



Statewatch analysis no 17

The new UK-US Extradition Treaty

- removes or restricts key protections for defendants
- signed and adopted with no parliamentary scrutiny

by Ben Hayes

New UK-US Extradition Treaty

On 31 March, David Blunkett, UK Home Secretary, signed a new Extradition Treaty on behalf of the UK with his United States counterpart, Attorney General Tom Ashcroft, ostensibly bringing the US into line with procedures between European countries. The UK parliament was not consulted at all and the text was not public available until the end of May. The only justification given for the delay was for "administrative reasons", though these did not hold-up scrutiny by the US senate, which began almost immediately.

The UK-US Treaty has three main effects:

- (1) it removes the requirement on the US to provide prima facie evidence when requesting the extradition of people from the UK but maintains the requirement on the UK to satisfy the "probable cause" requirement in the US when seeking the extradition of US nationals;
- (2) it removes or restricts key protections currently open to suspects and defendants;
- (3) it implements the EU-US Treaty on extradition, signed in Washington on 25 June 2003, but far exceeds the provisions in this agreement.

An analysis of the new UK-US Treaty - which will replace the 1972 UK-US Treaty - follows below, together with a number of relevant cases and issues that raise serious concern about the new agreement (and those between the EU and US).

Ben Hayes of *Statewatch* comments:

"Under the new treaty, the allegations of the US government will be enough to secure the extradition of people from the UK. However, if the UK wants to extradite someone from the US, evidence to the standard of a "reasonable" demonstration of guilt will still be required.

No other EU countries would accept this US demand, either politically or constitutionally. Yet the UK government not only acquiesced, but did so taking advantage of arcane legislative powers to see the treaty signed and implemented without any parliamentary debate or scrutiny.

Guantanamo Bay, the failed extradition of Lofti Raissi and US contempt for the International Criminal Court make this decision to remove relevant UK safeguards all the more alarming"

Evidence requirements in the new UK-US extradition treaty

Article 8 of the UK-US Treaty sets out the new extradition procedures between the two countries [1]. As with the old treaty [2], the offences in question must satisfy 'dual criminality' and be punishable in both states by a minimum custodial sentence of one year or more. The crucial 'update' is that under the old treaty (Article IX), the requesting state had to provide evidence:

"sufficient according to the law of the requested Party... to justify the committal for trial"

A reasonable standard and not especially high (essentially the same standard required at the committal stage in domestic criminal proceedings). Under the new treaty (art. 8, para. 2(b)) the state seeking extradition must provide:

"a statement of the facts of the offense(s)" [sic]

The Home Office press release announcing the treaty (to parliament and public alike) stated that a 'detailed statement of the facts of the case' would be required [3]. In the event it hardly matters, "facts" here do not mean evidence but refer instead to allegations. By way of example, the equivalent requirement in the European Arrest Warrant [4] is a:

"Description of the circumstances in which the offence(s) was (were) committed, including the time place and degree of participation in the offence(s) by the requested person"

In practise this may only be a few sentences. Critically, there is an additional requirement on the UK only to provide (art. 8, para. 3(c)):

"for requests to the United States, such information as would provide a reasonable basis to believe that the person sought committed the offense" [sic]

In effect, the evidence requirement on the US has been dropped altogether while the UK must still provide evidence to the standard of a 'reasonable' demonstration of guilt. As Justice note in a recent briefing on the treaty [5], the reasoning behind this lack of reciprocity is:

"that the United States has a constitutional protection which prevents it from extraditing a US citizen purely on the say-so of a foreign government. As the UK does not have such a constitutional protection, the UK is at liberty to forego this important safeguard in the interests of speeding up extraditions to the US"

The attempted extradition of Algerian pilot Lofti Raissi from the UK failed precisely because the US did not provide any evidence to support their 'holding charges' that he trained the 11 September hijackers (see below). Not only would Mr Raissi almost certainly have been extradited under the new treaty, it is also possible that he could be the subject of a new US request requiring no evidence (unlike the EU-US extradition treaty the UK-US agreement will be retrospective (Article 22(1))).

