



Department of Justice

STATEMENT OF
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BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

FOR A HEARING ENTITLED
“TREATIES”

PRESENTED
DECEMBER 13, 2017

**Statement of Bruce Swartz
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**Before the Senate Foreign Relations Committee
December 13, 2017**

Mr. Chairman and members of the Committee, I am pleased to appear before you today to present the views of the Department of Justice on extradition treaties between the United States and the Republics of Kosovo and Serbia. These historic treaties directly advance the interests of the United States in fighting terrorism and transnational crime.

At the outset, I wish to note that the decision to proceed with the negotiation of law enforcement treaties such as these is made jointly by the Departments of State and Justice, after careful consideration of our international law enforcement priorities. The Departments of Justice and State also participated together in the negotiation of each of these treaties. Accordingly, we join the Department of State today in urging the Committee to report favorably to the Senate and recommend its advice and consent to ratification.

The Departments of Justice and State have prepared and submitted to the Committee detailed analyses of the extradition treaties in the Letter of Submittal. In my testimony today, I will concentrate on why these updated extradition treaties are important instruments for United States law enforcement agencies engaged in investigating and prosecuting terrorism and other serious criminal offenses.

The U.S.-Republic of Kosovo Extradition Agreement

At the outset, I must note for this Committee that the United States and Kosovo currently operate under the 1901 extradition treaty between the United States and the Kingdom of Serbia. Kosovo is treated as a successor state under that instrument. The “list” treaty is antiquated and limited, and is not suitable for meeting 21st Century law enforcement challenges. I will further elaborate on this point later in my testimony.

Pursuant to a June 1999 United Nations Security Council resolution, the UN established an international civil and security presence in Kosovo, the UN Interim Administrative Mission in Kosovo (UNMIK), which still exists today. In September 2012, international supervision ended, and Kosovo became responsible for its own governance. While an UNMIK team had been handling prosecutions in Kosovo, the Kosovars have now assumed most of this responsibility. Despite being relatively new, Kosovar prosecutors are competent, establishing fair jurisprudence, and observing fundamental due process.

To fully empower both Kosovar and U.S. law enforcement officials with the tools that they need to combat global crime, a new extradition treaty is necessary. The Extradition Treaty

before this Committee includes both substantive and procedural “improvements” from the 1901 treaty. Allow me now to highlight a few of these critical improvements.

Substantive Improvements

The Extradition Treaty before this Committee contains new substantive provisions that did not exist in the 1901 extradition treaty. Perhaps most importantly, the new Extradition Treaty accommodates the requirements of the Kosovar constitution to permit extradition of nationals. The Kosovo Supreme Court has ruled that citizens of Kosovo cannot be extradited under the language of the 1901 treaty, because the treaty provides that neither country is bound to extradite its nationals, and the Kosovo constitution prohibits the extradition of nationals in the absence of a bilateral extradition treaty requiring such extraditions. As a consequence, in recent years, Kosovo denied a U.S. extradition request where the U.S. sought a fugitive for murder. The denial was premised on the fugitive’s Kosovo citizenship. Under the new Extradition Treaty, extradition can no longer be refused solely on the basis of the nationality of the person sought.

Moreover, the new Extradition Treaty not only allows for the extradition of nationals, but expands the types of crimes for which extradition can be sought. While the existing 1901 extradition treaty defines extraditable offenses by reference to a list of crimes enumerated in the treaty itself, the treaty before this Committee reflects the reality that crimes have become increasingly complex over the last century. A “list treaty” may present limits to extradition for newly emerging forms of criminality that the United States has a strong interest in pursuing, such as cybercrime and environmental offenses. The new Extradition Treaty will replace the old list of offenses with a modern “dual criminality” provision. This means that the obligation to extradite applies to all offenses that are punishable in both countries by a minimum term of imprisonment of more than one year. This is a critical improvement, since extradition will be possible in the future with respect to the broadest possible range of serious offenses, without the need to repeatedly update treaties as new forms of criminality are recognized.

