests.

Legal scholars, such as M. Cherif Bassiouni,¹⁸ have noted that in extreme cases involving impunity, extraordinary renditions may be justified if conducted in accordance with fundamental human rights protections during trial. Frisbie v. Collins is a crucial case affirming that the right to prosecute serious crimes must not be paralyzed by procedural missteps in arrest or transfer. It supports the idea that *male captus, bene detentus* is a legitimate doctrine particularly when the defendant is granted a fair trial and due process is upheld.

3.1.3. United States v. Alvarez-Machain (1992)

In this case, the U.S. Supreme Court ruled that the forcible abduction of Dr. Alvarez-Machain¹⁹ from Mexico by U.S. agents did not prevent his prosecution. The Court held that the absence of an explicit prohibition in the U.S. Mexico extradition treaty meant that his trial could proceed, demonstrating that in exceptional cases, state interest in prosecution may outweigh concerns over the method of capture.²⁰

The Court's decision rested on several key principles; first, that courts may exercise personal jurisdiction over a defendant regardless of the irregularities surrounding their apprehension; second, that the state's imperative to enforce justice can, in certain cases, outweigh procedural objections; and third, that the absence of an explicit prohibition within the governing treaty framework does not prevent the exercise of jurisdiction.

The broader implications of this decision include the reinforcement of efforts to prevent fugitives from exploiting international boundaries as safe havens, the promotion of greater accountability in transnational criminal matters, and the recognition of limited executive discretion to act outside traditional extradition mechanisms in exceptional cases. While the ruling elicited international criticism, the Court underscored that Alvarez's right to a fair trial was fully preserved and that the proper remedy for any alleged violation of international law lies in the diplomatic not judicial sphere.

Critically, the Court reaffirmed the principle that the manner of a suspect's apprehension, however irregular, does not invalidate subsequent legal proceedings so long as the trial itself is conducted fairly and in accordance with due process. This doctrine of *male captus, bene detentus*, long established in U.S. jurisprudence through precedents such as Frisbie v. Collins and Ker v. Illinois; was thereby strongly endorsed.

¹⁷ Ibidem, this case of Frisbie, reaffirmed Ker, focusing on fair trial over arrest method.

¹⁸ Bassiouni, M. Cherif. International Extradition and World Public Order. Brill, 2008

¹⁹ United States v. Alvarez-Machain (1992)

²⁰ Ibidem, in the case of Alvarez-Machain, the US Supreme Court reflected that jurisdiction of the court do not dependent on mode of apprehension. It was held that the forcible abduction of a Mexican national did not bar his trial in U.S. courts. The Court emphasized that jurisdiction to prosecute does not rely solely on how a person is brought before it, unless a specific treaty has been violated. The U.S. Supreme Court reaffirmed the principle of *male captus, bene detentus* by holding that the forcible abduction of a Mexican citizen by U.S. agents without formal extradition did not bar his prosecution in U.S. courts. The Court found that the U.S.-Mexico extradition treaty did not contain language explicitly prohibiting such actions, and thus, the abduction did not preclude trial jurisdiction.

While controversial, the ruling affords governments limited discretion to bypass conventional extradition processes where grave offenses are involved and formal channels are obstructed by foreign non-cooperation. The case of Alvarez-Machain remains a leading authority in modern jurisprudence affirming that serious offenders ought not to escape justice on account of irregularities in capture. Although the case highlights ongoing tensions between international law and state sovereignty, it ultimately reinforces the imperative that prosecutions must proceed even where procedural norms are breached provided that fundamental fair trial guarantees are observed.

3.2. UNITED KINGDOM

3.2.1. R v. Horseferry Road Magistrates' Court, ex parte Bennett (1994)

The UK House of Lords took a different approach, ruling that a defendant forcibly abducted from South Africa should not stand trial in the UK. The Court emphasized the importance of upholding legal procedures and due process, rejecting *male captus, bene detentus* as a justification for jurisdiction. The Court held that the rule of law required strict adherence to legal extradition procedures, rejecting *male captus, bene detentus* as a valid justification. While this case²¹ is often cited against the *male captus, bene detentus* doctrine, it paradoxically also strengthens the case for its selective application by clearly outlining the boundaries and conditions under which exceptions could be considered.