Barriers to extradition

Article 7 of the UK-US treaty covers the death penalty, stating that:

"the executive authority may refuse extradition unless the Requesting State provides an assurance that the death penalty will not be imposed or, if imposed, will not be carried out".

The term 'may refuse' replicates that in the EU-US extradition agreement and fails to meet the member states' obligations under Protocols 6 and 13 to the European Convention on Human Rights or respect the case law of the of the European Court which has upheld an absolute bar to extradition where the death penalty may be imposed [6]. It is hard to see why the treaty could not state unequivocally that the UK will not extradite in death penalty cases. It might even be questioned, in the current political climate, whether 'assurances' to this effect will be respected in practice.

Application of the "speciality rule" is equally ambiguous. This should mean that a person cannot be tried for offences other than those for which they were extradited, unless first given an opportunity to return to the country that extradited them. Although there have been narrow exceptions to this rule in the past, not to say various breaches of it by the US (see below), the new UK-US treaty allows the Home Secretary to waive speciality and consent to "detention, trial or punishment" (rather than simply prosecution) for any offence, not just an extraditable offence (Article 18(1)(c)). As Justice point out [5], this allows for the possibility that the Home Secretary could consent to indefinite detention of a person in Guantanamo Bay for an offence other than which they were initially extradited (see below).

Other existing barriers to extradition have also been weakened in the new agreement. The long established principle that states may derogate from their extradition obligations if they believe the offence committed was of a political character or if the prosecution is seen as political persecution (the "political offences" rule). This protection was unequivocal in the 1972 UK-US treaty but in the new agreement a whole host of offences can no longer qualify as political (Article 4).

Both the "military offences" exception (allowing states to refuse to extradite where no general criminal law offence has been committed) and the "re-extradition rule" (preventing a person being re-extradited to a third state without the prior consent of the extraditing state) are retained. Not surprisingly, the UK has:

"confirmed our understanding that this covers surrender to the international criminal court" [see also below].

"Lapse of time limitations", where states set time limits on how long charges sought by prosecutors can stand, will no longer prevent extradition between the UK and the US (Article 6), though no justification is given for ignoring time limits set by national law just because the offender has left the country.

Finally there is the principle of "ne bis in idem" (or "double jeopardy"): no one shall be liable to be tried or punished again in criminal proceedings for an offence for which they have already been finally acquitted or convicted. Under Article 5 of the new UK-US treaty, this can potentially be ignored in cases where trial took place in a third state. The European Courts have upheld the ne bis in idem principle and any attempt by the UK to ignore final judgments from other EU states would also breach the UK's commitment to mutual recognition.

Parliamentary scrutiny and ratification of the treaty

There was no parliamentary debate or scrutiny of the new treaty. It was drafted by Home Office officials and their US counterparts, signed on behalf of the UK by the Secretary of State and then published two months later.

In the UK the treaty will become law through an arcane process known as "Orders in Council" as international treaties are agreed by the Privy Council (Cabinet Ministers automatically become Privy Counsellors) in the name of the head of state, the Queen. This procedure falls under what is called the "royal prerogative", that is where powers have never been passed over to parliament and Ministers exercise powers on behalf of the Monarch - a thoroughly undemocratic procedure.

The Queen calls a meeting of the Privy Council, usually four or five Cabinet Ministers, at which there is no discussion, simply agreement on matters before it. The decision to agree the new treaty on extradition then becomes an "Order", which as it relates to existing legislation (the 1989 Extradition Act) is subject to the 1946 Statutory Instruments Act. Under this latter Act the proposal will be "laid before" parliament (simply listed in the daily order paper) and if MPs do not demand a vote on the floor of the house it automatically become law. It is almost unknown for MPs to force a debate and vote on such a matter because it means disrupting the planned agenda of the government of the day [7].

Although the UK-US treaty has been signed and will be ratified under the 1989 Extradition Act [8], it will only be implemented when this act is replaced by new extradition legislation currently before parliament. The government's Extradition Bill will implement the EU Framework Decision on a European Arrest Warrant [4], shortening procedures and removing a number of barriers to extradition. The UK-US treaty applies many of these 'streamlined' provisions, though it is highly debatable whether the US should be treated on an equal footing to European states (see below).

