



Handwritten notes: "Prime Minister You should be aware of this." and "CDP 3072" with a signature.

FOREIGN SECRETARY

UK/US EXTRADITION

Following last week's negotiations with United States officials on a draft supplementary extradition treaty, I thought it would be helpful if I let you and other colleagues know the line I suggest we take in relation to the points discussed in Washington.

As you know, the underlying object of the negotiations was to change the existing extradition arrangements so that the US courts could no longer decide that Irish terrorists cannot be extradited on the ground that their offences are political. As your officials will no doubt have told you, the discussions on this point were most successful. The Americans have accepted an extensive list of crimes for which the political offence exception would no longer apply; these include all serious crimes of violence, including terrorist, firearms and explosives offences. The Americans have in fact gone much further than we had anticipated, by not requiring the inclusion of the broader political exception which is contained in section 2 of our Suppression of Terrorism Act 1978. This is a major concession and means that in respect of crimes of violence, consideration of the political dimension would be entirely excluded from extradition proceedings. It is also envisaged that the Supplementary Treaty would apply to fugitive criminals already in the United States. The opportunity is also being taken to make some minor technical improvements to the existing Treaty.

There is, however, one outstanding point of difficulty. The United States wishes to have Article IV of the existing Treaty removed. This Article provides that if the offence for which extradition is requested is punishable by death, extradition may be refused unless the requesting Party gives satisfactory assurances that the death penalty will not be carried out.

It was evident from the discussions in Washington that the United States authorities attach considerable importance to the removal of the Article. The independence of the courts and state governors makes it constitutionally difficult for them to implement any commitment made under

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the Article, since the federal government cannot require a state governor to give an assurance that he would commute any particular capital sentence which the courts might impose. The US authorities are concerned that we might refuse a request for extradition, so allowing the worst criminals to escape prosecution.

While recognising the validity of the US arguments, I believe that it would be very difficult for us to agree to the removal of the Article. Since the death penalty was abolished in this country it has been our practice to negotiate in all new extradition treaties a provision along the lines of Article IV. The recent Green Paper indicates our intention to embody a provision of this kind in any new legislation on extradition. The removal of Article IV would be highly contentious. Critics could point to the possibility of a British subject facing extradition to the United States for a capital crime without our having any right to seek assurances or make representations. There is a risk that the death penalty issue could overshadow the very significant benefits which the Supplementary Treaty could give us.

I am also doubtful whether the deletion of the Article would have the practical advantages which the Americans foresee. In view of the controversy that this change might arouse in the United Kingdom, Secretaries of State might in future refuse to extradite offenders who were liable to the death penalty if there was no commitment at least to convey the representations of the United Kingdom Government to the authorities responsible for imposing the death penalty. I accept that in practice the main advantage of our being able to seek assurances is presentational, since it is always open to the requesting authority either to refuse to give assurances or else to disregard representations made on our behalf. But our experience in the only capital case involving extradition to the United States (that of Kirkwood last year) is a reminder that our ability to obtain assurances from the US authorities helped us to satisfy the European Commission on Human Rights that the complaint of the offender was inadmissible.

I recognise that the US negotiations have given a good deal of ground in agreeing to the main components of the draft Supplementary Treaty. But I am very concerned that the sensitivities surrounding the question of the death penalty could put at risk the passage of the necessary ratifying Orders in Parliament. We would also be hard pressed to convince our



critics that the removal of the Article did not worsen the position of the person whose extradition is sought.

I am not entirely certain whether the US negotiations have taken on board the political difficulties which the removal of Article IV would cause us, and the difficulty we would have in explaining the practical consequences of its removal. I believe that it might be helpful if I were to write to the US Attorney General expressing our gratitude for the very substantial concessions which his officials have made and pointing out the difficulties which the removal of Article IV would cause us. I would not at this stage reject out of hand the removal of Article IV, but would emphasise the Parliamentary and public sensitivity surrounding capital punishment.

I understand that the US side are very anxious to proceed swiftly and that it has been agreed that we should aim to initial a Supplementary Treaty in Washington on or shortly after 2 April. Subject to your agreement and that of our colleagues, I should be content for the Supplementary Treaty to be initialled at the earliest opportunity on the basis agreed in the negotiations, with the exception of the draft article which would remove Article IV of the present Treaty. I would hope that our Embassy in Washington might be able to convey this message to the Americans and indicate that I shall be writing personally to their Attorney General within the next few days explaining our difficulties on Article IV. In the light of the American response we can then consider further how best to pursue this particular point.

I am sending copies of this letter to the Prime Minister, the Lord President, the Secretary of State for Northern Ireland, the Attorney General, and to Sir Robert Armstrong. In view of the proposed timescale it would be most helpful to have colleagues' reactions in the course of Monday.

L. B

29 MARCH 1985