Questions of Justice: U. S. Courts' Powers of Inquiry under Article 3(a) of the United States-United Kingdom Supplementary Extradition Treaty

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A common provision of extradition treaties between the United States and other countries is the political offense exception. This exception allows the courts of the country holding the requested person to deny an extradition request if they determine that the offense for which extradition is sought is of a political nature. Using this provision, courts in the United States have refused in some cases to extradite members of the Irish Republican Army (IRA) to Northern Ireland. Because of this reluctance, the United States and the United Kingdom signed a supplementary treaty that effectively eliminates the political offense exception in cases involving citizens of the United Kingdom.

When President Reagan submitted the treaty to Congress for ratification, the United States Senate ratified an amended version. While continuing to limit the political offense exception, the amended version contains a provision that allows United States courts to examine the justice system of Northern Ireland before permitting the extradition of fugitives to that country. Such judicial inquiries will focus on whether the system of justice in Northern Ireland is prejudiced against the person sought to be extradited.

Part I of this note examines this new provision of the Supplementary Treaty and explores the legislative intent behind the amendment. Part II looks at how the judicial system in Northern Ireland treats those suspected of terrorist activities. Part III recommends a standard that courts can use to evaluate the system of justice in Northern Ireland and its effects on the rights of citizens in that country. Part IV concludes that the

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Two broad categories of political offenses exist: pure and relative. Pure political offenses are acts aimed directly at the prevailing government, and do not resemble ordinary crimes. These include treason, sedition, and espionage, and are frequently excluded from the roster of extraditable crimes in an extradition treaty. Relative political offenses are otherwise common crimes with political motives or components. Extradition litigation usually concerns relative offenses.

Three broad tests are used to determine whether a particular offense falls within the political offense designation. The French “objective” test renders an offense nonextraditable only if it directly injured the government’s rights. It does not consider the motives of the accused. The Swiss “proportionality” test considers various subjective factors when determining whether an offense is a political offense. The Swiss test considers the offender’s political motivation, the circumstances of the crime, and the level of the political elements of the crime. The Anglo-American “incidence” test generally requires that some sort of political disturbance exist at the time of the crime and that the crime was committed “incidental to” the particular disturbance.

For an excellent summary of the various legal standards surrounding the political offense exception, see Quinn v. Robinson, 783 F.2d 776, 792-803 (9th Cir.), cert. denied, 107 S. Ct. 271 (1986) and sources cited therein.

2 See infra note 8 and accompanying text.

justice system in Northern Ireland deprives citizens of those basic rights that democratic countries should guarantee and is prejudiced against those involved in politically motivated crimes. United States courts should, therefore, continue to deny extradition requests for those formerly protected by the political offense exception until the British government changes the justice system of Northern Ireland to sufficiently protect the human rights of the citizens of that country.

I. The Amended Version of the Supplementary Extradition Treaty Between the United States and the United Kingdom

A. The Supplementary Treaty

On July 17, 1986, the United States Senate ratified the Supplementary Extradition Treaty between the United States and the United Kingdom. The signers' intent behind the Supplementary Treaty was to eliminate the political offense exception to extradition with respect to certain serious violent crimes against persons or property. The Supplementary Treaty, once signed, was submitted to the Senate for ratification. The reduction of the political offense exception in the treaty created substantial controversy in hearings considering the Supplementary Treaty.

4 The complete name of the treaty is: Supplementary Treaty Concerning the Extradition Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, Signed at London on 8 June 1972 [hereinafter Supplementary Treaty]. The Supplementary Treaty was ratified by the United States and Great Britain, and entered into force December 23, 1986. 87 DEP'T ST. BULL., Feb. 1987, at 89.


6 S. Exec. Rep. No. 17, 99th Cong., 2d Sess. 7 (1986). These crimes were: murder, voluntary manslaughter, assault causing grievous bodily harm; kidnapping, abduction, serious unlawful detention, taking of hostages; offenses involving the use of bombs, grenades, rockets, firearms, and incendiary devices; and attempts to commit or conspiracy to commit any of these offenses. Id. at 15. Also excluded from consideration as political offenses were offenses listed in certain multilateral conventions dealing with air piracy, hijacking, and protection of diplomats. Id. at 6-7.


8 The Senate Foreign Relations Committee held hearings on the Supplementary Treaty and considered various proposed amendments. Id. at 1. Proposed amendments included one that distinguished attacks against civilians from attacks against soldiers and one that made the treaty prospective only, thus inapplicable to those then awaiting extradition. Id. at 3.