The relationship between the various pieces of legislation raise a serious question about the timing of the UK-US agreement. When the current Extradition Bill becomes law, it is likely that future bilateral extradition treaties will no longer be agreed by statutory instrument, but will have to be approved by both the House of Commons and Lords as well [9]. By agreeing the extradition treaty with the US just before the adoption of new domestic extradition legislation, parliamentary scrutiny has been completely avoided and the agreement will be implemented without debate.

Relationship between the UK-US and EU-US extradition treaties

The implications of this highly questionable timing do not stop there. The UK-US extradition treaty also means that the government will also avoid 'normal' parliamentary ratification of the controversial EU-US extradition treaty signed on 6 June 2003. Scrutiny committees in both the Commons and the Lords contributed significantly to pressure from civil society to publish the text of the draft EU-US agreements shortly before their adoption [10]. It is therefore ironic that the extradition treaty may be concluded by the UK without any further meaningful parliamentary scrutiny whatsoever. As the UK government's declaration on the treaty said:

"The United Kingdom welcomes the Agreements between the European Union and the United States of America on mutual legal assistance in criminal matters and extradition. Much of the legislation necessary to implement the agreements in the United Kingdom is already in force and, where it is not, Parliament's consideration of the draft legislation is, for the most part, at an advanced stage. The United Kingdom aims to complete its domestic requirements in the near future and looks forward to applying the Agreements at the earliest opportunity thereafter"

The UK-US extradition treaty also goes further than the provisions in the EU-US agreement in a number of areas. Most notably, the other EU states could not agree to the abolition of the evidence requirement for the US side while it refused to drop the 'probable cause' requirement and this issue was omitted from the agreed EU-US treaty. So as the UK government welcomed the EU agreement, all the other (public) member state declarations reserved the right to consider the constitutional implications of the agreement before the agreement is concluded [11].

Conclusion

There are a number of questions that need to be asked about this treaty. The lack of reciprocity over evidence requirements and the manner in which the agreement was signed and will be implemented are obvious concerns. The removal of other safeguards and ambiguity over speciality, the death penalty, political offences and ne bis in idem are also important. This has all been done in the name of 'efficiency':

"This new treaty will mean much closer co-operation and cut out much of the paperwork which has led to unnecessary delays in the current system and allowed criminals to exploit loopholes and deliberately thwart justice." - David Blunkett, 31 March 2001.

While it is true that there will be much less paperwork and faster procedures, it is an old adage that lengthy extradition proceedings are often both inevitable and necessary in the interest of justice. The reduction of standards is all the more alarming in the context of widespread about US failure to respect international law. Various examples put the new treaty in context.

Judicial cooperation with the United States: ten areas of concern

A number of cases and international human rights issues raise serious concern about the new UK-US extradition agreement and the recent EU-US treaties on extradition and mutual legal assistance.

1. The US regularly breaches international law

The US government justifies breaches of international law since 11 September on the basis of the 'war on terrorism'. This does not hide the fact that US violations were increasingly evident before this time, not least where extradition procedures and UK court procedures are concerned:

"There is a growing body of case law and evidence that the United States of America is breaching the procedures of the extradition treaties under which it seeks the return of suspects to face trial. It does so at the cost of the rights of individuals concerned, the principles of 'comity and reciprocity' upon which extradition procedures are founded, and the British tax payer" (Linda Woolley, extradition specialist and partner in criminal department, Kingsley Napley, June 2001). [12]

The Home Office would probably argue that the 'streamlined' UK-US extradition treaty will lead to a reduction in breaches of law and procedure, though this is only possible by weakening or removing the

minimum standards for the treatment of suspects and defendants that have been breached in the first place.

The new treaty brings extradition procedures with the US into line with extradition procedures to European countries, necessary we are told because the US is our "biggest single extradition partner" (this again is somewhat disingenuous: as the Home Office website states: "the majority of extraditions from the United Kingdom take place under the European Convention on Extradition").

