

Death Eligible Extradition and International Relations:

Policies in the Status Quo and
Recommendations for the Future

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Death Penalty - Final Paper

Fall 2013

While capital punishment has had a long steeped history throughout the world, it has, in recent years, become a much more seldom used form of punishment. Over the past decade, a growing number of countries have abolished the death penalty. From 1980 to 1999, the number of abolitionist countries increased from 62 to 105.¹ As international viewpoints and policies in regards to the death penalty have changed over the past century, international relations have been substantially impacted as well.

Extradition agreements and treaties, in particular, have been substantially impacted by the changing death penalty policies of nations around the world. Changing viewpoints in regards to the death penalty have not only caused nations to change their internal policies and laws, but it has, for many countries, necessitated a reevaluation of its extradition policies with the United States, in an attempt to make their extradition treaties more consistent with national viewpoints. Because of this, a number of countries have either renegotiated their extradition treaties with the United States, or changed their internal policies in regards to honoring their agreements made in extradition treaties.²

This paper will seek to provide both an informative resource of international extradition policies with the United States, as well as attempt to analyze the effects such changes in international beliefs and policies have had on international relations in general. Moreover, this paper will seek to analyze the abolitionist trend in relation to extradition agreements and international

¹ Richard C. Dieter, *International Perspectives on the Death Penalty*, <http://www.deathpenaltyinfo.org/international-perspectives-death-penalty-costly-isolation-us> (October 1999).

² See *infra* Appendix 1 and Appendix 2.

relations, and seek to predict the challenges the United States may face in the coming years, should it continue its current policies on the death penalty and extradition agreements.

Section 1: Extradition Treaties

With only a few exceptions, the vast majority of countries, excluding those with no formal extradition treaty with the United States, take one of two standpoints on the death penalty in their extradition agreements with the United States. Of these countries, roughly half make no mention of the death penalty or capital punishment in their extradition treaties, while the other half permit a country to deny extradition for death penalty cases where the individual would not be death-eligible in their own country, unless assurances are made that the death penalty will not be sought or will not be imposed.³

The remaining minority of countries have formed more unique ways of dealing with the death penalty in their extradition agreements. Venezuela, for example, has abolished both the death penalty and imprisonment for life in its Constitution. As a result, Venezuela's extradition agreement with the United States allows either country to refuse extradition for crimes punishable by death or life imprisonment.⁴ Similarly, Belgium and Luxembourg require a country make assurances that the death penalty will not be imposed, but they permit a

³ See *infra* Appendix 1.

⁴ Treaty of Extradition and Additional Article (April 14, 1923), 43 Stat. 1698.

country to refuse extradition even with assurances for humanitarian reasons.⁵ Finally, Bolivia requires that assurances against the use of the death penalty be given regardless of whether the requested country does not use the death penalty for that offense within their own nation.⁶

On the other end of the spectrum, the Bahamas, Thailand and South Korea require assurances that the death penalty will not be imposed only when the individual is facing the death penalty for a non-murder capital offense. For murder, extradition is required regardless of the national policies on the use of capital punishment.⁷

While the effect each of these different types of extradition agreements will be discussed in more depth in the following section, the important thing to note is the drastic difference in approaches countries take, either requiring assurances in nearly all circumstances, or permitting all instances of extradition for death eligible offenses.

Perhaps more important than the text of the agreements themselves, is the overall trend in language in extradition agreements. While there are examples of both early extradition agreements with defendant-favorable death penalty clauses, as well as very recent examples of extradition treaties lacking any death penalty clause, the overall trend has been a steady increase in the

⁵ See Extradition Treaty Between the United States of America and Luxembourg (October 1, 1996), TIAS 12804 and *infra* Appendix 1.

⁶ Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia (June 27, 1995) 1995 U.S.T. LEXIS 221.

⁷ See Treaty Between the United States of America and Korea (June 9, 1998) TIAS 12962 and *infra* Appendices 1 and 2.

percentage of extradition agreements requiring nations to make assurances not to use the death penalty. Only one of the fifteen earliest extradition agreements made any mention of the death penalty. Yet, of the fifteen most recent extradition agreements the United States has entered into, all but six included a provision requiring assurances or a more restrictive provision in regards to the death penalty.⁸ This trend shows a clear correlation between the abolitionist movement and the trend in the textual changes in extradition agreements.

As the death penalty has become abolished in more countries over the past century, extradition agreements have proven to be a hurdle for many countries. In the United States, treaties are negotiated through the executive branch, but must be passed through Senate with a two thirds majority vote.⁹ Because of this, it can be difficult for a country to amend its extradition treaty with the United States. While a number of older extradition treaties have been renegotiated, other countries which were either unable or unwilling to enter into new extradition agreements are still bound by their early treaties, despite any national policies or beliefs against the death penalty. Because of this, some countries have been forced to choose between honoring their extradition agreements with the United States and extraditing individuals in violation of their own internal policies on the death penalty.

Perhaps as a direct result of the difficulties in changing agreements, many of the extradition agreements are out of date. As appendix two of this paper illustrates, a number of extradition agreements have remained unchanged since

⁸ See *infra* Appendices 1 and 2.

⁹ U.S. Const. art. II, § 2.

the 19th century. Egypt, for example, has not had any change in the language of its extradition agreement since 1874.¹⁰ Similarly, Chile's extradition agreement has not been changed since 1900.¹¹ Despite the fact that this agreement has not been changed in over one hundred years, Chile abolished the death penalty for ordinary crimes in 2001, and for all crimes in 2008.¹²

As a result, extradition treaties have proven to be a significant source of tension in international relations. It has also made extradition a frequently disputed issue within countries, who are faced with the decision of whether or not they should extradite an individual.

Section 2: Types of Extradition Policies¹³

As mentioned, there are several different types of extradition policies the approximately 180 countries in the world have taken with the United States. These policies range from permitting all extraditions in death penalty cases to having no established extradition relation with the United States. This section of the paper will analyze and explain each of the different approaches that countries have taken in their extradition agreements with the United States.

