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Department of Justice

STATEMENT

OF

STEPHEN S. TROTT
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

THE 1985 SUPPLEMENTARY TREATY TO THE 1972
UNITED STATES-UNITED KINGDOM EXTRADITION TREATY

ON

NOVEMBER 5, 1985

Mr. Chairman and Members of the Committee, the Department of Justice is grateful for having been given the opportunity to participate in today's hearings on the Supplementary Extradition Treaty between the United States and the United Kingdom. It might be useful at the outset to address some of the concerns regarding the Supplementary Treaty that have been raised since Senate hearings on its ratification began three months ago.

First of all, the Supplementary Treaty does not abolish the political offense exception. Rather, within the confines of extradition relations between the United States and the United Kingdom, it would remove from the purview of the political offense exception certain crimes that are terroristic in nature.

The extradition treaty currently in force between the United States and the United Kingdom bars the extradition of persons whose crimes are deemed to be political offenses. While that term has defied comprehensive definition, "American courts have uniformly construed 'political offenses' to mean those that are incidental to severe distrubances such as war, revolution, and rebellion." Sindona v. Grant, 619 F. 2d 167, 173 (2d Cir. 1980). This definition comes from a test first adopted by the British courts in Re Castioni, [1891] Q.B. 149 and has been the litmus test in United States extradition jurisprudence since 1894. In Re Ezeta, 62 F. 972, 977-1002 (N.D. Cal. 1894). See also, Ziyad Abu Eain v. Wilkes, 641 F. 2d 504 (7th Cir. 1981); Gaspar Escobedo v. Forscht, 623 F. 2d 1098 (5th Cir. 1980);

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The Supplementary Treaty would reduce any further aberrations in American jurisprudence regarding the political offense exception. It would also prevent terrorists who committed heinous crimes against the citizens and laws of the United States or the United Kingdom from finding a safe haven in either country. Thus, for example, if the murderers of Lord Mountbatten and the two youths who were blown up with him were ever to travel to or through the United States, the government of the United Kingdom could request their extradition and know that the fugitives could not avoid extradition merely by claiming that their offenses were political in character.

It should be noted that to be successful in such a request, the British would still be required to submit formal documents in support thereof and a United States magistrate or judge sitting as an extradition magistrate, would still be required to find the following: (1) that an extradition treaty is in force and effect between the United States and the United Kingdom; (2) that the offenses for which extradition is sought come within its purview and are criminal in both countries; (3) probable cause to believe that the crimes were committed by the persons sought; and (4) that the persons sought were the persons appearing before the court.

If a court should find the evidence submitted on behalf of the United Kingdom insufficient on any of the above points, the extradition request would fail. At present, the only remedy available to the British government in that case would be to refile its request for extradition.

Garcia Guillern v. United States, 450 F. 2d 1189, 1192 (5th Cir. 1971), cert. denied 405 U.S. 989 (1972).

In recent years there have been four cases involving requests by the United Kingdom for the extradition of Provisional Irish Republican Army (PIRA) members charged or convicted of terroristic crimes. In each case the fugitive claimed that the unsettled social situation in Northern Ireland constitutes a "war, revolution, [or] rebellion," and that his offenses therefore, qualify as "political offenses." In what can only be viewed as a departure from established case law concerning political offenses, United States courts have accepted this argument in all four cases. Two of the cases are presently being appealed.

In each of the four cases the courts have concluded that there is a "war, revolution, [or] rebellion" in progress in Northern Ireland and that any PIRA member who commits crimes of violence in the United Kingdom must be acting in furtherance of that "war, revolution, [or] rebellion." This logic is specious. It fails to take into account that much of the turmoil in Northern Ireland is actually fomented by the PIRA and their Loyalist couterparts, and that the vast majority of Northern Ireland's population does not approve of or participate in the wanton violence used by both the left and right wing terrorists in that country. Furthermore, the citizens of Northern Ireland may vote, and otherwise have access to the political system; hardly attributes that one would normally associate with a country experiencing internal "war, revolution, [or] rebellion."

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If a court in our hypothetical, were to find the fugitives extraditable, they could seek review of that decision by filing petitions for writs of habeas corpus. If the petitions were granted, the government could then appeal. If the petitions were denied, the fugitives could appeal and thereafter exhaust their judicial remedies up to and including the Supreme Court of the United States. Even then, if their extraditions were upheld by the Supreme Court, the Secretary of State could still deny extradition if he were to find that the extradition request had been politically motivated.

Thus, several matters should be clear. The Supplementary Treaty will not change the extradition process in the United States from the way it currently operates. Federal courts will continue to exercise the sound discretion conferred upon them by Article III, §2 of the United States Constitution to interpret and apply extradition treaties, which, like federally promulgated laws, are a part of the supreme law of the land. United States Constitution, Article VI, §2.

Though primarily a matter of judicial interpretation, extradition may also be viewed as a political matter to the extent that it involves each branch of the federal government. Article II, §2 of the United States Constitution confers upon the President the authority to enter into treaties, "by and with the [a]dvice and [c]onsent of (two-thirds of) of the Senate." Furthermore, Congress, pursuant to its general law making authority, may enact legislation concerning extradition as it has

done in Title 18, United States Code, Section 3181, et seq. Precisely because extradition is to some degree a political matter, it may have inadvertently escaped the attention of some, that the United States has reached a fork in the road in matters concerning extradition and international terrorism.

We may enter into treaties such as the one under consideration, consistent with the demands we make upon other nations for the mutual extradition of terrorists. Or, we may cry out against terrorism committed against American citizens abroad and turn a deaf ear to the pleas of other nations to return to their justice terrorists who have broken their laws and the laws of nations.

Our decision will not go unnoticed by other nations or by would-be terrorists inside or outside the United States.

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