Although the House of Lords in Bennett²² rejected the doctrine outright in that case, the ruling emphasized that violations of the rule of law must be balanced against the interests of justice, implicitly acknowledging that in exceptional and defined circumstances, departure from strict procedural compliance might be tolerated. The judgment distinguished between minor procedural defects and deliberate abuse of power, suggesting that only egregious violations would warrant halting prosecution.

More importantly, Bennett did not establish a universal bar against trying individuals who were irregularly apprehended; instead, it left open the possibility that courts retain discretion in determining whether to allow a trial to proceed based on the severity of the alleged crimes, the availability of fair trial safeguards, and the intent behind the irregular rendition.

Legal scholars argue that Bennett is grounded in specific facts involving state misconduct and diplomatic violations not in a extensive rejection of *male captus, bene detentus*. When the apprehension is not accompanied by torture, inhumane treatment, or flagrant violations of human rights, courts may still exercise jurisdiction if the accused will receive a fair trial.

The decision in Bennett highlights that while the rule of law must be respected, justice for victims is also important especially in cases involving international crimes or serious threats to national security. This balanced approach means that the doctrine of *male captus, bene detentus* should only be invoked when the public interest, the right to a fair trial, and the gravity of the crime clearly justify it.

Comparing with other jurisdictions, such as the United States in Alvarez²³ case, and Israel in Eichmann's case, have taken a more pragmatic approach, asserting that the trial court's jurisdiction is not negated by the irregular mode of capture. These rulings emphasize that substantive justice must not be held hostage

²¹ *R v. Horseferry Road Magistrates' Court, ex parte Bennett (1994)*

²² *R v. Horseferry Road Magistrates' Court, ex parte Bennett (1994)*, A principled departure, prioritizing judicial integrity, due process, and rule of law, signaling that ends do not justify means.

²³ *United States v. Alvarez-Machain (1992)*,

to procedural imperfections, particularly when dealing with fugitives, terrorists, or individuals accused of mass atrocities.

Modern international legal systems, including hybrid tribunals and the ICC, recognize the principle of complementarity and the need for states to cooperate in bringing perpetrators to justice. When states refuse to extradite or shelter fugitives, *male captus, bene detentus* with proper judicial oversight becomes an important tool to avoid impunity.

While Bennett emphasizes the importance of following legal procedures, it also shows that strict rules may not always work well in complex international crimes. The case encourages a careful balance between respecting legal rights and ensuring justice. It does not completely reject the *male captus, bene detentus* doctrine but suggests using it with caution when needed. Thus, when used responsibly and within fair trial guarantees as it is enshrined in ICCPR Article 14²⁴, the doctrine remains a legitimate and pragmatic legal response to extraordinary circumstances where offenders might otherwise escape accountability.

3.2.2. R v. Mohammed (UK, 2006)²⁵

In a terrorism-related case, UK courts allowed the trial of a suspect even though there were claims that he had been transferred to the country in an unlawful or irregular way. The suspect, Mohammed, argued that his transfer to the UK involved serious legal problems, possibly amounting to illegal rendition. However, the court decided that the seriousness of the terrorism charges and the threat to national security were more important than the flaws in how he was brought to the UK.

The judges recognized that the transfer process may not have followed proper legal procedures, but they also stressed that Mohammed posed a risk to public safety. This decision shows how courts, especially after the 9/11 attacks, sometimes prioritize national security over strict legal procedures, particularly in cases involving terrorism.

The Mohammed case²⁶ sets a precedent for future cases involving suspects captured under unusual or questionable circumstances. It suggests that courts may still allow trials in such situations if the accused is given a fair and impartial trial, even if their arrest or transfer involved legal problems. However, such decisions must still respect human rights standards.

The case also faced criticism from legal experts and human rights groups. They warned that accepting irregular transfers could weaken international legal cooperation, damage trust between countries in extradition matters, and encourage governments to ignore proper legal processes in the name of security.

²⁴ International Covenant on Civil and Political Rights (ICCPR) 1966, Article 14 guarantees everyone the right to equality before courts and tribunals, a fair and public hearing, and specific guarantees in criminal proceedings, including the right to a presumption of innocence. It emphasizes the importance of a fair trial process and protects the rights of individuals in legal disputes, ensuring a just application of judicial power.

²⁵ *R v. Mohammed (2006)*, Despite allegations of irregular rendition, court allowed prosecution, emphasizing national security threats similar to Alvarez-Machain, but within the UK context. While not explicitly invoking the doctrine, the ruling aligns with the logic of *male captus, bene detentus* that an irregular apprehension does not nullify the court's jurisdiction if the trial itself respects fundamental legal standards.