There are several reasons why the US should not be considered an 'equal' to Council of Europe states for judicial cooperation in criminal matters. Primarily, the US is not a signatory to any of the international human rights conventions applicable to judicial cooperation between European states. So while there are concerns about judicial standards in certain Council of Europe countries (not to mention several EU countries) at least all are party to the European Convention on Human Rights and potentially accountable through the European Court of Human Rights.

2. The US is legally and politically unaccountable

The degree of protection provided by the ECHR and Strasbourg Court is not applicable to the US which is not accountable to any international court. It has also shown in the past its disregard for judgments from international tribunals such as the International Court of Justice (ICJ). The 1986 ICJ ruling against the US for the "unlawful use of force" in Nicaragua is the most famous example [13]. More relevant here is the execution of a German national by the State of Arizona in 1999, breaching an ICJ order for provisional measures to suspend the execution pending a judgment in relation to a breach of international obligations. The United States Solicitor-General in that case took the position that "an order of the International Court of Justice indicating provisional measures is not binding and does not furnish a basis for judicial relief" [5].

It follows that any breach of international obligations or human rights which might occur following extradition or mutual legal assistance to the US will not be effectively judicially reviewable. Nor is the US politically accountable to any international organisation (such as the EU or Council of Europe ministerial committees).

3. US contempt for the International Criminal Court

Since 'unsigned' the 1988 Rome Treaty on the International Criminal Court (which entered into force on 1 July 2002), the US has secured an apparently rolling annual immunity for US peacekeepers from the UN Security Council after threatening the withdrawal of all its personnel from UN operations around the globe if it did not get its way. It then began applying massive diplomatic and economic pressure on states that have ratified the ICC statute to grant exemptions to US citizens [14].

This begs the question that if the US is so unwilling to cooperate in the international prosecution of genocide, war crimes and crimes against humanity, why is the UK, and to a lesser extent the EU, so willing to cooperate in its international prosecution of its 'war on terrorism' (as distinct from the war on 'rogue states')? Meanwhile, it is likely that if other ICC signatory states sought to bring a case against Israel (another ICC pariah), the US might even seek to undermine the prosecution by pressuring smaller states not to participate. In this way the US threatened to pull the NATO headquarters out of Brussels if Belgium did not repeal a retrospective law on war crimes and extraterritorial jurisdiction under which charges against Ariel Sharon would have been pursued [15].

4. Guantanamo Bay, military tribunals and breach of the Geneva Conventions

There is increasing concern over the conditions of detention of many non-US nationals being held in legal limbo and the potential use of military tribunals at Camp Delta, Guantanamo Bay. The US is refusing to release British nationals for trial in the UK and the British government apparently unwilling to press the point. As Louise Christian who is acting for three of the families of the British detainees argues: "nothing less than bringing the British citizens back to the UK will suffice. We have the most draconian terrorism laws in Europe. If they cannot be prosecuted and convicted here then clearly they should not be." [16]

The situation in Guantanamo raises doubts as to the compatibility of any reduction in safeguards for

extradition to the US with the UK's obligations under the Human Rights Act and the ECHR. Moreover, discretion in the application of the speciality rule in the new UK-US Treaty (see above and further below): "appears to allow for the possibility of the Secretary of State consenting to indefinite detention in Guantanamo Bay for an offence other than that which a person was extradited for once that person has been returned to the US"

The rule of speciality was one of a number of issues on which agreement could not be reached in the EU-US treaty, leaving open the possibility that in implementing the Treaty other EU countries will also allow for consent to waive speciality.

5. US lack of evidence: Lofti Raissi

The failed attempt by the US to extradite Lofti Raissi from the UK raises doubts about the wisdom of removing the evidence requirement in the new treaty. The Algerian pilot was arrested on 21 September 2001 on 'holding charges' in a request to extradite him to the US that alleged he had trained the 11 September hijackers. At his first appearance in Bow Street Magistrates Court, US authorities said they had video evidence and telephone evidence connecting him to one of the hijackers and that he would likely face charges of conspiracy to murder and, potentially, the death penalty.