¹⁰ Egypt International Extradition Treaty with the United States, (August 11, 1874), 19 Stat. 572.

¹¹ Treaty between the United States and Chile Providing for the Extradition of Criminals, (April 17, 1900) 32 Stat. 1850.

¹² Death Penalty Focus, *International Views on the Death Penalty*, <http://www.deathpenalty.org/article.php?id=81> (Accessed October 13, 2013).

¹³ This section is based upon a survey of extradition agreements, and therefore all information contained in this section is in reference to the treaties discussed *infra* Appendix 1 and Appendix 2. Information about this survey as well as citations to specific extradition agreements can be found in those appendices.

Requiring Assurances

One of the more common and more restrictive approaches is to require assurances prior to extradition. Generally speaking, a country requesting extradition for a death-eligible offense under this type of an extradition agreement would be required to provide some sort of assurances that the death penalty would not be used, or if used would not be enforced. The type of assurances can vary greatly, but often will consist of some sort of written assurances from the executive authority that the death sentence would be commuted if imposed.

While the general procedure of requiring assurances is consistent between countries, the types of cases and circumstances in which they will request assurances varies.

The most restrictive of these is Venezuela's policy which permits refusal of extradition or the request of assurances for all death penalty or life in prison cases. Similarly, Belgium and Luxembourg allow the country to request assurances in all cases, but also permit the country to deny extradition even with assurances for humanitarian reasons.

Contrarily, the majority of countries require extradition after assurances are provided. Furthermore, while in Bolivia these assurances can be requested in all death penalty cases, the remainder of countries only allow assurances to be requested when one of the two countries would not permit the death penalty for that individual. Thus while in abolitionist countries, this would allow them to request assurances in all death penalty cases, nations which permit the death penalty, even if it is not used, would not be permitted to request assurances.

Finally, a small number of countries including the Bahamas, South Korea, and Thailand permit countries to request assurances for non-murder, but require extradition for all capital murder offenses.

One of the major concerns with providing assurances, particularly in the United States, is the ability to actually enforce those assurances after they are made. In the United States, the Executive authority is the branch of government which would be seeking the death penalty. Due to the separation of powers, the Executive can provide assurances only to the degree that they will not ask the court to impose the death penalty, and that if it is imposed, they will commute the sentence through the executive's power. Yet, for some countries, this raises genuine concerns about the amount of control that executive has over the imposition of the death penalty. The clearest solution would be to seek extradition for a non-death eligible offense, such as second degree murder. Under the terms of most extradition agreements, changes cannot be made to what crimes the individual will be charged with after extradition, and therefore the executive could adequately assure that the death penalty would not be used by not requesting extradition for first degree murder. Yet, this comes at a great cost as second degree murder is generally only eligible for life with the possibility of parole.

No-Mention

As a general principle, the extradition agreement is a comprehensive source of all the conditions of extradition between countries. As a result, the absence of any mention of the death penalty indicates that there is no ability to restrict extradition based upon the use of the death penalty. As a result each of the approximately 50 countries which make no mention of the death penalty in their extradition would be required to extradite for a capital offense, regardless of their internal policies or any other factors.

While many of these agreements may make no mention of the death penalty as a result of a specific intention to permit the death penalty due to the countries agreeing on the issue of the death penalty, other extradition agreements are simply outdated.

Unlike the previously discussed agreements which permit assurances if the two countries have conflicting policies on the death penalty, making no mention causes the risk of making the agreement outdated should one of the countries choose to abolish the death penalty.

For example, if two countries permitting the death penalty for murder were to put an assurances clause in their agreement, it would have no impact on day to day extradition as the cases would routinely fall into the grounds of a case where both countries permit the use of the death penalty, and therefore neither country could request assurances. Then, if at a later time one of the two countries abolished the death penalty, or if one of them began to permit the death penalty for offenses other than murder, the clause would come into force,

allowing the two countries to invoke the assurances clause, which would in turn protect the extradition agreement.

Contrarily, under this same scenario, making no mention of the death penalty would likely create a scenario where the extradition agreement conflicted with their own internal policies regarding the death penalty, and perhaps necessitating a renegotiation of their extradition agreement.

As a result, these types of extradition agreements which make no mention of the death penalty cause an inherent risk of being forced to renegotiate the issue of the death penalty down the line.

Should the United States ever abolish the death penalty, it would be required to extradite to the approximately 50 countries with this type of an extradition treaty, and would likely have to renegotiate each of these treaties to conform its international treaties to their own internal policies. Therefore, while these types of agreements may seem to be the most U.S.-friendly agreements we have, they likely will cause far more issues for the United States and other countries down the road, as the world continues to move towards abolitionist policies.

No Extradition Agreement

The third type of policy regarding the death penalty is also the most commonly used approach. More than a third of countries simply have no extradition treaty with the United States at all.

As previously discussed, extradition agreements are the way in which countries formalize all agreements relating to the issue of extradition. They are the only bilaterally binding type of agreement which govern the issue of extradition. Thus, without an extradition agreement in place, the issue of extradition becomes, in essence, optional to both countries.

While there are numerous instances of individuals being extradited from countries with no extradition agreement, and there is nothing preventing a country without an extradition agreement from in fact extraditing that individual, there is also nothing forcing the country to extradite a person. At any time in the extradition process, the requested country could simply refuse to extradite that person.

As a result, countries such as China and Russia and others in the approximately 70 countries which have no extradition treaty in place, must decide the issue of extradition on a case by case basis. While this adds a great level of uncertainty to each case of extradition, it also provides the added benefit for abolitionist countries of being able to refuse extradition for death penalty cases.