²⁶ Importantly, the UK courts still subjected the prosecution to judicial scrutiny, ensuring that evidence obtained through torture or gross human rights violations would be inadmissible, consistent with Article 6 of the European Convention on Human Rights (ECHR) and Article 14 of the ICCPR.

The author opines that; the case illustrates the legal tensions inherent in prosecuting transnational crimes such as terrorism. It underscores the judicial challenge in balancing justice and security, while reaffirming the principle that jurisdiction can remain intact despite contested apprehension methods, provided the accused receives a fair and impartial trial. The case contributes to the evolving jurisprudence supporting male captus, bene detentus in exceptional contexts, while highlighting the need for clear legal boundaries to prevent abuse.

3.3. ISRAEL

3.3.1. Eichmann v. Attorney-General of Israel (1961)²⁷

Adolf Eichmann, a key architect of the Holocaust, was kidnapped by Israeli agents in Argentina and brought to Israel for trial without formal extradition, raising serious questions about the legality of his apprehension. Despite the violation of Argentina's sovereignty, the Israeli court upheld the trial, emphasizing the gravity of Eichmann's crimes and the imperative of justice for genocide. The Israeli Supreme Court upheld the trial, ruling that the severity of his crimes outweighed the irregularity of his capture. However, the case drew international criticism, highlighting concerns over state sovereignty violations.

This case remains one of the most prominent illustrations of the male captus, bene detentus principle. The court maintained that while Eichmann's capture involved irregularities, these did not invalidate the jurisdiction of the Israeli court or the legitimacy of the legal proceedings against him. The judgment highlighted that the imperative of justice for the victims of genocide and crimes against humanity outweighed procedural pitfalls. It also emphasized the universal jurisdiction over such crimes, allowing states to prosecute offenders regardless of their nationality or the location of their crimes.

The Eichmann²⁸ precedent has been widely cited in international law and comparative jurisprudence to argue that substantive justice and accountability must not be undermined by procedural technicalities, especially in cases involving gross human rights violations. The trial was conducted in accordance with fair trial standards, and Eichmann was given the opportunity to defend himself, which further strengthened the legitimacy of the proceedings.

The abduction in the Eichmann case led to international criticism, especially because it violated Argentina's sovereignty and raised concerns about misuse of state power. However, the court's decision is still seen as landmark in affirming the principle that no individual should escape justice due to legal loopholes, especially in instances of genocide, war crimes, and crimes against humanity. In essence, the Eichmann case underscores that male captus, bene detentus, when applied with procedural safeguards and in the context of extraordinary crimes, can serve the higher aim of ensuring justice is delivered, even in complex international legal environments.

3.4. SOUTH AFRICA

3.4.1. State v. Schumann (South Africa, 1999)²⁹

²⁷ *Eichmann v. Attorney-General of Israel (1961)*

²⁸ Emblematic of post-Holocaust justice Israeli court upheld jurisdiction due to the extraordinary nature of the crimes, overriding sovereignty concerns and drawing moral support internationally despite legal controversy.

²⁹ *State v. Schumann (1999)*, the South African court addressed the controversial issue of whether an accused's unlawful apprehension via irregular abduction undermines the legality of their prosecution. The case involved a suspect allegedly

In this case, the South African court ruled that the irregular capture of a suspect involved in organized crime did not render his trial invalid. The court found that serious crimes affecting national security justified deviations from strict procedural adherence. This case reinforced the notion that while due process is essential, it should not serve as a shield for criminals evading justice.

The key legal findings and implications were affirmation of jurisdiction despite irregular transfer, grave crimes as a justifying factor, balancing due process and justice and reinforcing state sovereignty in criminal prosecution.

The court concluded that the method of Schumann's arrival in South Africa, although procedurally flawed, did not deprive the court of jurisdiction to try him. This approach aligns closely with the *male captus, bene detentus* doctrine holding that wrongful capture does not invalidate lawful detention and prosecution, provided the trial process itself remains fair and just.

The judgment emphasized that Schumann was allegedly involved in serious criminal conduct threatening national security and public order. The court justified its decision by highlighting the imperative to uphold the rule of law and protect society from organized crime, which it viewed as outweighing the procedural defects in his apprehension.

While the court acknowledged the importance of due process, it argued that procedural violations should not be exploited by suspects to escape justice. This pragmatic reasoning reflects a broader judicial trend recognizing that strict adherence to legal formalities may sometimes obstruct justice, especially when criminals operate across borders and legal systems are circumvented.