Over a series of court appearances, the FBI's 'evidence' diminished. The video evidence, for example, turned out to be a webcam shot of Lofti not with a hijacker, but his cousin. Finally, on 12 February 2002, after spending almost five months locked up for more than 23 hours a day in Belmarsh high-security prison, Mr Raissi was freed on conditional bail on the grounds that the US did not have enough evidence to bring a prosecution [17].

As suggested above, not only would Mr Raissi almost certainly have been extradited under the new treaty, it is possible that he could now be the subject of a new US request requiring no evidence (under Article 22(1) the Treaty covers offences committed before its entry into force). The US also wants Raissi on lesser charges of lying on his application for a pilot's licence (failing to declare knee surgery for an old tennis injury and a conviction for theft when he was 17).

The US is also seeking the extradition of a Mr Makhoulis from the UK on the sole basis of testimony from Ahmed Ressay, who was sentenced in 2001 to 140 years for terrorist offences that included causing an explosion at Los Angeles airport. Ressay did not mention Makhoulis' name until well after his own conviction and only then as part of a 'deal' with the US authorities to see him freed. The courts have approved the extradition and representations now being made to the Home Secretary who will give the order to proceed with the extradition or halt proceedings.

6. US non-disclosure of evidence: the Kashamu case

In the case of Kashamu, the Divisional Court quashed the committal order "by reason of the unfairness of the proceedings resulting from the non-disclosure of crucial evidence" by the US government - a witness in the US prosecution case had in fact identified someone other than the defendant. It then tried to supply a different identifying witness. The UK court cited correspondence between US prosecuting authorities which showed that non-disclosure was a conscious decision made on the basis that "the extradition treaty.. did not require that such disclosures be made". The Court declined to categorise the conduct as "anything other than the error of judgment that it is conceded to be".

7. US breaches of speciality in extradition cases

The speciality rule means that a person cannot be tried for offences other than those for which they were extradited (unless first given an opportunity to return to the territory that extradited them). In an article on breaches of extradition procedures and UK court procedures, extradition specialist Linda Woolley cites a number of examples where the US has flouted the speciality rule. The most interesting of these is the case of Robert Gross, which highlights not only breaches of procedural guarantees, but the contempt in which the US holds those who exercise and successfully assert their rights to protection under UK law [12].

In 1998 the US Department of Justice sought the extradition of Dr Robert Gross from the UK for false accounting, obtaining a passport by deception, bribery and contempt of court. The international warrant

on which Gross was arrested valued the fraud at US \$2 million. In fact the Bow Street magistrate committed Dr Gross only on six charges of false accounting (with a value of US \$3,450) and one of obtaining a passport by deception. Despite this, correspondence from the US authorities continued to state that Gross would be tried on the basis of the wider alleged fraud, bribery and contempt of court. Gross's lawyers made detailed representations to the UK Home Office that if extradited Gross would not be treated in accordance with the speciality provisions of the treaty.

Suddenly, in May 2000, the US authorities withdrew their extradition request. This apparently welcome news evaporated when the US Justice department wrote to Dr Gross suggesting that the decision to withdraw the extradition request had been a deliberate tactical step designed to put maximum pressure on him to return - leaving him without the protections of extradition such as trial guarantees upon which he should have been entitled to rely. He was effectively left in exile. The letter also suggested that Dr Gross should be punished for defending the extradition despite the fact that he had simply pursued his legal rights under UK law, and moreover, that his applications to the court had been successful and the conduct of the US authorities criticised.

The letter from the US also wrongly asserted that there was "no end of the extradition process in sight", whereas representations to the Home Secretary are the final stage in the extradition process. One conclusion to the proceedings would have been for the Home Secretary to order Dr Gross's return only if clear and unambiguous undertakings were given to the US government to protect his position. By acting as it did, the US Department of Justice avoided having to give those undertakings, effectively undermining the whole purpose of the extradition process at great cost to the defendant, the UK prosecuting authorities, the courts and the British taxpayer which had brought, heard and funded the proceedings for nearly four years.