The treaty was a response by the United States and British executive branches to several recent federal court decisions denying requests by the United Kingdom for the extradition of members of the Provisional Irish Republican Army (PIRA), a separate and generally more violent wing of the IRA, accused or convicted of committing violent acts. In general, the denied requests were for PIRA members who had committed violent acts against British forces occupying Northern Ireland. The courts routinely granted extradition where the victims of such acts were civilians. The courts denying extradition determined that the acts which formed the basis of the extradition requests were political in nature; therefore, the requests could not be granted. See Quinn v. Robinson, 783 F.2d 776 (9th Cir.), cert. denied, 107 S. Ct. 271 (1986); In re Mackin, 668 F.2d 122 (2d Cir. 1981); In re Doherty, 599 F. Supp. 270 (S.D.N.Y. 1984), appeal dismissed, 786 F.2d 491 (2d Cir. 1986); In re Mc-
After hearings were held, the Senate Foreign Relations Committee submitted, and the Senate ratified, an amended version of the Supplementary Treaty. While still limiting the political offense exception, article 3(a) of the submitted treaty contains what is potentially an even more powerful tool for courts to use when considering extradition requests from the United Kingdom.

B. Article 3(a) of the Supplementary Treaty

1. Legislative History

The amendment to the original Supplementary Treaty, article 3(a), reads as follows:

Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality,


In Quinn, William Joseph Quinn petitioned the district court for a writ of habeas corpus following the extradition magistrate's approval of the United Kingdom's request for extradition. The district court found that the offenses for which extradition was being sought were nonextraditable political offenses and denied the request for extradition. 783 F.2d at 786. The court of appeals reversed because some of Quinn's offenses took place in England. "The crimes did not take place within a territorial entity in which a group of nationals were seeking to change the form of the government under which they live; rather the offenses took place in a different geographical location." Id. at 818.

In Mackin, the extradition magistrate denied the United Kingdom's request for the extradition of Desmond Mackin, charged with the attempted murder of a British soldier and related firearms possession crimes. The circuit court upheld the denial of extradition, finding that the magistrate's denial of extradition was unappealable. 668 F.2d at 130. The appellate court also noted that the government was free to refile extradition requests because extradition decisions have no res judicata effect. Id. at 128-29.

In Doherty, the extradition magistrate denied the extradition request because the magistrate determined that the murder of the British soldier for which Doherty had been convicted was a political offense within the meaning of the treaty. 599 F. Supp. at 277. When the government attempted to appeal this decision, the court again held that the decision of the magistrate was unappealable. 786 F.2d at 495.

In McMullen, the district court refused the extradition request on similar grounds; the bombing of British Army barracks was found to be a political act in light of the background of violence and insurrection then taking place in Northern Ireland. McMullen, No. 3-78-1099 MG.

During the advice and consent proceedings in the Senate, the limitation of the political offense exception was a source of considerable debate. Many senators opposed the limitation of the exception. See generally 132 CONG. REC. S9251-275 (daily ed. July 17, 1986) and 132 CONG. REC. S9119-171 (daily ed. July 16, 1986) (Senate debates preceding ratification of the Supplementary Treaty). Some senators sympathized with the goals of those seeking change in Northern Ireland. See 132 CONG. REC. S9164 (daily ed. July 16, 1986) (statement of Sen. DeConcini), 132 CONG. REC. S9258 (daily ed. July 17, 1986) (statement of Sen. Hatch). Others were wary of eliminating the protection of the political offense exception from extradition treaties in general. In response to this concern, the Senate passed a declaration stating that:

The Senate . . . declares that it will not give its advice and consent to any treaty that would narrow the political offense exception with a totalitarian or other non-democratic regime and that nothing in the Supplementary Treaty with the United Kingdom shall be considered a precedent by the executive branch or the Senate for other treaties.

132 CONG. REC. S9120 (daily ed. July 16, 1986) (text of the resolution of ratification). Some senators opposed what they considered to be an attempt to limit the power of the judiciary in extradition cases. Unsuccessful efforts were made to retain the full political offense exception. See, e.g., 132 CONG. REC. S9119-171 (daily ed. July 16, 1986); 132 CONG. REC. S9251-277 (daily ed. July 17, 1986).
or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.  

Article 3(a) thus empowers United States courts to evaluate the justice system of the requesting country when considering extradition requests. The clearest expression of the purpose of article 3(a) is found in a colloquy between Senators Kerry, Biden, and Lugar that took place during a Senate Foreign Relations Committee meeting. In the exchange, Senator Biden indicated that despite the fact that the requested person is otherwise subject to extradition under the treaty, the defendant will have an opportunity in Federal court to introduce evidence that he or she would personally, because of their race, religion, nationality or political opinion, not be able to get a fair trial because of the court system or any other aspect of the judicial system in the requesting country.

Citing the unique nature of the system of justice in Northern Ireland, Senator Biden noted that article 3(a) was intended to "create a right of inquiry into the fairness of a foreign judicial system." Accordingly, courts must now determine how they will employ this new power in future extradition proceedings.

2. Effects of Article 3(a)

Article 3(a) creates an unprecedented power of inquiry in the federal courts. It will confer on the courts the responsibility to question both the motive underlying the extradition request and the fairness of the judicial process of the requesting country. This investigation is triggered only when the person sought for extradition presents evidence of that prejudice or unfairness. Courts, therefore, cannot conduct this review sua sponte.