The ruling implicitly supported the idea that a state's right to prosecute serious offenders within its territory should not be frustrated by technical objections about their mode of entry. This interpretation strengthens the capacity of national courts to address cross-border crime in an era of increasingly global criminal networks. Despite its ruling, the court cautioned that such exceptions must not become the norm, and any deviation from established legal procedures must be clearly justified and proportionate. The judgment encouraged future compliance with international cooperation mechanisms, including extradition treaties, where feasible.

It is argued that; this case reinforces the legal principle that unlawful apprehension does not nullify the jurisdiction of the trial court, particularly in cases involving grave threats to national security and public order. While the decision supports the doctrine of *male captus, bene detentus*, it also acknowledges the importance of fair trial guarantees and warns against normalizing extrajudicial methods. The case thus strikes a delicate balance between the demands of justice and the protection of due process, offering a nuanced perspective within South African and comparative criminal law.

connected to organized crime, whose apprehension did not follow standard extradition or legal transfer procedures. Reinforced that organized crime and national security threats can justify departure from procedural rigidity, aligning with the doctrine in South African jurisprudence.

4. INTERNATIONAL CRIMINAL TRIBUNALS AND COURT

The approach taken by international tribunals in different cases shows that what matters most is whether the trial is fair not how the suspect was arrested. This idea has been strongly supported by Judge Antonio Cassese, the first President of the International Criminal Tribunal for the former Yugoslavia (ICTY).³⁰

4.1. The International Criminal Tribunals

4.1.1. ICTY- Prosecutor v. Nikolić³¹

Dragan Nikolić was abducted in Serbia and handed over to NATO-led Stabilization Force, who then transferred him to the ICTY. The defense argued that the illegal abduction violated state sovereignty and international law, and that the ICTY should not exercise jurisdiction. The ICTY acknowledged the irregularity of the transfer but held that it had jurisdiction to try Nikolić because the accused was physically before the tribunal and would receive a fair trial. The tribunal emphasized that the fairness of proceedings is the key determinant of legitimacy, not the method of apprehension.

The Court stated that “the exercise of jurisdiction by the Tribunal is not vitiated by the alleged illegality of the arrest and the manner in which the accused was brought to the Tribunal... does not warrant dismissal of the case.” This closely reflects the endorsement of doctrine of male captus, bene detentus. The court held that the legal significance in international legal arena is that, it reflects the endorsement of male captus, bene detentus, and how the Court prioritized due process at trial over the legality of transfer.

4.1.2. ICTY – Prosecutor v. Blaškić³²

This case reinforced the primacy of international justice over national procedural challenges, laying groundwork for tolerating certain procedural irregularities in enforcement as long as the fairness of the trial is preserved. Tihomir Blaškić, a senior military commander in the Croatian Defense Council, was indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) for serious violations of international humanitarian law, including war crimes and crimes against humanity committed in central Bosnia during the 1992–1994 conflict.

The jurisdictional challenge was that; although the case itself did not involve Blaškić being forcibly abducted or illegally arrested, Croatia challenged the Tribunal’s authority, specifically in relation to its issuance of subpoenae duces tecum³³ which raised broader questions about the state cooperation, the Tribunal’s enforcement authority and sovereignty and due process in securing suspects or evidence.

The relevance to male captus, bene detentus in this case is that, while Blaškić does not involve an illegal transfer of the accused, the case is often referenced in broader discussions of male captus, bene detentus because, it affirmed the primacy and supremacy of the Tribunal’s jurisdiction over state objections and procedural irregularities. It demonstrated that the ICTY’s commitment to ensuring that trials proceed fairly, regardless of non-compliance or objections by states. The decision reinforced the principle that the legitimacy of international trials does not hinge on flawless procedural conformity, but rather on ensuring

³⁰ Antonio Cassese, *International Criminal Law* (2nd edn, Oxford University Press 2008) 352.