For example, recently the United States has requested extradition of Edward Snowden from Russia to face charges of espionage.¹⁴ Under the U.S. Code, espionage could potentially result in a death sentence, if the individual was

¹⁴ Steve Holland, *Edward Snowden Extradition: White House Expects Russia to Expel NSA Whistleblower*, http://www.huffingtonpost.com/2013/06/24/edward-snowden-extradition_n_3488360.html (June 24, 2013).

convicted.¹⁵ Because of this, there was a potential that if extradited he may face a death-eligible offense.

In response to this possibility, the United States provided assurances to Russia that, if Snowden was extradited, the offense he was charged with would not be a death-eligible offense, and if it were a death eligible offense, that the death penalty would not be sought¹⁶. Despite this assurance, Russia chose to refuse extradition, as they do not have any extradition agreement with the United States which would require them to extradite Snowden.¹⁷

As can be seen in the case of Snowden, the absence of an extradition agreement creates a situation where there is complete uncertainty as to all aspects of extradition. The individual could be extradited with or without assurances, the individual may be extradited for a non-death eligible offense, and then charged with additional crimes which make them death eligible, or extradition could be refused regardless of the level or quantity of agreements made to satisfy the second government. As a result, this is often the least desirable way to deal with extradition for all parties involved, as the extradition process is far more complicated and uncertain between these types of countries.

¹⁵ 18 USC § 794 (1996).

¹⁶ Oren Dorell and Doug Stanglin, USA Today, *U.S. Assures Russia No Death Penalty for Snowden*, <http://www.usatoday.com/story/news/2013/07/26/edward-snowden-fbi-russia-nsa/2589319/> (July 26, 2013).

¹⁷ *Id.*

Section 3: Approaches to Extradition

As previously discussed, disputes resulting from undesirable clauses in extradition agreements, have led to a large amount of conflict between countries, who are forced to decide whether or not to honor their extradition agreements. The range of approaches in these types of disputes has greatly varied from reaching conclusions which clearly are in violation of extradition treaties to adding procedural loopholes for the requesting nation to satisfy specific concerns. Regardless, it is clear that countries are forced to find a balance between international relations and internal interests, and take an action which accurately considers both of these aspects of the extradition disputes.

Because of the varies approaches across the globe, this section of the paper will focus on several individual countries approaches to extradition, including a study of those countries decisions on previous extradition matters, and the effects, if any, extradition has had on our international relations with that nation.

Italy

Perhaps one of the most extreme actions taken in response to growing national disapproval for the death penalty has taken place in Italy. While a number of countries have actively sought to avoid actions which would significantly impair international relations, Italy, as a result of a case in the Italian Constitutional Court, has refused to extradite any capital offender to the United

States, regardless of the facts or circumstances surrounding the case or any assurances the United States may offer.¹⁸

In *Venezia v. Ministero di Grazia & Giustizia*, the Italian Constitutional Court found that Article 9 of the Italy-United States Extradition Treaty was in violation of the Italian Constitution. Specifically, it found that Article 9, which permitted extradition of capital offenders with sufficient assurances from the requesting country, violated their constitution's protections of fundamental human rights. As a result, Italy has a strict policy of refusing to extradite any capital offender to the United States, regardless of the assurances the United States may be willing to offer that the individual will not receive the death penalty.

This policy, of course, has had significant impacts on international relations between the United States and Italy. In particular, there has been a growing amount of tension between the United States and Italy as a result of Italy refusing to extradite suspected terrorists due to the capital nature of many of their crimes. In 2003, for instance, the CIA resorted to an extraordinary rendition of Abu Omar.¹⁹ While not used often, extraordinary renditions are a method of capturing a terrorist used since the September 11, 2001 terrorist attacks in the United States, in which the CIA unilaterally kidnaps a suspected terrorist within another country, and returns them to the U.S. or another location in order to

¹⁸ *Venezia v. Ministero di Grazia & Giustizia*, Corte coste, 27 June 1996, 79 Rivista di Diritto Internazionale 815 (1996).

¹⁹ Barbie Latza Nadeau, *Will CIA Employees Be Extradited for Abu Omar Kidnapping*, <http://www.thedailybeast.com/articles/2012/09/21/will-italy-extradite-cia-employees-for-abu-omar-kidnapping.html> (Sept. 21, 2012).

stand trial or interrogation.²⁰ While it is not certain why the CIA chose to utilize this method of securing Abu Omar instead of a normal extradition, one cannot help but notice the possibility that less severe methods of obtaining Abu Omar could have been used had Italy had a history of honoring the United States' extradition agreement in capital cases. As a result of this event, the Italian government held trials "in absentia" for 23 Americans and found each of the individuals guilty and sentenced them to prison sentences. Italy is currently requesting that all 23 of the individuals tried in connection the kidnapping be extradited to serve their prison sentences.²¹

Contrarily, in the past few months, the Italian Courts have taken a step back from their decision in *Venezia*. In 2013, the United States requested extradition of Miguel Torres from Italy to face first degree murder charges in Pennsylvania.²² Under the *Venezia* decision, the Italian Courts could not constitutionally extradite an individual to another country for a death-eligible offense, regardless of assurances. However, the Italian Court of Appeals found on the case that while extradition would not be constitutional, the constitutional issues are trumped by the treaty's requirements.²³ However, the Italian Supreme Court never heard the case, and as a result, it is unclear how the Italian government will handle this issue in the future.

²⁰ Michael Garcia, *Renditions: Constraints Imposed by Laws on Torture*, <http://www.fas.org/sgp/crs/natsec/RL32890.pdf> (Sept. 8, 2009).

²¹ Barbie Latza Nadeau, *Will CIA Employees Be Extradited for Abu Omar Kidnapping*, <http://www.thedailybeast.com/articles/2012/09/21/will-italy-extradite-cia-employees-for-abu-omar-kidnapping.html> (Sept. 21, 2012).

²² Dan Kelly, *Italian Court: Torres should be Extradited to U.S. in Murder Case*, <http://www2.readingagle.com/article.aspx?id=493983> (July 19, 2013).

