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ACHILLE LAURO / US -ITALY EXTRADITION TREATY

1. I called on Mr Mullenberg at the American Embassy on 25 October to discuss extradition aspects of the Abbas case. Mr Mullenberg is an official from the US Department of Justice on temporary posting in Rome dealing almost entirely with extradition matters.

US/Italy Extradition Treaty

2. We began by discussing the subject of extradition in general. Mr Mullenberg regarded the 1983 US/Italy extradition treaty as a very imperfect document. He said that the central problem was the issue of "probability of cause", which represented a fundamental difference between the two legal systems. The wording of Article 10 of the treaty which represented an attempt to blur or overcome this problem did not work in practice. Mr Mullenberg said that it was sufficient in Italy for anyone to approach a magistrate and declare that "x is a member of the Mafia" for x to be arrested at once pending investigation. No judge in the United States however would authorise an arrest on the basis of this evidence; and if they were to do so they would find themselves in breach of the American constitution which explicitly endorses the concept of "probability of cause". No bilateral treaty has the power to abrogate this principle. In practice therefore most Italian requests for provisional arrest or extradition are refused because they do not establish "probability of cause".
3. Another area of extradition in which the treaty has failed to bridge the two systems is trial in absentia. It is very common in Italy for magistrates conducting a trial in which there are a large number of defendants to come across incidental evidence against someone connected with the defendants who lives overseas. It is quite common in Italy, although that person may not have conducted a defence and his links with the defendants may be tenuous, for him to be included in the summing up and sentencing. He may then find if he sets foot in Italy in the future that he is arrested and required to serve his sentence. This practice is unacceptable to the American courts, who would much prefer that Italian magistrates simply tried those defendants present and postponed trial of any persons overseas until they came within their jurisdiction. Italian requests for extradition on the basis of trials carried out in absentia are therefore normally refused.
4. Mr Mullenberg complained that the Italians have sometimes abused the facilities offered by the extradition treaty. Provisional arrest was a good example. It had been intended by the Americans to cover only cases where there was good reason to believe that the person sought might flee before extradition could be carried out. The Italians have developed a habit however of filing requests for the provisional arrest of persons in the United States as soon as any mention is made during a trial in Italy of their connection with any criminal or Mafia circles here. In many cases the person sought has been settled in the United States with regular employment, substantial assets, and with his family, so that there is no reason to suspect that he could leave in a hurry. Such requests are automatically rejected by the Americans.
5. Another area of American practice which the Italians have found

difficult to understand is the appeals system. A good example is the Paziienza case. The Italians applied successfully first for Paziienza's provisional arrest and then for his extradition. They cannot understand therefore why he has not been extradited. The reason is that anybody wealthy or well connected enough to engage a good lawyer for as long as it takes can delay their extradition by successive appeals first to the Court of Appeal then through various other intermediate stages until the case goes to the Supreme Court. Even if the ruling went against Paziienza at every hearing, it would still take more than a year to go through the process. Mr Mullenberg said that there were also areas of vagueness in the wording of the extradition treaty. The wording suggests that a request for provisional arrest under Article 12 must be carried out; but as the examples quoted above show, this does not happen in practice. The text also leaves unclear the question of which legal authorities are competent to take decisions in different cases. A recent example is provided by a drugs case in the United States, where a defendant extradited from Italy was acquitted on ~~the~~ charge for which he was extradited, but during the hearing clear proof came to light of his guilt on a different drugs charge. Under the terms of the treaty he could only be tried on the new charge if a written authorisation was obtained from the "competent legal authorities" in Italy. Mr Mullenberg said that he had sat through numerous meetings at which different officials from the Ministry of Grace and Justice and magistrates had all argued amongst themselves about who was the appropriate person to sign the piece of paper. As far as the Americans were concerned, any of them would have qualified.

6. Mr Mullenberg also spoke at length about the problems of dealing with personalities and the legal bureaucracy in Italy. Dott. Palamara at the Ministry of Grace and Justice insisted that all dealings passed through him. Mr Mullenberg said that he found Palamara conceited, inflexible, and of limited ability. He would much prefer to deal direct with magistrates or with other more able officials in the Ministry of Grace and Justice; but Palamara made this impossible. Mr Mullenberg found Italian paperwork difficult to come to terms with. He said that if he were allowed to contact the magistrate dealing with a case, he could, in discussion with the magistrate, produce a useful 30 or 40 page extradition document which would serve the purposes of the courts in the United States perfectly. Instead the extradition requests are built up through a series of magistrates reports containing all sorts of irrelevant forms and details, which by the time they have then gone through officials at the Ministry reach Mr Mullenberg in the form of documents 500 pages thick. Moreover much of the detail contained in these reports is not only irrelevant but is likely to ~~influence a US judge~~ ~~be counterproductive~~ in a US court. He quoted me an example from the Paziienza case. One sentence read: "on such and such a day "Paziienza travelled to Nice and met Monsieur X, whom we know to be a bad man". Such unsubstantiated value judgements are very common.