This expansive provision is material to our extradition requests for extraterritorial offenses. For the United States, extraterritorial jurisdiction is important in two areas of particular concern: drug trafficking and terrorism. Under the 1901 treaty, Kosovo recently denied our extradition request for a fugitive wanted for prosecution on charges of providing material support for terrorism -- having facilitated the travel of foreign fighters -- although communicating from Kosovo with other facilitators via the Internet. The Supreme Court of Kosovo held that the language of the 1901 extradition treaty did not provide for extradition of a person for a crime committed in the requested state. Under the new Extradition Treaty, Kosovo will no longer be able to deny our extradition requests on the sole basis that a criminal act occurred in Kosovo, not in the United States.

Furthermore, the new Extradition Treaty ensures that the only applicable statute of limitations is that of the country making the extradition request. Accordingly, this provision ensures that the U.S. prosecutors will maintain procedural control over the viability of their cases, rather than being at the mercy of foreign statutes of limitations.

Procedural Improvements

In addition to the substantive improvements, the Extradition Treaty before this Committee includes procedural enhancements, which streamline the extradition process. For example, the Treaty contains a “temporary surrender” provision, which allows a person found extraditable, but already in custody abroad for another criminal charge, to be temporarily surrendered for purposes of trial. Absent temporary surrender provisions, we face the problem of delaying the fugitive’s surrender, sometimes for many years, while the fugitive serves out a sentence in another country. As a result, during this time, the U.S. case against the fugitive becomes stale, and the victims are delayed justice for the crimes committed against them.

Further, the Extradition Treaty also allows the fugitive to waive extradition, or otherwise agree to immediate surrender, thereby substantially speeding up the fugitive’s return in uncontested cases. The Treaty also streamlines the channels for seeking “provisional arrest” – the process by which a fugitive can be immediately detained while documents in support of extradition are prepared, translated, and submitted through the diplomatic channel – and the procedures for supplementing an extradition request that already has been presented to the requested country.

Together, the procedural and substantive improvements to the Extradition Treaty will ensure that U.S. prosecutors and law enforcement officials are better positioned to combat crime in an ever globally integrated and interdependent world.

The U.S.-Republic of Serbia Extradition Agreement

The United States and Serbia also operate pursuant to the same 1901 extradition treaty between the United States and the Kingdom of Serbia.

However, unlike Kosovo, as applied to Serbia, the 1901 treaty is augmented by the extradition provisions applicable under multilateral conventions to which Serbia and the United States are parties. As a practical matter, this permits both countries to extradite fugitives for a broader scope of conduct apart from the enumerated list of crimes in the 1901 treaty. For example, both countries are party to the United Nations Transnational Organized Crime Convention, the UN Convention against Corruption, and the 1988 Vienna Drug Convention, all of which serve to augment the provisions in existing bilateral extradition treaties.

Nevertheless, none of these multilateral treaties addresses one of the most important aspects of modern extradition practice: allowing for the extradition of nationals. In contrast, much like the proposed U.S.-Kosovo Extradition Treaty, the U.S.-Serbia Extradition Treaty before this Committee, allows for the extradition of nationals.

Furthermore, unless the U.S. and Serbia become parties to an exhaustive list of multilateral conventions that cover every possible crime, we leave ourselves vulnerable to the possibility of gaps. The U.S.-Serbia Extradition Treaty before this Committee minimizes the possibility of these gaps. As is found in the proposed U.S.-Kosovo Extradition Treaty, the U.S.-Serbia Treaty under consideration includes a “dual criminality” provision, which allows

extradition with regards to all offenses that are punishable in both countries by a minimum term of imprisonment of more than one year.

In addition to the provision which allows extradition of nationals, and the inclusion of the critical “dual criminality” method, the U.S.-Serbia Extradition Treaty before this Committee includes all of the substantive and procedural improvements as contained in the proposed U.S.-Kosovo Extradition Treaty.

Conclusion

In conclusion, Mr. Chairman, we appreciate the Committee’s support in our efforts to strengthen the framework of treaties that assist us in combatting international crime. For the Department of Justice, modern extradition treaties are particularly critical law enforcement tools. To the extent that we can update our existing agreements in a way that enables cooperation to be more efficient and effective, we are advancing the protection of our citizens. Accordingly, we join the State Department in urging the prompt and favorable consideration of these law enforcement treaties. I would be pleased to respond to any questions the Committee may have.