8. Breaches of by the US of mutual legal assistance rules

Linda Woolley argues that a:

"similar position prevails in the field of mutual assistance, where US courts countenance the production and use of unlawfully obtained material and the use of evidence provided for a specific offence in relation to others" [12]

In the case of Zacarias Moussaoui, the alleged 20th hijacker, the FBI had apparently concocted an elaborate plan to use mutual legal assistance provisions to conduct a search of Moussaoui's computer by extraditing temporarily extraditing him to France since a warrant could not be granted in the US.

A month before the 11 September attacks Moussaoui had aroused suspicion when he paid cash to learn how to fly a 747-400 though only trained in a single engine Cessna. He was detained for overstaying his visa by the FBI who were unable to link him to terrorist activity nor, according to the Washington Post, satisfy the probable cause requirement to obtain a warrant to search his laptop [18]. According to the newspaper French intelligence agencies then linked Moussaoui to Chechen rebels, though could still not provide enough evidence for the warrant. To circumvent this requirement, the FBI then apparently planned to deport Moussaoui to Paris, where he could be held for three days as the French authorities sought a way to conduct the search. The attacks on 11 September gave the authorities probable cause and proceedings against Moussaoui are underway.

9. Mistaken identity

"The case of Derek Bond, the British national arrested in South Africa on a US extradition request which turned out to be based on mistaken identity is another demonstration that requests for extradition to the United States cannot necessarily be taken on face value and that procedural safeguards must be maintained in extradition to countries which retain the death penalty and are not judicially accountable for their actions" (Justice [5]; see also the Guardian, 27 February 2003 [19])

10. Beyond the pale? Abduction

Alvarez-Machain was forcibly abducted from Mexico to the US by Drug Enforcement Agents. The Mexican authorities protested and the US supreme Court held that the abduction was "shocking" and in violation of general principles of international law. However, the court also held that the conduct did not

violate the extradition treaty with Mexico or prohibit trial of the accused. In a ruling on a similar case, the UK House of Lords took the opposite view [20].

In this context many were shocked to read in the Guardian newspaper recently of the detention of two London based businessmen, Bisher al-Rawi and Jamil al-Banna in Guantanamo Bay. In November 2002 they were arrested by British police at Gatwick airport. Although freed without charge and allowed to travel to Gambia where they own a peanut oil factory they were rearrested on arrival and detained for a month by local secret police, allegedly at request of the British government, and questioned by the US agents. They were then flown to a CIA interrogation centre at Bagram airbase in Afghanistan, before being transferred to Camp Delta in Cuba where they are held for alleged links to al-Qaida.

Refusing to help the men, the government maintains that it will not press the US authorities over the men's fate because they are not British citizens. Mr al-Rawi is an Iraqi national who has been living here for 19 years and Mr al-Banna is a Jordanian who was granted refugee status in Britain three years ago. If, as the Guardian suggests, the UK ordered their arrest in Gambia and the CIA their subsequent transfer to Cuba, a clear and deliberate breach of their human rights has taken place and the rule of law and extradition ignored [21].

Another relevant case maybe that of Nizar al-Khazraji, the head of Iraq's armed forces from 1987 to 1990, who fled to Jordan in 1995 and four years later applied for political asylum in Denmark. He was denied asylum as immigration authorities thought it likely he was involved in chemical weapon attacks on the Kurds in northern Iraq in the late 1980s. But he was allowed to stay in Denmark under special rules applied to individuals thought to be at serious risk if they return home.

Khazraji had been under investigation by Danish authorities for his alleged crimes since 2001. He had surrendered his passport and had to report to police three times a week in his home town of Soro, south of Copenhagen. On 17 March 2003, Khazraji disappeared having earlier told Reuters he wished to leave Denmark for Iraq and join efforts to topple President Saddam Hussein before a U.S.-led attack on his country. International media reports had also linked Khazraji to the U.S. war build-up in Iraq, saying the former army chief was on a Bush government short-list of suitable persons to succeed Saddam.

On April 2, Danish Justice Minister, Ms. Lene Espersen, wrote to the US ambassador asking for "any information from relevant American authorities on the circumstances under which Khazraji disappeared and his whereabouts since March 17". Espersen noted in her letter that the disappearance had been the subject of intense debate in Danish media and in parliament. She said she was enclosing a selection of newspaper articles offering theories on what had happened to Khazraji. One theory was that, in view of current developments in Iraq, he had escaped with the aim of returning there. "It has also been proposed, however, that he escaped with the assistance of authorities of foreign countries or that he was even abducted by such authorities," Espersen wrote. "In this connection, the Central Intelligence Agency has been mentioned in several articles," she said.