Immediate and long-term consequences attend this power of inquiry. The immediate consequence is apparent; where the court finds that the requesting country's system of justice is unfair in light of the article 3(a) criteria of race, religion, nationality, or political opinions, it

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13. "The so-called Ninoy Aquino test involves not only the issue of trumped-up charges, but also the issue of due process and the fairness of the system of justice to which a fugitive would be extradited." Id. at S9253 (statement of Sen. Kerry). The test set forth in article 3(a) is sometimes called the "Ninoy Aquino test." In 1982 the Reagan administration withdrew a similar proposed extradition treaty with the government of the Philippines amid concerns that Aquino could not get a fair trial if he were returned to the Philippines. Id.

14. The language of article 3(a) requires that the "person sought establish[s] . . . to a preponderance of the evidence" the existence of the unfairness or prejudice. 132 CONG. REC. S9120 (daily ed. July 16, 1986).
will deny the request for extradition. The possible long-term consequence of this power of inquiry will be to encourage the requesting government to eliminate any prejudicial or unfairly punitive aspects of its justice system. Only if the requesting government makes such changes can it be assured of the extradition of fugitives sought to be prosecuted or punished under its own system of justice.15

C. The Scope of Inquiry Under Article 3(a)

The intended scope of judicial inquiry under article 3(a) is not limited to a review of the requesting country's court system; rather, the inquiry should extend to the entire justice system of that country.16 The entire justice system includes pretrial procedures such as arrest and detention procedures, search and seizure policies, and approved methods of interrogation and crowd control,17 as well as trial features such as the jury system, rules of evidence, and sentencing practices.18 If the justice system of the requesting country does not meet "minimal standards within a democratic context" the request for extradition should be denied.19

II. The Justice System in Northern Ireland

The justice system of Northern Ireland is in great part a creature of the Northern Ireland (Emergency Provisions) Act of 1978 (EPA).20 The EPA consolidated much of Northern Ireland's emergency criminal law into a single act,21 and constitutes the basis for the levels of personal rights and freedoms that citizens of Northern Ireland possess today.22

15 "The Committee on Foreign Relations is sending a strong signal to the court system of our Nation that the standard of justice in Northern Ireland is unacceptable to us, until changed to reflect basic safeguards for the individual." 132 Cong. Rec. S9258 (daily ed. July 17, 1986) (statement of Sen. Kerry).
16 With article 3(a) we are conferring upon a potential fugitive the right to introduce evidence of the fairness of the administration of justice system in Northern Ireland . . . . This is not a narrow provision. It is a very broad, and far-reaching provision that represents a marked departure from past practice in extradition law and should be so interpreted by the court system in this country.
17 Id. at S9254 (statement of Sen. Kerry).
18 Id. at S9260-61 (statement of Sen. Biden).
19 "Does the administration of justice system meet even minimal standards within a democratic context? If it does not, then the courts under article 3(a) have an obligation not to extradite." Id. at S9257 (statement of Sen. Kerry).

These acts were variously imposed following the reinstitution of direct British rule over Northern Ireland in 1972. They replaced the Civil Authorities (Special Powers) Act (Northern Ireland), 1922-33, originally a temporary body of law made permanent in 1933. The Special Powers Act was itself "emergency" legislation; it conferred many of the same powers now granted by the EPA. Until Britain restored direct rule in 1972, the Unionist government used the Special Powers Act almost exclusively against Republican activists. K. Boyle, T. Hadde & P. Hillyard, Law and State: The Case for Northern Ireland 39-40 (1975) [hereinafter Law and State].
22 The EPA has been supplemented to some extent by the Prevention of Terrorism (Temporary Provisions) Act, 1984, ch. 8. [hereinafter PTA]. The PTA applies throughout the British Isles and is a reaction to the general increase in terrorism in recent years. Although the PTA's restrictions on
When compared with other parts of the United Kingdom, the British government has severely curtailed these rights and freedoms in Northern Ireland. According to the government, such curtailment is a legitimate response to the character and scale of “terrorist activities” in the North.

A. Specific Restrictions on Personal Liberties Because of the EPA

1. Pretrial

The restrictions placed on the personal liberties of the citizens of Northern Ireland affect virtually every citizen and are a part of everyday life. Security forces such as soldiers and constables have the power to stop and question any person in Northern Ireland. The person detained must answer “to the best of his knowledge and ability” any questions asked of him or face summary conviction and imprisonment for up to six months and a fine of up to four hundred pounds. A person who fails to stop on the command of soldiers risks being shot.

Another intrusion on personal rights occurs when a person is arrested in Northern Ireland. A police officer may arrest without a warrant anyone he suspects of being a terrorist. To effect the arrest, the officer is allowed to make a warrantless search of any premises where he believes the suspect is located. Once arrested, the suspect may be held in custody for up to seventy-two hours during which the police typically interrogate the detainee.

Personal rights are substantial, they are incidental in Northern Ireland when compared to those of the EPA. Together, these two acts create the chief restrictions on personal rights and freedoms in Northern Ireland.