²³ *Id.*

Clearly, relations with Italy have suffered greatly as a result of the issues extradition of capital offenders raises for the Italian courts. While it appears from the *Venezia* case that no level of assurances or changes to the language of the extradition treaty would be sufficient to allow extradition of a death-eligible offender, the recent step back in *Torres* has left the United States unclear as to what the Italian government's future position will be. The case also raises questions as to whether Italy is an unordinary outlier in its willingness to disregard its extradition treaty with the U.S. or the beginning of a growing trend of resistance to extradition of capital offenders to the U.S. If the latter is true, it is clear that the death penalty would, at some point, come at too high of a cost for the U.S. to maintain, as the United States would eventually have to choose between offenders receiving the death penalty and offenders receiving no penalty at all.

United Kingdom

Similar to Italy, the United Kingdom has been forced to decide how willing they were to extradite a capital offender to the United States, given their strong opposition to the death penalty. The issue was most clearly dealt with in 1989 by the European Court of Human Rights (ECHR). In this decision, the ECHR found that it was a violation of the European Convention on Human Rights to extradite an individual to the United States for a capital offense, unless assurances were received that the individual would not be put to death, and those assurances were sufficient to satisfy the United Kingdom's concerns that the individual may

face a death sentence. Specifically, the ECHR was concerned with extraditing to the United States due to the inability for a court to reach a determination about sentencing prior to extradition, and the inability for any other branch of the government to reach a decision in regards to sentencing that would be binding upon the court. As a result, the ECHR feared that an individual extradited to the United States could be sentenced to death regardless of what assurances the local government made.²⁴

In 2003, the U.K. reformed their international extradition laws through the United Kingdom Extradition Act. Under this act, the United Kingdom outlined two possibilities for extraditing capital offenders to category 2 territories²⁵. First, the nation may provide adequate written assurances to the U.K. that the death sentence would not be imposed for the individual. Due to the concerns outlined in *Soering*, however, it is likely that a situation will arise, particularly in the U.S., where assurances cannot be provided that it will not be imposed, but they can be provided that the sentence will not be carried out if imposed. Because of this, the extradition agreement also allows the country to extradite if written assurances are provided that the sentence will not be carried out.²⁶ This addition to the extradition treaty permits the U.K. to extradite to the U.S. with a promise by the

²⁴ *Soering v United Kingdom* 161 Eur. Ct. H.R. (ser. A) (1989).

²⁵ The UK Extradition Act of 2003 divides countries into Category 1 and Category 2 territories. While not explicitly outlined, Category 1 territories are EU nations which as part of their membership follow certain specific guidelines regarding punishments, extradition, and human rights. Category 2 territories consist of all other nations which do not meet the criteria and is comprised of the Non-EU nations. See Extradition Act 2003, c. 41 (U.K.).

²⁶ See *id.*

executive branch of a commutation of the sentence to life without parole, should the individual be sentenced to death.

Thus, in sharp contrast to Italy, the United Kingdom, while having similar concerns about the potential for an individual to be given the death penalty despite assurances by the United States that the sentence would not be imposed, looked to find a way to satisfy their concerns, without causing the international controversies brought about by the Italian decision. As a result, the impact to relations between the two countries impacted to a much lesser degree. While there is an inherent conflict between the United States and all prohibitionist countries as a result of the very inconsistent ideological viewpoints of the death penalty, the ability for the nations to still work with each other has allowed for only a minimal, more subconscious impact to international relations.

Canada

Of course, extradition issues with Canada, as well as Mexico, provide one of the largest impacts on the United States. As the countries bordering the United States on both sides are abolitionist countries, the impact of defendant favorable extradition policies in these countries has a much more substantial effect on the United States due to the regularity in which extradition with Canada and Mexico takes place.

In 2001, Canada reached a similar decision to the 1989 Soering decision in the U.K. In *U.S. v. Burns*, the Supreme Court of Canada found that the extradition of an individual without assurances that they would not receive the

death penalty, was a violation of Section 7 of the Canadian Charter of Rights and Freedom. While the extradition treaty between the United States and Canada had historically made the decision to extradite without assurances discretionary, this decision, made it a violation of human rights for Canada to extradite without receiving assurances.²⁷

Not long after, Canadian courts reached a second decision impacting death penalty extradition. In *Judge v. Canada*, the court was faced with reviewing the extradition of Roger Judge. Roger was a resident of the United States, and was sentenced to death in 1987, but managed to escape from custody and flee to Canada. He was extradited to the United States following a prison sentence for two robberies committed in Canada in 1993, and proceeded to file a series of appeals both in the United States and Canada. In the 2003 decision regarding this case, the Human Rights Committee found that the extradition of an escaped convict who had been sentenced to death, without assurances that the death sentence would be commuted, violated the Canadian Charter of Rights and Freedoms.²⁸

In these two decisions, Canada showed a sharp change in policies from a purely discretionary system where the government was free to choose whether or not they would require assurances from the United States Government, to a clearly non-discretionary country where no individual could be deported or extradited if he would face a death sentence as a result of the extradition.

²⁷ *United States v. Burns and Rafay*, 2001 SCC 7 (S.C. Canada, 22 March 2001).

²⁸ *Judge v. Canada*, Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

Clearly, Canada is included in the growing trend to limit extradition of capital offenders to only those cases where the country has received strong assurances that the defendant would not be sentenced to death. The growing number of countries following this line of thought and finding that extradition of a capital offender is a violation of the individual's human rights may even indicate a trend towards Italian-style policies of non-extradition for capital cases. Clearly, the impact of an Italian-model policy in Canada would be devastating, as the United States must rely so heavily on its extradition with its bordering countries. Yet, if the United States continues to hold on to the death penalty as a potential sentence, it is clear that it will continue to face more challenges in the realm of international relations and extradition.

