American Bar Association Section of International Law and Practice Reports to the House of Delegates

I. Report on United States-United Kingdom Extradition Treaty*

RECOMMENDATION
RESOLVED that the American Bar Association:

Urges that the Supplementary Extradition Treaty with the United Kingdom, signed on June 25, 1985, be ratified.

REPORT

1. The purpose of this report is to analyze the provisions of the Supplementary Extradition Treaty with the United Kingdom, signed at Washington on June 25, 1985, in order to determine the position the American Bar Association should take with respect to the exclusion of certain acts from the application of the political offense exception to extradition provided for in the 1972 Extradition Treaty between the United States and the United Kingdom (28 U.S.T. 227; TIAS 8468).

2. A copy of the supplementary treaty and the State Department’s analysis of its provisions are set forth in the message of July 17, 1985, from the President transmitting the treaty to the Senate and recommending its advice and consent to ratification [S. Treaty Doc. No. 8, 99th Cong., 1st Sess. (1985)].

Article I of the supplementary treaty would exclude specified crimes of violence, frequently committed by terrorists, from the scope of the political offense exception to extradition.

Subsections (a) through (d) of Article I would exclude from the exception, aircraft hijacking, aircraft sabotage, crimes against internationally protected persons, including diplomats, and hostage taking.

Subsections (e) through (k) list unlawful homicides (murder and manslaughter); maliciously wounding or inflicting grievous bodily harm, kidnapping; abortion, false imprisonment, unlawful detention including the taking of hostages; causing an explosion likely to endanger life or cause serious damage to property, conspiracy to cause such an explosion, making or possessing of explosives with intent to cause life to be endangered or serious damage to property; possessing of firearms or ammunition with intent to endanger life; use of firearms with intent to resist or prevent arrest; damaging property with intent to endanger life or with a reckless disregard as to whether life would be endangered.

Subsection (l) would exclude any attempt to commit the listed offenses.

3. Broad Association policy in regard to the political offenses exception was expressed in the February 1981 Resolution on International Terrorism, sponsored by the Section of International Law. In relevant part, this resolution included a strong recommendation that the United States continue its effort to develop and support new initiatives to combat international terrorism, including:

... the attainment of an international consensus not to regard crimes of terrorist violence, particularly those stipulated in the conventions referred to in this resolution, to be political offenses or offenses of a political character, within the meaning of bilateral or multilateral extradition arrangements or national laws governing extradition.

More specifically, ABA policy with respect to certain general legislative proposals relevant to the political offense exception to extradition then pending in Congress, was expressed in Report No. 104A approved by the House of Delegates in August 1983. In relevant part the ABA strongly recommended that such legislation:

b. exclude all acts of terrorist violence from the application of the political offense exception, particularly those denounced by multilateral conventions to prevent and punish acts of international terrorism,

c. preclude the application of the political offense exception to offenses which constitute serious breaches of the norms established under international humanitarian law applicable in international and noninternational armed conflicts, without subjecting to extradition combatants for warlike acts which do not transgress those norms.

The ABA has not addressed the applicability of these policies to the situations in particular countries.

4. Ratification of the Supplementary Extradition Treaty is important in the fight against terrorism and will enhance the ability of the United States to secure the extradition of those who use violence against U.S. citizens or interests for political purposes.
In particular, the provisions of subparagraphs (a) through (d) and (1) of Article I, excluding from the exception acts covered by multilateral conventions to deter and punish international terrorist acts, reflect the ABA policy emphasis with respect to those offenses. Again consistent with the thrust of ABA policy on terrorist offenses, subparagraphs (e) through (k) deal with other violent crimes that are felonies in both the United States and the United Kingdom.

Since subparagraphs (e) through (k) do not distinguish between acts of violence when they occur in situations falling short of non-international armed conflict and when they occur in non-international armed conflict, a question might be raised whether in the context of non-international armed conflict, these subparagraphs are fully consistent with the policy enunciated in 1983 in ABA Report 104A with respect to the general legislative proposals then pending. See this Section's Report to the House of Delegates attached as Enclosure 3 to Report 104A.

Traditionally, a distinction has been drawn between armed conflict and disorders falling short of armed conflict in order to prevent making the government's security personnel and property fair game for terrorist attacks in situations falling short of armed conflict. While ABA policy established with respect to legislation has called for such a distinction to be made, governments are reluctant to draft treaties dealing with normal law enforcement relationships in a manner that expressly contemplates such events.

It is the understanding of the ABA Section of International Law and Practice that, in negotiating and concluding this treaty, the United States and British governments do not contemplate either country being involved in a non-international armed conflict, civil war, or insurrection, or governing dependent territories the population of which no longer desire that relationship. In the light of this understanding the Section concludes that ratification of the Treaty is consistent with ABA policy. It is the hope of this Section that this understanding will be included in the Report of the Senate Foreign Relations Committee recommending that the Senate give its advice and consent to ratification.

CONCLUSION

The Supplementary Extradition Treaty should be ratified by the President with the advice and consent of the Senate.

Respectfully submitted,

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Chairman

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