The PTA gives the police the power to arrest those persons whom they have “reasonable grounds” for suspecting are involved in terrorism. The initial period of arrest is 48 hours; the Secretary of State may extend this period five additional days. The police, therefore, do not need a warrant and can detain a person arrested under the PTA for up to seven days before they must file a charge. Approximately 10% of those arrested in Northern Ireland are arrested under authority of the PTA. Walsh, Arrest and Interrogation: Northern Ireland 1981, 9 J. L. & Soc'y 37, 41 (1982).

REPORT OF THE COMMISSION TO CONSIDER LEGAL PROCEDURE TO DEAL WITH TERRORIST ACTIVITIES IN NORTHERN IRELAND, 1972, CMND. SER. 5, No. 5185, at 34 (Lord Diplock, Chairman) [hereinafter Diplock Report]; REPORT OF A COMMITTEE TO CONSIDER, IN THE CONTEXT OF CIVIL LIBERTIES AND HUMAN RIGHTS, MEASURES TO DEAL WITH TERRORISTS IN NORTHERN IRELAND, 1975, CMND. SER. 5, No. 5847, at 22 (Lord Gardiner, Chairman) [hereinafter Gardiner Report].

EPA, supra note 20, § 18.

At common law, which otherwise applies in the rest of Great Britain, there is no comparable power to stop and no duty to answer. CURRENT LAW STAT. ANN., ch. 5, § 11, general note (1978).

Current Law Statutes Annotated contains privately annotated compilations of United Kingdom statutory law. The annotations to the EPA were made by Kevin Boyle, LL.B., Barrister, Professor of Law, University College, Galway.

See infra notes 80-83 and accompanying text.

EPA, supra note 20, § 11(1). “The power is exercisable on subjective suspicion only; there is no requirement that the constable have reasonable grounds for an arrest.” CURRENT LAW STAT. ANN., ch. 5, § 11, general note (1978).

EPA, supra note 20, § 11(2). This power has been called “one of the most offensive oppressions in the entire situation.” C. RICE, DIVIDED IRELAND—A CAUSE FOR AMERICAN CONCERN 24 (1985). In the period from 1971 through June 1978 almost 300,000 warrantless home searches were authorized. Foley, Public Security and Individual Freedom: The Dilemma of Northern Ireland, 8 YALE J. WORLD PUB. ORD. 284, 294 (1982).

The power is commonly used by the police as a means of detaining suspects for interrogation who may subsequently be rearrested under [§] 13 and charged with a scheduled
Suspicion of terrorism is probably the most frequently invoked justification for an arrest because the attendant detention powers facilitate the security forces' intelligence-gathering objectives.30 Related provisions of the EPA allow the government to intern suspected terrorists without trial for indefinite periods of time and provide only limited administrative review as a procedural safeguard against abuse.31 Although no one has been interned under these provisions of the EPA,32 the provisions do exist and may be exercised by the Secretary of State upon approval of Parliament. The judiciary is not involved in this detention process as the decisions concerning the indefinite detention without trial of individual suspects are made at the executive level.33

The EPA grants further powers of arrest to security forces where suspicion of criminal activity exists.34 The forces do not need a warrant and must possess only a low level of suspicion before arresting a suspect.35 The police have the power to conduct a warrantless search of premises where they believe the person sought is located; the army, on the other hand, must suspect that the person is a terrorist before it may conduct a similar search.36 The police may seize anything they find during such a search if they believe the object is connected with a crime;37 the army has no such power.38 If the police arrest a suspect on suspicion of criminal activity, he may be detained for up to forty-eight hours before...
he must be brought before a court or released.\textsuperscript{39} If the army arrests a suspect it may hold him for a maximum period of four hours.\textsuperscript{40}

The arrest and detention process is an extremely important part of the intelligence-gathering activities of the security forces in Northern Ireland. The security forces' ability to arrest and detain on their subjective suspicion that a person may be a terrorist or may have committed a crime means in effect that almost anyone in Northern Ireland is susceptible to arrest at any time.\textsuperscript{41} For many Northern Irish citizens periodic arrest and interrogation is a fact of life.\textsuperscript{42} The fact that few arrests result in charges being filed\textsuperscript{43} demonstrates that the security forces are abusing the arrest powers granted by the EPA and infringing on the civil rights of Northern Irish citizens in the process.

Once arrested and detained, a suspect is subject to the interrogation powers of the authorities. Because these powers are not enumerated in and, therefore, not limited by any specific provision of the EPA, abuses of the civil rights of prisoners have occurred. In 1971 the British government verified allegations of incidences of sensory deprivation and other forms of mistreatment of detainees during interrogation.\textsuperscript{44} While subsequent attention has reduced the frequency and severity of such instances of misconduct and certain reforms have been instituted in the form of internal guidelines for interrogation, no effective external safeguards against arbitrary interrogation presently protect the citizens of Northern Ireland.

2. Trial

Those charged with crimes in Northern Ireland face further restrictions on their rights due to the EPA. The EPA creates a class of "scheduled" offenses that include a wide variety of crimes against persons or property "commonly committed by terrorist groups in Northern Ireland."\textsuperscript{45} The offenses are not necessarily political in nature,\textsuperscript{46} but are

\textsuperscript{39} Id. The power exists under the Magistrates' Courts Act (Northern Ireland), 1964, ch. 21, § 132, and the Children and Young Persons Act (Northern Ireland), 1968, ch. 34, § 50(3).