Mexico

Like most other abolitionist countries, Mexico refuses to extradite without assurances that the individual will not face the death penalty. Unlike the others discussed, however, Mexico seems to base this as a matter of course, rather than a matter of law. While Canada, the U.K. and Italy have addressed the issue of extraditing capital offenders from the perspective of it being a violation of their human rights to not demand assurances, Mexico relies only on the text of its extradition agreement and is simply consistent in demanding assurances under this policy.²⁹

²⁹ Michelle Roberts, Associated Press, *U.S. Fugitives Caught in Mexico Escape Death Penalty*, <http://www.nysun.com/foreign/us-fugitives-caught-in-mexico-escape-death-penalty/69760/> (Jan. 18, 2008).

Despite the theoretical differences, Mexico does have a strong history of demanding assurances and refusing to extradite capital offenders without them. As a result, Mexico has become the primary location for individuals facing capital offenses to flee. In 2006, 83 individuals were extradited from Mexico, almost all of which were for Murder or Drug related charges.³⁰

While not as strong-willed in their abolitionist policies as other countries, the impacts of this extradition policy with Mexico is particularly severe due to the proportion of extradition that occurs from Mexico. In 2008, for example, Texas began an initiative of increased inspections and car checks of individuals heading towards Mexico from Texas. This initiative was put in place to try to stop fugitives from fleeing into Mexico.³¹ Such an initiative, on top of increased burdens to the lawful citizens traveling across the border, but it places high monetary costs for the increased police involvement around the border.

Conclusions on International Approaches

As previously discussed, there is an obvious trend towards requiring assurances from the United States prior to extraditing a capital offender. The exact approach, however, has greatly varied between countries. Some countries, such as Canada and the U.K., have required sufficient assurances as a matter of protecting the human rights or constitutional rights of the individual. To a higher extreme, Italy's 1996 decision has required that no extradition for a capital crime takes place, as even the theoretical risk of the assurances being

³⁰ *Id.*

³¹ *Id.*

insufficient is enough to violate human rights. Yet another more common approach is to simply request the assurances as permitted by their treaty with the United States as a matter of course, without any constitutional or statutory requirement within the nation to request assurances on every occasion.

Regardless, the trend away from extraditing capital offenders is extremely clear, and appears to be continually growing in the restrictiveness of various nation's requirements. As a result of these policies, it is clear that the United States will at some point, be forced to choose between its reliance on other countries to permit extradition, and its policy of continuing to permit the death penalty as a sentence. While it is not certain that other countries will follow the lead of Italy, the trends towards increasingly defendant favorable policies will likely eventually lead more countries towards their line of thinking.

Section 4: Extradition from the U.S.

Perhaps not surprisingly, the United States does not follow the abolitionist trend towards finding extradition for a capital offense is a violation of human or constitutional rights, even if the United States does not permit the death penalty for such a crime. Instead, the United States has found that a judge presiding over an extradition hearing cannot consider humanitarian reasons, including the imposition of the death penalty for a non-murder offense, in reaching a finding that the defendant should not be extradited. In *Prasoprat v. Benov*, the 9th Circuit reached this conclusion in regards to a Thailand request for extradition for a drug trafficking offender who would face the death penalty after extradition. The court

found that the judge improperly considered the death penalty being imposed in Thailand for drug trafficking, and found that humanitarian reasons for not granting an international extradition request were improper.³² This decision was reached, despite the fact that the extradition treaty with Thailand permits a refusal of extradition for non-murder offenses, unless assurances are given that a death sentence will not be imposed or carried out.³³

As a result of this decision, it is unclear who, if anybody, would request assurances on behalf of the United States, or deny an extradition request based upon a finding similar to those in the U.K. and Canada. The United States, instead, seems to have adopted a very defendant unfavorable approach towards extradition, in support of its own tradition of permitting the death penalty.

Section 5: Recommendations and Conclusions

Last year, only 43 people were executed in the United States.³⁴ Despite the small and infrequent use of the death penalty in the United States, it has come at a significant cost. The United States has been forced to renegotiate old extradition treaties, pass amended treaties through the executive branch and senate, and has hindered international relations with the United States from across the globe.

³² *Prasoprat v. Benov*, 421 F.3d 1009 (9th Cir 2005).

³³ Treaty between the Government of the United States of America and the Government of the Kingdom of Thailand Relating to Extradition, 1983 U.S.T. LEXIS 418 (Dec. 14, 1983); see *infra* Appendix 1.

³⁴ Death Penalty Information Center, *Executions by Year*, <http://www.deathpenaltyinfo.org/executions-year> (Updated December 12, 2013).

As countries continue to move closer towards a complete block on extradition the United States for death-eligible offenders, the United States must decide how it will alleviate the concerns of the international community. One way would be for the United States itself to join the abolitionists and eliminate the death penalty. Alternatively, the United States could try to find a way to grant stronger assurances to the international community that the death penalty would not be imposed.

The vast majority of concerns identified in this paper could be addressed through a few key changes to the approach the United States takes with extradition. Those recommendations are outlined here.

Recommendation 1: Add Assurances Clauses to Extradition Agreements

As time moves on, the United States will be required to review its extradition agreements with a wide range of countries as they become more outdated. In order to prevent the need for future changes to extradition agreements, the United States should begin routinely requiring that an assurances clause such as the one used in a majority of countries permitting assurances to be requested when a person is death eligible in the requesting country, but not the requested country. This would prevent the previously identified issue of extradition agreements 'aging out' as international attitudes change. At some point, the United States itself will likely become an abolitionist country, at which time it will be forced to renegotiate a large number of extradition

treaties. By making this change now, it will save the United States extensive diplomatic work in the future.