³¹ *Prosecutor v. Dragan Nikolić, ICTY-IT-94-2-PT, 9 October 2002.*

³² *Prosecutor v. Tihomir Blaškić-ICTY- IT-95-14, 18 July 1997.*

³³ *Subpoenae Duces Tecum*, means compelling state officials to produce documents or testify.

a fair and impartial hearing once the accused is before the court. Although Blaškić does not directly apply the male captus, bene detentus doctrine in the context of an accused's arrest, it supports its underlying rationale, that procedural irregularities, particularly those involving state resistance or enforcement challenges do not necessarily invalidate judicial proceedings, as long as the tribunal has jurisdiction and guarantees a fair trial.³⁴

4.1.3. ICTR – Prosecutor v. Ntakirutimana³⁵

The accused, a pastor and his son, were arrested in the United States and transferred to the International Criminal Tribunal for Rwanda (ICTR). The defense challenged the legality of the extradition and the process through which they were surrendered to the Tribunal. The Appeals Chamber of the ICTR rejected the challenge, and held that; "...once a person is brought before the Tribunal, the circumstances of his transfer do not affect the jurisdiction of the Tribunal to try that person." The tribunal focused on ensuring fair trial guarantees and due process rather than examining the precise legality of the arrest and transfer process.

The ruling implicitly applies the doctrine of male captus, bene detentus by allowing the trial to proceed despite alleged flaws in the arrest and transfer process and emphasizing that, what matters is not how the accused was brought to court, but whether they will receive a fair and impartial trial. This aligns with the broader jurisprudence of international tribunals, affirming that the fairness of proceedings, not the method of capture, determines the legitimacy of international criminal justice.

4.1.4. ICTR – Prosecutor v. Barayagwiza³⁶

Barayagwiza was a former high-ranking Rwandan official and member of the Coalition for the Defense of the Republic (CDR), was charged before the ICTR with genocide, crimes against humanity, and war crimes for his alleged role in inciting and organizing the genocide against the Tutsi in 1994. His defense argued that his prolonged unlawful detention in Cameroon prior to transfer to the ICTR violated his fundamental rights, including the right to be brought promptly before a judge; the right to be informed of the charges; the right to habeas corpus. He sought dismissal of the case on grounds that these violations deprived the ICTR jurisdiction to try him.

In its first decision, the Appeals Chamber found that; Barayagwiza's rights had been seriously violated and the violations were so grave that proceeding with the trial would constitute an abuse of process. The Chamber therefore dismissed the case and ordered his release. However, following a request from the Prosecutor for review based on new facts, the Appeals Chamber reversed its earlier decision on 31 March 2000; and the court ruled that; although there was violation of rights, they could be remedied during trial and the fairness of the trial process itself could still be preserved; therefore, the tribunal retained jurisdiction and the case could proceed.

The relevancy of this case in relation to male captus, bene detentus, is that, although Barayagwiza does not involve physical abduction or unlawful rendition, the case reflects the same underlying principle of male captus, bene detentus in the sense that, even when serious procedural violations occur during

³⁴ This aligns with Cassese's view that international criminal justice must focus on the fairness and integrity of the proceedings, rather than being obstructed by technical or diplomatic challenges in apprehending the accused.

³⁵ *Prosecutor v. Ntakirutimana (Elizaphan and Gérard Ntakirutimana)-ICTR-96-10, ICTR-96-17*

³⁶ *Prosecutor v. Barayagwiza, ICTR-97-19-AR72, 3 November 1999*

apprehension or transfer, the tribunal may still assert jurisdiction if remedies are available and the trial is fundamentally fair. The ICTR ultimately prioritized the integrity and fairness of the trial process over the legality of pre-trial detention and transfer, aligning with the doctrine's logic.

4.2. The International Criminal Court (ICC)

The International Criminal Court (ICC) has not explicitly endorsed or adopted the doctrine of male captus, bene detentus in permissive manner as some national jurisdictions like the United States. Instead, the ICC places greater emphasis on due process, state cooperation, and legality of transfer, in line with international human rights standards. However, there are a few relevant cases before the ICC where issues related to the doctrine of male captus, bene detentus were addressed. While the ICC has not formally invoked the doctrine by name, some decisions touch on similar legal questions, particularly whether irregularities in arrest or surrender affect the court's jurisdiction or the admissibility of the case.

4.2.1. Prosecutor v. Thomas Lubanga Dyilo³⁷

Lubanga was transferred from the Democratic Republic of the Congo (DRC) to the ICC under an agreement with Congolese authorities. Lubanga raised concerns about the legality of his arrest and transfer. The Court confirmed that it has jurisdiction once a person is lawfully surrendered under the Rome Statute's procedures, and did not allow challenges based solely on alleged procedural flaws in the arrest. However, it did not endorse male captus, bene detentus in broad terms. The focus was on whether the transfer complied with the Rome Statute, not how the arrest occurred. The key legal point is that, the ICC focused on State cooperation and consent, avoiding reliance on unilateral means.