The U.S. embassy replied "If Khazraji has indeed left the country the embassy has no knowledge of how he did so or his whereabouts". The US embassy in Copenhagen may not know, but has failed to answer the question in respect to authorities in the US itself, such as CIA or others. According to Nizar al-Khazraji's son who has now left Denmark and is living in Norway, sources in the Middle East area trusted by the family say his father is in Iraq and is doing political work there (this has not yet been confirmed by other sources).

Footnotes

NB: All sources in **Maroon** are *links* to source documents

[1] Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, 31 March 2003: **2003 UK-US extradition treaty**

- [2] Extradition Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America, 1972: **1972 UK-US extradition treaty**:
- [3] Home Office press release, 31 March 2003
- [4] **EU Framework Decision on European arrest warrant**,
- [5] **Justice briefing** on extradition to the US, Susie Alegre, 3 July 2003
- [6] **Protocol no 13** to the European Convention on Human Rights came into force on 1 July 2003 of, abolishing the death penalty in all circumstances, see *Statewatch News Online*,
- [7] As this particular treaty is both delegated legislation (by statutory instrument) under an existing 1989 Extradition Act and is based on an international treaty it raises yet another arcane procedure known as the "Ponsonby Rules". Arthur Ponsonby, a life-long pacifist and campaigner for open government, was an Under-Secretary of State at the Foreign Office in the Ramsay MacDonald Labour government of 1924. He gave an undertaking, during the 2nd reading of the Treaty of Peace (Turkey) Bill on 1 April 1924, that the House of Commons would be informed of all treaties and agreements and that they would be "laid" before the House for 21 days and it became the constitutional practice. Unlike most other national legislatures where written constitutions gives parliaments the formal power of ratifying treaties and international agreements this power rests with the government in the UK (exercising the royal prerogative on behalf of the monarch).
- [8] **UK Extradition Act 1989**
- [9] In its proposed Extradition bill the government sought to retain the power to enter into bilateral extradition treaties by way of Privy Council Orders (the "negative procedure"). However, this has been strongly opposed by the Home Affairs Committees in both the Commons and the Lords who state that a draft of the order must be approved by both houses (the "positive procedure"). The government looks set to accept this change, see its response in a special report on the **Home Affairs Select Committee's first report** on the Extradition Bill:
- [10] See "**EU Council capitulates and releases draft EU-US agreements**", *Statewatch News Online*,
- [11] Outcome of Proceedings of Justice and Home Affairs Council meeting on: 6 June 2003, "Draft Council Decision concerning the signature of an Agreement between EU - USA on mutual legal assistance and extradition", **10409/03, 13 June 2003**
- [12] "Extradition: a study of the Abuse of by US authorities of Treaty Obligations and UK Court Procedures", Linda Woolley, *Business Crime Newsletter*, June 2001.
- [13] "Rogue states", Noam Chomsky, 2000 (Pluto).
- [14] "Farcical birth of International Criminal Court", *Statewatch bulletin*, vol 12 no 3 (May-Jul 2002)
- [15] "**U.S. sends stern warning to Belgium on war crimes case**", *Statewatch News Online*,
- [16] "Fears over Camp Delta", Letters, *The Guardian*, 17 July 2003.
- [17] "**Two "terrorist" suspects, held for months in prison, freed by the court for lack of evidence**"
- [18] "**Moussaoui Probe Pushed U.S. Limits**", *Washington Post*, 31 January 2002,
- [19] "**I couldn't eat, sleep or read for worry, says Briton after 20-day jail ordeal**", *The Guardian*, 27 February 2003
- [20] In a similar case in the UK trial was prohibited, with Lord Griffiths stating that "the judiciary accepts a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour which threatens either basic human rights or the rule of

law”.

[21] “**The UK businessmen trapped in Guantanamo**”, The Guardian, 11 July 2003,

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