Recommendation 2: Add an Intermediary Degree of Murder

One of the primary concerns with requesting assurances is the legitimacy of the assurances the United States is able to provide. Moreover, if extradition is requested for a death-eligible offense, under a number of extradition agreements, this would automatically permit the requested country to request assurances, which requires unnecessary amounts of work to provide adequate assurances to that country that the individual will have their sentence commuted afterwards. This lengthens the extradition process, and creates an unnecessary aspect of extradition law. By creating an intermediary degree of murder, perhaps specific to individuals being extradited, which is both eligible for a sentence of life without parole, yet ineligible for a sentence of death, it would streamline the process of extradition, as there would be no concerns to begin with regarding the death penalty. It would, in essence, avoid the discussion of the death penalty altogether, and allow the extradition process for murder to proceed much in the same way that a completely non-death eligible offense such as rape or theft would proceed through the extradition process.

This would likely even alleviate concerns of countries such as Italy who may be willing to extradite an individual for first degree murder even with assurances. By legislatures creating an intermediary degree of murder, they would create the strongest possibility of retaining the death penalty, having a

successful and incident-free extradition process, and alleviating international concerns about what happens to individuals charged with murder after extradition.

Conclusions

Regardless of how the United States contends with the problems it will face with extradition, it is clear that the international community is growing less supportive of the United States' policies. While the United States may be able to find a way to deal with the issue of extraditions, only abolishing the death penalty would fully alleviate the concerns of the international community.

The recommendations previously discussed, while providing a temporary solution to the immediate issue of extraditions, do not address the true underlying issue. The United States has retained capital punishment despite a growing international consensus that the death penalty should be abolished. Should the United States continue to retain the death penalty as a form of punishment, it will eventually be forced into a crossroads in which it must decide whether the retention of the death penalty provides a sufficient internal benefit to justify the United States remaining an outlier in the international community.

While the ultimate issue of whether the death penalty should be retained is largely outside the purview of this paper, what is clear is that international relations, as they relate to the death penalty, will only continue to degrade through retaining the death penalty, and as this occurs, the issue will become one that is increasingly difficult to ignore.

Appendix 1

Death Penalty Clauses in U.S. Extradition Agreements³⁵

Type of Extradition Clause	Countries Using	
Can Deny Extradition in All Death Penalty and Life in Prison Cases or Extradite With Assurances	Venezuela	
Requires Assurances, But Executive Can Still Deny Extradition for Humanitarian Reasons	Belgium	Luxembourg
Requires Assurances in All Death Penalty Cases	Bolivia	
Requires Assurances in Death Penalty Cases When One Country Doesn't Use Death Penalty	Argentina Australia Austria Brazil Bulgaria Canada Colombia Costa Rica Cyprus Czech Republic Denmark Estonia Finland France Germany Hong Kong Hungary India Ireland Israel Italy Jamaica Jordan Kiribati	Latvia Lithuania Malta Mexico Netherlands New Zealand Norway Paraguay Peru Philippines Poland Portugal Romania Solomon Islands South Africa Spain Sri Lanka Sweden Switzerland Turkey Tuvalu United Kingdom Uruguay
Requires Extradition for Murder, Requires Assurances for Non-Murder Capital Offenses	Bahamas Thailand	South Korea
No Mention of Death Penalty in Extradition Agreement	Albania	Liechtenstein

³⁵ All data contained in chart is based upon the current extradition agreements with the United States. A current listing of U.S. Extradition Agreements and citations to those agreements can be found at 18 U.S.C. § 3181; see *infra* Appendix 2.

	Antigua and Barbuda	Malawi
	Barbados	Malaysia
	Belize	Mauritius
	Burma	Monaco
	Chile	Nauru
	Congo	Nicaragua
	Cuba	Nigeria
	Dominica	Pakistan
	Dominican Republic	Panama
	Ecuador	Papua New Guinea
	Egypt	Saint Kitts and Nevis
	El Salvador	Saint Lucia
	Fiji	Saint Vincent and the Grenadines
	Gambia	San Marino
	Ghana	Seychelles
	Greece	Sierra Leone
	Grenada	Singapore
	Guatemala	Slovak Republic
	Guyana	Slovenia
	Haiti	Suriname
	Honduras	Swaziland
	Iraq	Tanzania
	Japan	Tonga
	Kenya	Trinidad and Tobago
	Lesotho	Zambia
	Liberia	Zimbabwe

Appendix 2

18 U.S.C. § 3181: List of Current U.S. Extradition Agreements³⁶

EXTRADITION AGREEMENTS

The United States currently has bilateral extradition agreements with the following countries:

Country	Date signed	Entered into force	Citation
Albania	Mar. 1, 1933	Nov. 14, 1935	49 Stat. 3313.
Antigua and Barbuda	June 3, 1996	July 1, 1999	TIAS.
Argentina	June 10, 1997	June 15, 2000	TIAS 12866.
Australia	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
	May 14, 1974	May 8, 1976	27 UST 957.
	Sept. 4, 1990	Dec. 21, 1992	1736 UNTS 344.
Austria	Jan. 8, 1998	Jan. 1, 2000	TIAS 12916.
	July 20, 2005	Feb. 1, 2010	
Bahamas	Mar. 9, 1990	Sept. 22, 1994	TIAS.
Barbados	Feb. 28, 1996	Mar. 3, 2000	TIAS.
Belgium	Apr. 27, 1987	Sept. 1, 1997	TIAS.
	Dec. 16, 2004	Feb. 1, 2010	
Belize	Mar. 30, 2000	Mar. 27, 2001	TIAS.
Bolivia	June 27, 1995	Nov. 21, 1996	TIAS.
Brazil	Jan. 13, 1961	Dec. 17, 1964	15 UST 2093.
	June 18, 1962	Dec. 17, 1964	15 UST 2112.
Bulgaria	Mar. 19, 1924	June 24, 1924	43 Stat. 1886.
	June 8, 1934	Aug. 15, 1935	49 Stat. 3250.
	Sept. 19, 2007	May 21, 2009	
Burma	Dec. 22, 1931	Nov. 1, 1941	47 Stat. 2122.
Canada	Dec. 3, 1971	Mar. 22, 1976	27 UST 983.
	June 28, July 9, 1974	Mar. 22, 1976	27 UST 1017.
	Jan. 11, 1988	Nov. 26, 1991	TIAS.
	Jan. 12, 2001	Apr. 30, 2003	
Chile	Apr. 17, 1900	June 26, 1902	32 Stat. 1850.
Colombia	Sept. 14, 1979	Mar. 4, 1982	TIAS.
Congo (Brazzaville)	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Jan. 15, 1929	May 19, 1929	5 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936	5 Stat. 1117.
Costa Rica	Dec. 4, 1982	Oct. 11, 1991	TIAS.
Cuba	Apr. 6, 1904	Mar. 2, 1905	33 Stat. 2265.
	Dec. 6, 1904	Mar. 2, 1905	33 Stat. 2273.
	Jan. 14, 1926	June 18, 1926	44 Stat. 2392.
Cyprus	June 17, 1996	Sept. 14, 1999	TIAS.
	Jan. 20, 2006	Feb. 1, 2010	