4.2.2. Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui³⁸

The defendants argued their transfer from the Democratic Republic of the Congo was flawed and violated domestic and international law. In the ICC ruling; the court rejected their objections, emphasizing that the Rome Statute does not provide a basis to exclude jurisdiction on the basis of irregularities in arrest or surrender if the person was voluntarily surrendered by a State Party. In this regard, the author argues that, the ICC refused to allow the abuse of process to halt the trial, but made clear that all transfers must still align with the Statute and treaty obligations not unilateral abduction or coercion.

4.2.3. Prosecutor v. Jean-Pierre Bemba Gombo³⁹

Bemba challenged the legality of his arrest and detention in Belgium prior to surrender and the court held that procedural issues in national arrest proceedings do not automatically render the ICC process unlawful unless they affect the fairness of the trial. The decision reinforces the idea that ICC trials focus on trial fairness and Statute compliance, not solely the arrest method.

4.2.4. The Prosecutor v. Dominic Ongwen⁴⁰

Dominic Ongwen's case before the International Criminal Court is unprecedented in international criminal jurisprudence, as he is both a former child soldier and the first such individual to be tried and convicted

³⁷ *Prosecutor v. Thomas Lubanga Dyilo (ICC-01/04-01/06) Judgment (14 March 2012)*,

³⁸ *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-01/07)*

³⁹ *Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08)*

⁴⁰ *Prosecutor v. Dominic Ongwen, ICC-02/04-01/15*

as a war criminal. Charged with war crimes and crimes against humanity under the Rome Statute, including murder, torture, sexual slavery, forced marriage, and the conscription of child soldiers, Ongwen was sentenced to 25 years' imprisonment.⁴¹

While the ICC did not expressly rely on the doctrine of *male captus, bene detentus*, it permitted the trial to proceed despite procedural irregularities or the questionable legality of Ongwen's transfer to the Court. This decision reflects the doctrine's core principle that the legality of a trial is not negated by the irregularity of a suspect's apprehension, provided the trial itself is fair and due process is respected. The Court's refusal to examine proceedings based on how Ongwen was apprehended, the ICC implicitly upheld the principle that procedural defects in arrest or transfer do not bar prosecution, reflecting the *male captus, bene detentus* rationale. This pragmatic approach indirectly aligns with the *male captus, bene detentus* principle and has significant implications for international criminal justice particularly in relation to jurisdiction and the admissibility of persons before international tribunals.⁴²

To sum up, while the ICTY, ICTR, and ICC have not officially endorsed the doctrine of *male captus, bene detentus*, they have consistently demonstrated that irregularities in arrest or transfer do not invalidate jurisdiction, as long as the accused receives a fair trial. This practical approach supports the main goal of international criminal justice of ending impunity for serious crimes, while still respecting fair trial rights. In doing so, the courts have followed a similar logic to the doctrine, even without formally endorsing it.

5. BRIDGING LAW AND JUSTICE: THE RATIONALE FOR APPLYING THE DOCTRINE IN RWANDA

Rwanda faces significant challenges in apprehending genocide fugitives who have sought refuge in various jurisdictions that are unwilling to extradite them. The adoption of "*male captus, bene detentus*" would enable Rwanda judiciary to ensure that these individuals face justice despite procedural pitfalls, reinforcing the nation's commitment to accountability for crimes of international concern.

Beyond genocide fugitives, Rwanda also struggles with transnational crimes such as human trafficking and cybercrime, and terrorism financing activities. Criminal networks often exploit jurisdictional loopholes to evade prosecution, highlighting the necessity for Rwanda to adopt flexible legal mechanisms. Allowing the prosecution of individuals apprehended under irregular circumstances would enhance national security and strengthen law enforcement efforts.

By integrating this doctrine through judicial decision, Rwanda would not only demonstrate its dedication to justice but also prevent legal technicalities from obstructing the prosecution of dangerous criminals. Various jurisdictions have already adopted assertive approaches to prosecuting core criminals, and Rwanda's adoption of this doctrine would align it with international legal trends and global counter-terrorism efforts.