Abbas' Case

7. Mr Mullenberg said that the documentation which the American Embassy presented to the Chigi and to the Ministry of Grace and Justice was a formal request for provisional arrest only. Mr Mullenberg said that, in view of the regularity with which the Americans have turned down Italian requests for provisional arrest, an American request at this stage stood little chance of being accepted. He said however that ~~legal~~ legal advice from the Department of Justice counted for little at that time. The determination of the White House, and the American Ambassador, to seek Abbas' detention was based not on any legal considerations but on information available

to them from other sources. Mr Mullenberg said that the request for provisional arrest contained no evidence against Abbas. He assumed that it would have been followed up with a formal request for extradition under Article 10, but he confessed that he could not see what evidence could be produced to sustain the request, since the information which the Americans were working on came from sources which could never be quoted in a court of law. He himself was very sceptical therefore about whether an extradition request could be sustained. I asked about the tape transcripts, which had appeared in the press. Mr Mullenberg commented that it was possible for anyone to read anything they liked into these transcripts. He gave me the impression that the tapes had nothing to do with the extradition paperwork, but had been passed to the Italians separately as a political signal to show them that Abbas' role in the affair might have been more dubious than the Italians seemed to claim. He mentioned also that the prescribed period of 45 days mentioned in the extradition treaty for the preparation of a formal extradition request was almost always inadequate. This was another area in which the text of the treaty had caused problems in practice.

8. Mr Mullenberg told me that he and the Embassy's legal attache (who is an FBI officer) were flown down to Sigonella when the Egyptian Boeing landed there to liaise with local magistrates. He made it clear that his instructions were to persuade local magistrates to detain the plane and those on it for as long as possible. He said that his task was impossible. There were at least six senior magistrates at Sigonella from three different Italian cities. They devoted all their energies to arguing amongst themselves about who was competent to deal with the case, with the result that by the time Mr Mullenberg persuaded them to at least demand that Abbas be questioned as a simple witness, the plane had already left for Rome. Mr Mullenberg also had the task of organising the identity parade at which American passengers from the Achille Lauro who had been flown into Sicily, (including Marilyn Klinghoffer), picked out the four hijackers. He described very vividly the bureaucratic problems which this caused for him.

9. I asked Mr Mullenberg what would now happen to the early American request for the four hijackers to be extradited for trial in the United States. I wondered whether the Americans feared that there might be any risk of the Italians releasing them quietly after a decent interval. Mr Mullenberg said that this was very unlikely, following the publicity which the case had received. He was sure that Italian magistrates would throw the book at the four. Under the terms of the extradition treaty the hijackers could not be tried again in the United States for any offences for which they had already been tried in Italy. Since the range of charges to which they were liable in Italy included those such as murder, for which they could not be tried in the United States, it was highly improbable that there would be any grounds for extradition to the United States. Interestingly, Mr Mullenberg commented that although the publicity which they had received should now ensure that they receive lengthy sentences, the Americans had reason to believe at an early stage during the crisis that the Italians were sending signals to certain interlocutors, which gave the impression that they might be prepared to let them slip away quietly when the fuss had all died down. I am not sure how well founded such reports are, but their very existence goes some way to explain the attitude of Ambassador Rabb during

the crisis.

Sigonella

10. Mr Mullenberg had numerous stories of the behaviour of the military at Sigonella. He said that it would be impossible to exaggerate the tension that existed between the American and Italian forces there. He said that he and other Embassy officials there had no idea who the delta force were when they arrived. Their behaviour however was farcical; and they were straining at the leash for action. They were all wearing camouflage and unmarked uniforms. They could have behaved quite inconspicuously; but a man looking like a garage mechanic dressed in overalls and a uniform with no insignia, who subsequently turned out to be the General commanding the Force, spent his whole time running round the base stopping every American citizen he saw and warning them not to tell reporters back in the United States that they had seen the force or its general at Sigonella! Mr Mullenberg said that all the most senior Italian military commanders in the region had converged on the base, and that it was difficult to know who was who because so many forces were involved. He described the most tense moment as coming when the Egyptian Boeing took off for Ciampino. The Italians had guessed that the Americans would try to follow or intercept the plane and therefore arranged to block both runways with their own aircraft as soon as it took off. By this time the American pilot of the F14 had received instructions to follow the plane and had begun taxiing to take off. On finding both runways blocked, he swiftly turned round and managed to take off on the taxi way in front of the terminal. In doing so, he passed no more than 30 or 40 feet above the head of the Italian General commanding the base, ~~and thus~~ "ruining his hairstyle for some time to come". As this was happening, the base commander who was livid had the airport declared closed and the runway lights turned off.

Mutual Assistance on criminal matters

11. Mr Mullenberg mentioned to me that the US/Italian treaty on mutual assistance on criminal matters had still not come into effect (it was signed in 1982). The reason for this was that the Americans now had strong reservations about the central clause which permitted the forfeiture of assets belonging to a criminal sentenced in the other country. Originally it had seemed a good idea to order the seizure of the house, yacht or cars of criminals in the drug trade arrested and tried in the other country. The subject took on rather a different complexion however with the Sindona case. It was one thing to seize a criminal's house or yacht, but Sindona owned the Franklin bank in New York, and it was unthinkable for the US Government to wind up the Franklin bank to pay Sindona's debts in Italy.

p.s. Mr Mullenberg did not think that the case would have any effect on the future operation of the US/Italy extradition treaty.

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