³⁶ The text of Appendix 2 has been taken from 18 U.S.C. § 3181. It is included here as a reference and was used in the preparation of Appendix 1. The original footnotes have been included at the end of this chart.

Czech Republic ¹	July 2, 1925	Mar. 29, 1926	44 Stat. 2367.
	pr. 29, 1935	Aug. 28, 1935	1 Stat. 3253.
	May 16, 2006	Feb. 1, 2010	
Denmark	June 22, 1972	July 31, 1974	25 UST 1293.
	June 23, 2005	Feb. 1, 2010	
Dominica	Oct. 10, 1996	May 25, 2000	TIAS.
Dominican Republic	June 19, 1909	Aug. 2, 1910	36 Stat. 2468.
Ecuador	June 28, 1872	Nov. 12, 1873	18 Stat. 199.
	Sept. 22, 1939	May 29, 1941	55 Stat. 1196.
Egypt	Aug. 11, 1874	Apr. 22, 1875	19 Stat. 572.
El Salvador	Apr. 18, 1911	July 10, 1911	37 Stat. 1516.
Estonia	Nov. 8, 1923	Nov. 15, 1924	43 Stat. 1849.
	Oct. 10, 1934	May 7, 1935	49 Stat. 3190.
	Feb. 8, 2006	Apr. 7, 2009	
European Union	June 25, 2003	Feb. 1, 2010	
Fiji	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	July 14, 1972, Aug. 17, 1973	Aug. 17, 1973	24 UST 1965.
Finland	June 11, 1976	May 11, 1980	31 UST 944.
	Dec. 16, 2004	Feb. 1, 2010	
France	Apr. 23, 1996	Feb. 1, 2002	TIAS.
	Sept. 30, 2004	Feb. 1, 2010	
Gambia	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Germany	June 20, 1978	Aug. 29, 1980	32 UST 1485.
	Oct. 21, 1986	Mar. 11, 1993	TIAS.
	Apr. 18, 2006	Feb. 1, 2010	
Ghana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Greece	May 6, 1931	Nov. 1, 1932	47 Stat. 2185.
	Sept. 2, 1937	Sept. 2, 1937	51 Stat. 357.
	Jan. 18, 2006	Feb. 1, 2010	
Grenada	May 30, 1996	Sept. 14, 1999	TIAS.
Guatemala	Feb. 27, 1903	Aug. 15, 1903	33 Stat. 2147.
	Feb. 20, 1940	Mar. 13, 1941	55 Stat. 1097.
Guyana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Haiti	Aug. 9, 1904	June 28, 1905	34 Stat. 2858.
Honduras	Jan. 15, 1909	July 10, 1912	37 Stat. 1616.
	Feb. 21, 1927	June 5, 1928	45 Stat. 2489.
Hong Kong	Dec. 20, 1996	Jan. 21, 1998	TIAS.
Hungary	Dec. 1, 1994	Mar. 18, 1997	TIAS.
	Nov. 15, 2005	Feb. 1, 2010	
Iceland	Jan. 6, 1902	May 16, 1902	32 Stat. 1096.
	Nov. 6, 1905	Feb. 19, 1906	34 Stat. 2887.
India	June 25, 1997	July 21, 1999	TIAS 12873.
Iraq	June 7, 1934	Apr. 23, 1936	49 Stat. 3380.
Ireland	July 13, 1983	Dec. 15, 1984	TIAS 10813.
	July 14, 2005	Feb. 1, 2010	
Israel	Dec. 10, 1962	Dec. 5, 1963	14 UST 1707. ²
	July 6, 2005	Jan. 10, 2007	
Italy	Oct. 13, 1983	Sept. 24, 1984	35 UST 3023.
	May 3, 2006	Feb. 1, 2010	