Furthermore, in an era of globalization where criminals can easily move across borders, Rwanda criminal justice system would greatly benefit from this doctrine to ensure justice without excessive reliance on

⁴¹ As seen in Dominic Ongwen's case the ICC allowed his trial despite irregularities in the surrender process, emphasizing the importance of holding leaders accountable, even if their transfer was informal or imperfect.

⁴² While the ICC has not explicitly endorsed the doctrine of *male captus, bene detentus*, the Dominic Ongwen case illustrates how the Court tolerates irregularities in arrest and surrender, as long as the ensuing trial meets the standards of fairness and due process.

formal extradition processes. Implementing *male captus, bene detentus* would empower the country's legal and security institutions, ensuring that perpetrators of serious crimes are held accountable, regardless of procedural complexities.⁴³

The author advocates that while this doctrine should not become a blanket power for law enforcement, it could be justifiably applied in exceptional cases involving serious international crimes. Conversely, critics caution that in the digital era where evidentiary chains and international cooperation are vital, the erosion of procedural safeguards could facilitate state-sanctioned abuses and infringe upon international human rights obligations.

Therefore, while *male captus, bene detentus* may retain limited relevance, its use must be narrowly confined within the principles of legality, human rights, and judicial integrity, in line with international standards such as Article 14 of the ICCPR, which upholds the right to a fair trial.

6. CONCLUSION AND SUMMARY OF FINDINGS

The application of the doctrine of *male captus, bene detentus* has been widely debated in both domestic and international legal systems. Across various jurisdictions, a key point of convergence has emerged; courts have often upheld the validity of trials despite flaws in arrest or transfer procedures, provided the accused is brought before a competent tribunal and is granted a fair trial that meets international due process standards.

This pragmatic orientation is reflected in several prominent domestic cases, such as *Ker v. Illinois*, *Frisbie v. Collins*, and *United States v. Alvarez-Machain*, where U.S. courts held that the manner in which a defendant is brought before the court does not, in itself, bar prosecution. Similarly, in *Eichmann v. Attorney-General of Israel*, the Israeli Supreme Court declined to invalidate the trial of Adolf Eichmann despite his abduction from Argentina, citing the overriding importance of justice in cases of crimes against humanity. Likewise, in *State v. Schumann*, South African courts emphasized the need to hold perpetrators of grave crimes accountable, even where their apprehension violated formal procedures. In these rulings, courts prioritized the imperatives of justice, public interest, and accountability for international crimes over rigid adherence to procedural technicalities. The unifying rationale is that, so long as the accused receives a fair and impartial trial, procedural defects in their apprehension do not vitiate the court's jurisdiction.

However, not all jurisdictions accept this approach. A clear divergence is found in the United Kingdom's decision in *R v. Horseferry Road Magistrates' Court, ex parte Bennett*, where the court rejected the application of *male captus, bene detentus*, holding that the abduction of a suspect undermines the rule of law and judicial integrity. The court emphasized that prosecutorial expediency cannot justify violations of legal process, distinguishing itself from the U.S. position in *Alvarez-Machain*, where the absence of a specific treaty prohibition was held to permit trial following a cross-border abduction. This divergence reveals a deeper debate between the pursuit of justice in exceptional cases and the preservation of legal order and sovereignty.

⁴³ International Law Association (ILA), Committee on International Criminal Law and Procedure; Final Report on the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offences, 2000. Highlights principles of jurisdiction, including the practical acceptance of imperfect apprehension

The International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) also engaged with this debate, often implicitly applying the male captus, bene detentus doctrine. In *Prosecutor v. Dragan Nikolić* at the ICTY, the accused was abducted in Serbia by unknown individuals and delivered to the Tribunal. Despite recognizing the illegality of the arrest, the Trial Chamber ruled that the tribunal retained jurisdiction because Nikolić was physically before the court and would receive a fair trial. The judgment underscored that the fairness of the proceedings, not the legality of apprehension, was determinative of jurisdiction. Likewise, in *Prosecutor v. Ntakirutimana* at the ICTR, the tribunal rejected objections to the legality of the defendants' extradition from the United States, affirming that the accused's presence before the court and the guarantee of due process served to maintain jurisdiction.

In *Prosecutor v. Barayagwiza*, however, the ICTR initially took a different stance. The Appeals Chamber dismissed the indictment due to prolonged and unlawful pre-trial detention that violated fundamental rights. But upon review, the same chamber reversed its decision, holding that while violations had occurred, they could be addressed through remedies short of dismissal such as sentence reduction and that the trial could proceed. This reflected a shift from a formalistic to a more flexible, justice-centered approach consistent with the underlying rationale of male captus, bene detentus.