\textsuperscript{40} EPA, supra note 20, § 14(1). If the person detained is to be held for a longer period, he may be rearrested by a constable under § 11 or § 13. CURRENT LAW STAT. ANN., ch. 5, § 14, general note (1978). In an unscientific survey of Northern Irish citizens who had been arrested, 28.4\% had been arrested under § 14 of the EPA. Walsh, supra note 22, at 41.

\textsuperscript{41} The absence of a warrant requirement means there is no supervision or recourse in the judicial system for what might be unjust arrests.

\textsuperscript{42} Walsh, supra note 22, at 49.

\textsuperscript{43} In the first 10 months of 1980, 8.6\% of those arrested under the EPA were charged with a scheduled offense. Id. at 39, table 1. Comparable charge rates in England and Wales average 80-90\%. Id. at 39.

\textsuperscript{44} REPORT OF THE ENQUIRY INTO ALLEGATIONS AGAINST THE SECURITY FORCES OF PHYSICAL BRUTALITY ARISING OUT OF EVENTS ON THE 9TH AUGUST 1971, 1971 CMND. SER. 5, No. 4823 (Chairman Sir Edmund Compton) [hereinafter Compton Report]. The Compton Report revealed that suspects' heads were covered with black hoods for long periods and they were exposed to continuous and monotonous noise so as to make communication impossible. In addition, the report disclosed that suspects were forced to stand against a wall with their legs apart and their hands raised against the wall for six or seven hours at a time and that they were often deprived of food and sleep. Boyle, Human Rights and Political Resolution in Northern Ireland, 9 YALE J. WORLD PUB. ORD. 156, 165 (1982).

\textsuperscript{45} CURRENT LAW STAT. ANN., ch. 5, sched. 4, general note (1978).

\textsuperscript{46} Scheduled offenses include common law murder, manslaughter, kidnapping, false imprisonment, assault causing bodily harm, and riot. EPA, supra note 20, § 30, sched. 4.
culled from other acts already in force. Those charged with scheduled offenses are tried in different courts under different procedural and evidentiary rules that favor the prosecution in a number of ways.

Specific crimes that appear to fall within the scope of the scheduled offenses classification can be treated as nonscheduled by certification of the Attorney General for Northern Ireland. This certification procedure is necessary "so as to exclude crimes which have no connection with terrorism." Thus, the only crimes effectively treated by the courts as scheduled are those that the government believes are connected with terrorism. Because terrorism is defined as "the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear," those accused of committing politically motivated crimes are subjected to a system of justice quite distinct from the one faced by ordinary, nonscheduled defendants.

The most noticeable of the differences between the two systems is the absence of a right to trial by jury for those who commit scheduled offenses. In scheduled offense cases, the judge sits as the finder of fact and law, whereas in cases involving nonscheduled offenses, the defendant possesses the right to trial by jury.

This feature of the EPA has aroused considerable criticism and commentary. Critics charge that conviction rates in scheduled offense cases have increased in recent years because judges hearing such cases have become case-hardened and are no longer as sympathetic towards defendants as they once were. Others question the ability of judges to rule on the admissibility of evidence that a jury normally would not see while continuing to serve as the finder of fact.

Proponents of the EPA note that the system has eliminated the problems of biased juries and intimidation of jurors by nationalist groups. These advocates of the EPA further point out that judges must

47 In addition to common law offenses, scheduled offenses are drawn from various statutes dating back to 1861 dealing with explosives, theft, terrorism, and other statutory crimes. For a full listing of these acts, see id.

Over 50 classes of crimes are defined as scheduled. Anyone charged with committing a scheduled offense is subject to the EPA trial provisions unless the Secretary of State certifies that the case is to be treated as nonscheduled. Id. § 30, sched. 4, note 2. There is no procedural framework for this certification; it is an unappealable, nonjudicial process without standards, burdens of proof, or right of representation.

48 Id. §§ 6-10. See also infra notes 52-70 and accompanying text.

49 EPA, supra note 20, § 30, sched. 4. See also CURRENT LAW STAT. ANN., ch. 5, sched. 4, note 2 (1978).


51 EPA, supra note 20, § 31(1).

52 Id. § 7.

53 Between 1973 and 1979, the proportion of acquittals in trials of scheduled offenders fell from 15% to 6%. Carlton, Judging Without Consensus—The Diplock Courts in Northern Ireland, 3 L. & Pol'y Q. 225, 234 (1981).

54 AMNESTY INTERNATIONAL, NORTHERN IRELAND: AMNESTY INTERNATIONAL'S CONCERNS REGARDING THE CRIMINAL JUSTICE SYSTEM, app. at 3-4 (1984) (AI Index: EUR 45/01/84) [hereinafter AMNESTY INTERNATIONAL].

55 A better solution may have been to end the freehold jury system. Because Protestants comprise a substantial majority of the property owners in the North, this system chose juries that were
give reasons for convicting scheduled offenders and that such offenders possess an automatic right of appeal to the Court of Criminal Appeal in Northern Ireland.

Of deeper concern to opponents of the EPA are the evidentiary provisions that greatly reduce the standards for admissibility of evidence in trials of scheduled offenders. Any statement made by the accused is admissible provided the court deems it relevant and does not exclude it on other grounds. The court will exclude the statement only if the accused makes a prima facie showing that the security forces used torture or inhuman or degrading treatment to induce the statement.

Northern Irish courts have had difficulty interpreting this new standard of admissibility. It is a marked departure from the common law requirement of a showing that the defendant had given the statement voluntarily. One judge interpreting the new standard concluded that the standard "appears to accept a degree of physical violence which could never be tolerated by the courts under the common law text and leaves it open to an interviewer to use a moderate degree of physical maltreatment for the purpose of inducing a person to make a statement." Such a standard for admissibility encourages the use of inhuman measures in interrogation proceedings as investigators take advantage of the gap between the new standard and the common law standard to secure either a confession or intelligence information, or both. Based on disclosures of past indiscretions on the part of officials

predominantly Protestant; thus, these juries were susceptible to bias and were an easy target for intimidation. Law and State, supra note 21, at 90-92.

The Criminal Justice Act, 1972, ch. 71, § 25, removed the property qualification for jury service in favor of a registered voter system. This Act does not apply to Northern Ireland; the new jury qualification scheme extends only to England and Wales. Id. at ch. 71, § 66(7).

56 EPA, supra note 20, § 5.
57 Id. at § 6. The effective scope of this appeal has been criticized. "[M]atters within the discretion of the trial judge do not afford grounds of appeal and appellate review over the 'weighing' of the evidence by the [judge] is very limited in scope." Amnesty International, supra note 54, app. at 4.
58 EPA, supra note 20, § 8(1). One survey of the Diplock courts indicated that in 56% of the cases tried the only evidence of guilt was a statement from the defendant. From 70% to 90% of the convictions obtained were based wholly or mainly on admissions made to police. Foley, supra note 28, at 299 n.113.
59 EPA, supra note 20, § 8(2).

It is a fundamental condition of the admissibility in evidence against any person equally of any oral answer given by that person to a question put to him by a police officer and of any statement made by that person that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

62 "[W]here ill treatment less than torture, inhuman or degrading treatment was established in a particular case as having been used to induce a statement, the admissibility of that statement involved the exercise of the general judicial discretion to exclude evidence." Current Law Stat. Ann., ch. 5, § 8, general note, subs. (2) (1978).
interrogating suspects and the current lack of procedural safeguards protecting suspects, it is not safe to assume that all detainees will be humanely treated by security forces.

Another consequence of the lowered evidentiary standards has been the use of informant testimony against defendants charged with committing scheduled offenses. The government has used the testimony of “supergrass” witnesses to convict large numbers of defendants during a single proceeding. “Supergrass” witnesses are not volunteers; like many informants in the United States, “supergrass” witnesses exchange their testimony for immunity from prosecution or reduced sentences. The testimony does not have to be corroborated by additional evidence, and because there are no juries in trials of scheduled offenses, the judge warns only himself of the inherent unreliability of such testimony.

Convictions of large numbers of defendants may, and often do, rest on the testimony of a single informant. Because pending charges will be reduced or dropped in return for his testimony, the informant has much to gain from testifying; he assumes a new identity after testifying, and thus has little to lose. Allegations have been asserted that informants are fabricating incriminating testimony in response to threats of prosecution by authorities. Because of the problems associated with the “supergrass” trials, they have fallen into disrepute and are now less frequently used than in the past. Their continued use, however, stands as another example of how justice has been compromised in the North.

III. Article 3(a) Analysis of the Justice System in Northern Ireland

A. Judicial Standards for Article 3(a) Analysis

Article 3(a) of the Supplementary Extradition Treaty will confer on United States courts the power to examine the criminal justice system in Northern Ireland when considering extradition requests. This inquiry should not take place in an informational vacuum. To provide a consistent measure of the fairness of Northern Ireland’s justice system, courts should determine the rights and freedoms of the citizens of Northern Ireland and should consider the system’s impact on those rights.

It is reasonable to expect a country to respect those rights and free-

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63 See supra note 44 & infra note 88 and accompanying text.

64 One of the chief criticisms of the existing reforms are that the guidelines for interrogation are self-policed. No independent external authority investigates claims of brutality by security forces during interrogations. See, e.g., Foley, supra note 28, at 322-24; Walsh, supra note 22, at 51-52.

65 “Grass” is the British nickname for informer. “Supergrass” refers to those who inform authorities about large numbers of people and appear as the principal prosecution witnesses at their trials. Green, Supergrass and the Legal System in Britain and Northern Ireland, 102 L.Q. Rev. 198 (1986).

66 Id. at 203-05.

67 After 10 supergrass trials in Northern Ireland, 54% of those found guilty were convicted on the basis of uncorroborated accomplice evidence. Id. at 240, 247.

68 Id. at 198.

69 Id. at 198-99.

70 Conviction rates have declined in recent supergrass trials as judges seem to be taking a more critical view of the supergrass trial. Id. at 239-41. The Solicitors’ Criminal Bar Association disfavors supergrass trials. C. Rice, supra note 28, at 38.

71 See supra notes 9-19 and accompanying text.
doms that it explicitly recognizes as fundamental and that it agrees to honor. The United Kingdom has recognized and has agreed to respect those rights and freedoms listed in the European Convention on Human Rights (Convention). However, the system of justice that Great Britain has implemented in Northern Ireland significantly abridges these supposedly recognized rights of the citizens of Northern Ireland. While the justice system does not technically violate the principles of the Convention because of the "state of emergency" in effect in Northern Ireland, the justice system nevertheless effectively violates many of the guaranteed rights and freedoms listed in the Convention.

The Convention specifically guarantees the following: the right to life, freedom from torture, inhuman or degrading treatment, the right to liberty and security of person, the right to a fair trial, the right to respect for private and family life, home and correspondence, and other significant basic human rights.


1. The Right to Life

The EPA empowers security personnel in Northern Ireland to stop and detain citizens if they suspect that the citizen is involved in terrorist activity. When security personnel order a citizen to stop and he refuses, the citizen does so at his peril. Recent cases brought against members of the security forces suggest that in certain parts of Northern Ireland security personnel order a citizen to stop and he refuses, the citizen does so at his peril. Recent cases brought against members of the security forces suggest that in certain parts of Northern Ireland

72 The United Kingdom signed the Convention on November 4, 1950. Further protocols have been signed; none of these subtract from the rights enumerated in the original convention. European Convention on Human Rights, opened for signature, Nov. 4, 1950, reprinted in Council of Europe, European Convention on Human Rights, Collected Texts 115 (10th ed. 1975) [hereinafter Convention].

73 Id. at 102, § 1, art. 2.

74 Id. at 103, § 1, art. 5.

75 Id. at art. 5. This right includes the assurance that arrest will be effected in order to bring someone before competent judicial authority on reasonable suspicion of having committed an offense, or when it is considered reasonably necessary to prevent an offense from being committed, or to prevent someone from fleeing after an offense has been committed. Id.

76 Id. at 104, § 1, art. 6.

77 Id. at 104-05, § 1, art. 8.

78 These basic rights include the following: freedom from slavery and servitude (Id. at 103, § 1, art. 4); protection from ex post facto criminal law (Id. at 104, § 1, art. 7); freedom of thought, conscience, and religion (Id. at 105, § 1, art. 9); freedom of expression (Id. at art. 10); freedom of peaceful assembly and association (Id. at art. 11); the right to marry and to found a family (Id. at art. 12); the right to peaceful enjoyment of one's possessions (Id. at 117, First Protocol, art. 1); the right of parents to ensure education of children in conformity with their own religious and philosophical convictions (Id. at art. 2); the right to free elections by secret ballot (Id. at art. 9); freedom from imprisonment for debt (Id. at 130, Fourth Protocol, art. 1); the right to liberty of movement, to choose a residence, and freedom to leave any country (Id. at art. 2); freedom from exile, and the right to enter the country of one's nationality (Id. at art. 3); prohibition of the collective expulsion of aliens (Id. at art. 4). The Convention has created an enforcement mechanism, consisting of the European Commission on Human Rights and the European Court of Human Rights. Convention, supra note 72, at 106-07, § II, art. 19. The Commission considers applications from individuals and states alleging violations of the Convention. If the Commission finds merit in the allegations, it approves the application allowing the Court of Human Rights to hear the case. Since signing the Convention in 1950, the United Kingdom has recognized this enforcement arm in numerous proceedings before the Court and the Commission.

79 See supra notes 24-43 and accompanying text.
Ireland security personnel may shoot to kill those who disobey orders to stop.80

The British government gives every soldier a Yellow Card that describes the conditions under which he is to fire his weapon. The card forbids the firing of warning shots. Instead, the card instructs soldiers to fire “aimed shots” if verbal warnings to stop are not heeded.81 Additionally, the Special Air Services allegedly train police officers to “shoot to kill” suspected terrorists.82 The result of this relatively undisciplined instruction regarding the use of lethal force is, according to one commentator, “that the individual can hardly know for certain when he is liable to be deprived of his most precious of rights, his life.”83

The use of rubber or plastic bullets by security forces has caused a number of civilian deaths in Northern Ireland. Introduced in 1970 as a means of riot control,84 the bullets appear to be used as more than just a means of quelling violent disturbances. Numerous reports exist of soldiers firing the bullets into otherwise peaceful gatherings.85 An inordinate number of those injured by the bullets suffer head injuries even though soldiers are supposedly instructed not to aim at the head.86 Such use of deadly force is not consistent with the Convention’s protection of the right to life.

2. Freedom from Torture, Inhuman or Degrading Treatment

Complaints concerning the physical and mental abuse of detainees by security forces appear to have decreased in recent years.87 While this trend is welcome, the decrease is in part due to reforms instituted after instances of severe abuse of Northern Irish detainees were disclosed in the early 1970s.88 Because those interrogating the detainees also en-

80 Spjut, The “Official” Use of Deadly Force by the Security Forces Against Suspected Terrorists: Some Lessons From Northern Ireland, 1986 PUB. L. 38, 57-59. Judges in two cases decided that when a soldier is on patrol in a ‘bad’ area he would risk his own life and that of others on patrol if he chased a suspect, because good tactical formation is essential to observation of terrorists who are waiting to ambush the patrol. Pursuit of the suspect, then, is not an option open to a soldier or, for that matter, a police officer in a ‘bad’ area. Id. at 55.

81 Id. at 55 & 55 n.10. These “aimed shots” are designed to kill a fleeing suspect, if one accepts the reasoning of Lord Lowry, C.J., in one case brought against a soldier who had killed a civilian who did not obey an order to halt. “Once the accused [soldier] made up his mind to fire, his training would dispose him to fire at the centre of the target without having to make a conscious decision whether his intention was to kill [the civilian].” Quoted in Spjut, supra note 80, at 55.

One judge went even further, dispensing with the third verbal warning required by the Yellow Card. In that instance, the accused soldier “might have challenged a third time as the yellow card specifies—if he had and the man had gone on and been shot at 50 metres would that have been justifiable, whereas when he shot after two challenges at 15 metres it is not. I doubt if reasonableness can depend upon such knife edge considerations.” Quoted in Spjut, supra note 80, at 56.

82 Id. at 55. As the Special Air Services is an elite branch of the British Armed Forces. Police and government authorities deny this claim.

83 Id. at 64-65. In the period 1969-83, security forces killed 264 civilians during antiterrorist operations in Northern Ireland. Id. at 66, annex.

84 C. Rice, supra note 28, at 26; Boyle, supra note 44, at 172.


86 Id. at 27 (citing a statement made in the House of Commons by Humphrey Atkins, former Northern Ireland Secretary).

87 Walsh, supra note 22, at 51, table 6.

88 The British government investigated reports of physical and psychological abuse of detainees
force any controls on methods of interrogation, it is indeed possible that abuse of detainees still occurs. 89 In addition, instances of verbal abuse continue to be documented. 90 Judges routinely allow confessions of scheduled offenders into evidence in trials even when the confessions are the products of a "moderate degree of physical maltreatment." 91 United States courts considering Northern Irish extradition requests must ask themselves whether the degree of maltreatment presently allowed, even under the "reformed" system, is consistent with contemporary notions of humane treatment and justice.

3. The Right to Liberty and Security of Person

Article 5 of the Convention guarantees liberty of the person "in particular to provide guarantees against arbitrary arrest or detention." 92

and concluded that the following methods of interrogation were used: keeping detainees' heads covered by a black hood except when alone or when being interrogated; submitting detainees to continuous and monotonous noise to isolate them from communication; depriving detainees of sleep; depriving detainees of food and water other than one pound of bread and one pint of water at intervals of six hours; making the detainees stand facing a wall with their legs apart and their hands raised against the wall for extended periods of time. O'Boyle, Torture and Emergency Powers Under the European Convention on Human Rights: Ireland v. The United Kingdom, 71 Am. J. Int'l L. 674, 675 (1977).

Following reports of such abuse, the British government instituted a Committee of Enquiry to investigate the allegations. See Compton Report, supra note 44. While confirming the use of such techniques, the Compton Committee said the treatment did not constitute physical brutality, because those inflicting the punishment lacked the requisite mens rea. Compton Report, supra note 44, para. 105, at 29. The Committee did not examine the psychological effects of such treatment.

Disatisfaction with the Compton Report led to the establishment of a second committee, chaired by Lord Parker. This committee examined the interrogation procedures to determine if revision was required. See Report of the Committee of Privy Counsellors Appointed to Consider Authorised Procedures for the Interrogation of Persons Suspected of Terrorism, 1972, Cmnd. Ser. 5, No. 4901. The majority of the Parker Committee considered the use of the techniques justifiable under the circumstances. They recommended only that safeguards be enacted to limit excessive use of the techniques. Id. at 7-9, paras. 35-42. A minority of the committee disagreed and believed that the use of such techniques violated domestic and international law. Id. at 14, para. 10(d). The British government officially discontinued the use of the five techniques on March 2, 1972. O'Boyle, supra, at 679.

The Irish Republic was concerned with the use of the techniques and instituted proceedings against the United Kingdom under the European Convention on Human Rights. The European Commission on Human Rights accepted for consideration the application and approved submission of the case to the European Court of Human Rights. See Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) (1978) at 63.

The Commission found that the techniques constituted torture under the guidelines of the Convention. Ireland v. United Kingdom, 25 Eur. Ct. at 66. Later, the Court changed that finding to one of only inhuman and degrading treatment. