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2 Attorney General,

I am writing to express the gratitude of the British Government at the outcome of the recent discussions which took place in Washington on the proposed supplementary extradition treaty. We greatly appreciate the initiative which the United States government has taken in putting forward proposals for strengthening our bilateral extradition arrangements. We are especially grateful for the way in which the delegations were able to agree upon the main elements of a draft supplementary treaty which would enable the political dimension to be completely removed from extradition proceedings for a wide range of serious criminal offences.

I hope that the draft supplementary treaty can soon be initialled on the basis agreed in the recent discussions: that is with the omission of the original draft Article 2 (broader political safeguard) and 3 (prosecution if extradition refused). We entirely accept the case made by the US delegation for their omission, namely that such restrictions were inappropriate to a treaty which related to the very similar criminal justice system in our two countries and that Article 2 in particular held out the risk of protracted and unmeritorious litigation. I know that some of the proposals made by your delegation (for example, the wish to provide for extradition in the case of all offences which carry a maximum sentence of at least 12 months' imprisonment) could not be accepted because of the limitations imposed by the UK's extradition law. But some at least of these points could be met if our law is reformed in the next few years.

However, as you will know, there was one matter which could not be resolved in the course of the discussions and which, it was accepted, must be referred to Ministers on each side for decision in the light of the relevant political considerations. This concerned the proposal made by the United States delegation that Article IV of the present Treaty, which relates to the death penalty, should be deleted. The United States delegation explained the importance which was attached to this matter. They made clear (and I accept) that it would be most serious if on any occasion the Article led to a failure of justice as a result of a refusal to surrender. They made clear also that the Article could place your Government in an invidious position by reason of the constitutional independence of the courts and the States, which might preclude the Federal Government from giving the sort of assurance that we would be at liberty to seek under the Article. Nor could it be certain that in some future case a State governor might not be willing to give an assurance on whether the death penalty would actually be imposed, thus placing both our Governments in a difficult position.

These are weighty arguments and I have, with my Ministerial colleagues, considered them most carefully. Our view nonetheless is that it would be very difficult for us to agree to the deletion of the Article. Since the death penalty was abolished in the United Kingdom twenty years ago, it has been the practice to negotiate

The Hon Edwin Meese III

in all our new extradition treaties a provision along the lines of Article IV. On the advice of a recent committee of experts, our recent consultative document on the reform of our extradition law stated our intention to embody a provision of this kind in any new legislation on extradition. Of more immediate concern, I and my colleagues consider that, given the sensitivities surrounding the question of capital punishment in the UK, the removal of Article IV would in political terms be highly contentious. I believe that, when we introduce the subordinate legislation needed to ratify the supplementary treaty, we could well face considerable Parliamentary criticism if we were to propose the removal of Article IV. The controversy aroused might well overshadow the real achievements embodied in the rest of the supplementary treaty, and put at risk the passage of the necessary legislation. Critics could point to the possibility of a British subject facing extradition to the United States for a capital crime without the United Kingdom government having any formal right to seek assurances or make representations. It might be argued that, in the absence of any scope for seeking such assurances or for conveying representations, a future Secretary of State might consider himself obliged to refuse to extradite offenders who faced the death penalty.

There is also the need to take account of our international obligation. The United Kingdom is a party to the European Convention on Human Rights. In the recent case involving the extradition of Kirkwood to the United States, it is my impression that our ability to make representations that the death penalty should not be imposed went a long way towards helping to satisfy the European Commission on Human Rights that the complaint of the fugitive was inadmissible.

I therefore very much hope that you will be able to take account of the very real difficulties which the removal of Article IV would cause us. I believe too that in practice the present wording of Article IV provides a broad enough discretion for the matter not to cause any major difficulty in particular cases (as the Kirkwood case again demonstrated).

I and my colleagues all recognise the considerable lengths to which your negotiators have already gone to meet our aims in these negotiations. But I felt it right to let you know of the very limited room I have for manoeuvre on this point, especially in view of the need to secure the specific approval of our Parliament for the supplementary treaty. I hope therefore that it may be possible now to proceed to the initialling of the supplementary treaty on the basis of the agreed text (subject to the resolution of any technical or drafting changes) and with the omission of draft Articles 2, 3 and 4. I believe this would be a really major achievement, of which both our governments can be justifiably proud.

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