Jamaica	June 14, 1983	July 7, 1991	TIAS.
Japan	Mar. 3, 1978	Mar. 26, 1980	31 UST 892.
Jordan	Mar. 28, 1995	July 29, 1995	TIAS.
Kenya	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	May 14, Aug. 19, 1965	Aug. 19, 1965	16 UST 1866.
Kiribati	June 8, 1972	Jan. 21, 1977	28 UST 227.
Latvia	Oct. 16, 1923	Mar. 1, 1924	43 Stat. 1738.
	Oct. 10, 1934	Mar. 29, 1935	49 Stat. 3131.
	Dec. 7, 2005	Apr. 15, 2009	
Lesotho	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Liberia	Nov. 1, 1937	Nov. 21, 1939	54 Stat. 1733.
Liechtenstein	May 20, 1936	June 28, 1937	50 Stat. 1337.
Lithuania	Oct. 23, 2001	Mar. 31, 2003	TIAS 13166.
	June 15, 2005	Feb. 1, 2010	
Luxembourg	Oct. 1, 1996	Feb. 1, 2002	TIAS 12804.
	Feb. 1, 2005	Feb. 1, 2010	
Malawi	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	Dec. 17, 1966, Jan. 6, Apr. 4, 1967	Apr. 4, 1967	18 UST 1822.
Malaysia	Aug. 3, 1995	June 2, 1997	TIAS.
Malta	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	May 18, 2006	July 1, 2009	
Marshall Islands	Apr. 30, 2003	May 1, 2004	
Mauritius	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mexico	May 4, 1978	Jan. 25, 1980	31 UST 5059.
	Nov. 13, 1997	May 21, 2001	TIAS 12897.
Micronesia, Federated States of	May 14, 2003	June 25, 2004	
Monaco	Feb. 15, 1939	Mar. 28, 1940	54 Stat. 1780.
Nauru	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
Netherlands	June 24, 1980	Sept. 15, 1983	35 UST 1334.
	Sept. 29, 2004	Feb. 1, 2010	
New Zealand	Jan. 12, 1970	Dec. 8, 1970	22 UST 1.
Nicaragua	Mar. 1, 1905	July 14, 1907	35 Stat. 1869.
Nigeria	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Norway	June 9, 1977	Mar. 7, 1980	31 UST 5619.
Pakistan	Dec. 22, 1931	Mar. 9, 1942	47 Stat. 2122.
Panama	May 25, 1904	May 8, 1905	34 Stat. 2851.
Papua New Guinea	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
	Feb. 2, 23, 1988	Feb. 23, 1988	TIAS.
Paraguay	Nov. 9, 1998	Mar. 9, 2001	TIAS 12995.
Peru	July 26, 2001	Aug. 25, 2003	
Philippines	Nov. 13, 1994	Nov. 22, 1996	TIAS.
Poland	July 10, 1996	Sept. 17, 1999	TIAS.
	June 9, 2006	Feb. 1, 2010	
Portugal	May 7, 1908	Nov. 14, 1908	35 Stat. 2071.
	July 14, 2005	Feb. 1, 2010	
Romania	July 23, 1924	Apr. 7, 1925	44 Stat. 2020.
	Nov. 10, 1936	July 27, 1937	50 Stat. 1349.
	Sept. 10, 2007	May 8, 2009	
Saint Kitts and Nevis	Sept. 18, 1996	Feb. 23, 2000	TIAS 12805.

Saint Lucia		Apr. 18, 1996	Feb. 2, 2000	TIAS.
Saint Vincent and the Grenadines		Aug. 15, 1996	Sept. 8, 1999	TIAS.
San Marino		Jan. 10, 1906	July 8, 1908	35 Stat. 1971.
		Oct. 10, 1934	June 28, 1935	49 Stat. 3198.
Seychelles		Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Sierra Leone		Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Singapore		Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Apr. 23, June 10, 1969	June 10, 1969	20 UST 2764.
Slovakia ¹		July 2, 1925	Mar. 29, 1926	44 Stat. 2367.
	pr. 29, 1935		Aug. 28, 1935	45 Stat. 3253.
	Feb. 6, 2006		Feb. 1, 2010	
Slovenia ¹		Oct. 17, 2005	Feb. 1, 2010	
Solomon Islands		June 8, 1972	Jan. 21, 1977	28 UST 277.
South Africa		Sept. 16, 1999	June 25, 2001	TIAS.
South Korea		June 9, 1998	Dec. 20, 1999	TIAS 12962.
Spain		May 29, 1970	June 16, 1971	22 UST 737.
		Jan. 25, 1975	June 2, 1978	29 UST 2283.
		Feb. 9, 1988	July 2, 1993	TIAS.
		Mar. 12, 1996	July 25, 1999	TIAS.
		Dec. 17, 2004	Feb. 1, 2010	
Sri Lanka		Sept. 30, 1999	Jan. 12, 2001	TIAS.
Suriname		June 2, 1887	July 11, 1889	26 Stat. 1481.
		Jan. 18, 1904	Aug. 28, 1904	33 Stat. 2257.
Swaziland		Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		May 13, July 28, 1970	July 28, 1970	21 UST 1930.
Sweden		Oct. 24, 1961	Dec. 3, 1963	14 UST 1845.
		Mar. 14, 1983	Sept. 24, 1984	35 UST 2501.
		Dec. 16, 2004	Feb. 1, 2010	
Switzerland		Nov. 14, 1990	Sept. 10, 1997	TIAS.
Tanzania		Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Nov. 30, Dec. 6, 1965	Dec. 6, 1965	16 UST 2066.
Thailand		Dec. 14, 1983	May 17, 1991	TIAS.
Tonga		Dec. 22, 1931	Aug. 1, 1966	47 Stat. 2122.
		Mar. 14, Apr. 13, 1977	Apr. 13, 1977	28 UST 5290.
Trinidad and Tobago		Mar. 4, 1996	Nov. 29, 1999	TIAS.
Turkey		June 7, 1979	Jan. 1, 1981	32 UST 3111.
Tuvalu		June 8, 1972	Jan. 21, 1977	28 UST 227.
			Apr. 25, 1980	32 UST 1310.
United Kingdom		Mar. 31, 2003	Apr. 26, 2007	
	Dec. 16, 2004		Feb. 1, 2010	
Uruguay		Apr. 6, 1973	Apr. 11, 1984	35 UST 3197.
Venezuela		Jan. 19, 21, 1922	Apr. 14, 1923	43 Stat. 1698.
Yugoslavia ¹		Oct. 25, 1901	June 12, 1902	32 Stat. 1890.
Zambia		Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Zimbabwe		July 25, 1997	Apr. 26, 2000	

¹ Status of agreements with successor states of Czechoslovakia and Yugoslavia is under review; inquire of the Treaty Office of the United States Department of State.

² Typographical error corrected by diplomatic notes exchanged Apr. 4 and 11, 1967. See 18 UST 382, 383.