

THE U.S.-U.K. EXTRADITION TREATY: NEW WEAPON AGAINST TERRORISM

The Supplementary Extradition Treaty between the U.S. and the United Kingdom was signed by both countries on June 25, 1985. It now requires confirmation by the U.S. Senate. The goal of the Treaty is to enable London and Washington to be more effective in combatting terrorism by increasing the chances that if someone commits a crime in one of the countries and then flees to the other, he will be returned to the first country to stand trial. This supplementary treaty is needed because the current U.S.-U.K. extradition treaty does not cover such wanton acts of violence as hijacking and hostage taking, which had been excluded because they were viewed as politically motivated. Traditionally, the U.S. has refused to extradite those accused of political "crimes." The pending supplementary treaty deals with this by stating specifically that these crimes no longer will be treated as political, thus permitting extradition in those cases.

The new Treaty will allow the U.K. to seek extradition of terrorists of the outlawed Irish Republican Army (IRA). As such, it is a matter of great importance to London. It should also be a matter of urgency to the U.S., for it would be a major weapon against terrorism. It also would be an appropriate way for the U.S. to show its gratitude to the U.K. for being America's only European ally to help and support the U.S. retaliation against Libyan-sponsored terrorism.

The new Treaty contains four substantive articles. Article 1 states that a person should not be exempt from extradition, no matter what his motive, if he commits the following crimes: aircraft hijacking and sabotage, crimes against internationally protected persons including diplomats, hostage taking, murder and manslaughter, malicious assault, kidnapping, and specified offenses involving firearms, explosives, and serious property damage. These are not political acts, states the Treaty.

Article 2 prevents a criminal from avoiding prosecution by fleeing to a country that has a shorter statute of limitations than the country in which the crime occurred. Article 3 extends from 45 to

60 days the period, following the provisional arrest of a fugitive, that a state has to submit evidence in support of its extradition request. Article 4 states that the Treaty applies to any offense committed before or after the Treaty takes effect. This retroactive provision has been standard in U.S. treaties since at least 1874.

Some members of the Senate Foreign Relations Committee, led by Joseph R. Biden, Jr. (D-DE) are attempting to modify the proposed Treaty in a way that seriously would weaken its antiterrorist value. A Biden Amendment would exempt from extradition those accused of crimes against noncivilians including policemen and off-duty soldiers. The reasoning seems to be that attacks against noncivilians are prima facie a political act. Most experts question this logic. If passed, the Biden Amendment would allow terrorists to find sanctuary in the U.S., even if they shot a British policeman.

The political status of Northern Ireland is not at issue with the new Treaty, terrorism is. CIA Director William Casey recently stated that "the terrorist's victims may have no political identity, or they may be political symbols....One defining characteristic of the terrorist is the choice of method: the terrorist chooses violence as the instrument of first resort."

Some critics understandably are concerned that the Treaty will set a precedent, reversing longstanding U.S. policy of refusing to be involved in overseas politically motivated civil strife. Would the U.S., for example, extradite dissidents in the future to Nicaragua or Poland, where the critical absence of any recourse to democratic channels of protest makes armed resistance a last resort? In response to this concern, State Department General Counsel Abraham Sofaer has written to Senators Richard Lugar (R-IN) and Claiborne Pell (D-RI) promising that the U.S. will sign extradition treaties only with "genuine democracies."

The U.S. was wise to negotiate and sign the Treaty. Now nearly a year has passed. It is time for the U.S. and U.K. to add the Treaty to their arsenal against terrorism.

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For further information:

Uri Ra'anani et al., eds., Hydra of Carnage (Lexington, Massachusetts/Toronto: Lexington Books, 1986), p. 6.

Hearings before the Committee on Foreign Relations, U.S. Senate, "U.S.-U.K. Supplemental Extradition Treaty," October 22, 1985.

Abraham D. Sofaer, "The Political Offense Exception and Terrorism," U.S. Department of State, Current Policy No. 762, November 1985.