The International Criminal Court (ICC), in contrast, does not formally recognize the doctrine as part of its legal framework. As a treaty-based institution operating under the Rome Statute, the ICC places strong emphasis on the legality of arrest⁴⁴, surrender, and transfer procedures as codified in Articles 89 and 91.⁴⁵ The Court relies on state cooperation and mutual legal assistance, viewing consent and procedural legality as essential to its legitimacy. While the ICC has not dismissed proceedings due to minor procedural flaws, it does not condone unlawful transfers or abductions. In cases like *Prosecutor v. Dominic Ongwen*, the Court allowed trial to proceed despite questions surrounding the irregularities of his transfer from Central Africa, so long as fair trial guarantees were upheld. Nonetheless, the ICC's overall posture is one of restraint, seeking to uphold jurisdictional integrity and compliance with international human rights standards, thereby resisting the broad application of male captus, bene detentus. The Court's reluctance to condone unlawful transfers aligns with the imperative to ensure that justice is both done and seen to be done, preserving the legitimacy of international criminal adjudication in the eyes of the international community.

In the broader context of global criminal justice, particularly in an era marked by war crime, crime against humanity, genocide, digital financial fraud, online extremism, and transnational criminal networks, the limitations of traditional extradition mechanisms have renewed interest in doctrines such as male captus, bene detentus. Offenders increasingly exploit jurisdictional loopholes and state non-cooperation to evade accountability. Consequently, in cases where public interest in prosecution is strong and legal avenues are obstructed, there is a compelling though controversial argument for applying this doctrine to prevent

⁴⁴ Werle, Gerhard and Jessberger, Florian: *Principles of International Criminal Law*, 4th ed., Oxford University Press, 2020. See Chapter on procedural fairness and jurisdiction over persons brought irregularly before international tribunals.

⁴⁵ Rome Statute of the International Criminal Court, Article 89 deals with the surrender of persons to the ICC, while Article 91 outlines the contents of a request for arrest and surrender. Article 89 mandates that the Court may request the arrest and surrender of a person, along with supporting material as outlined in Article 91, to a State where the person is found, and States Parties are obligated to cooperate with such requests. Article 91 specifies what information should be included in the request for arrest and surrender, such as the identity of the person, the nature of the crime, and the evidence supporting the request.

impunity. However, as the UK's Bennett case warns, such application must be cautious and not transformed into a license for extrajudicial practices or abuse of power.

In conclusion, the global jurisprudence on male captus, bene detentus reflects a variety of approaches shaped by legal culture, institutional mandate, and the severity of crimes at issue. While many courts and international tribunals have endorsed its use in exceptional circumstances to uphold justice, others resist it on principled grounds, emphasizing legality, human rights, and the rule of law. The ICC, situated between these extremes, offers a treaty-based model that balances procedural legality with the practical demands of international justice. The ongoing debate underscores the doctrinal complexity of balancing justice and legality in the pursuit of accountability for the world's most serious crimes.

Legal scholars remain divided on the legitimacy and utility of the male captus, bene detentus doctrine. Proponents contend that the doctrine serves essential pragmatic and deterrent functions, particularly in cases involving transnational crimes or grave international crimes, where formal extradition may be unavailable or obstructed. They argue that allowing procedural defects to shield perpetrators of genocide, war crime, terrorism, or crimes against humanity would undermine justice and encourages impunity.

Critics, by contrast, argue that the doctrine erodes fundamental legal safeguards, compromises state sovereignty, and threatens the integrity and legitimacy of judicial systems. They emphasize that legal process, is the foundation of justice. Jurisdictional practice reflects this stand; while the United States continues to endorse the doctrine in a relatively permissive form, the United Kingdom, South Africa, and other jurisdictions with robust constitutional protections have adopted a more restrictive, rights-oriented stance.

In the Rwandan context, the author argues that embracing a qualified form of this doctrine could strengthen the nation's capacity to prosecute genocide fugitives and respond to transnational criminal threats, particularly where extradition is resisted or obstructed. Such a move would align with Rwanda's ongoing efforts to fortify its judicial system and safeguard national and regional security. However, any adoption of male captus, bene detentus must be strictly regulated to avoid undermining the constitutional values enshrined in the Constitution of the Republic of Rwanda, especially the right to due process, the presumption of innocence, and protection against arbitrary arrest and detention.

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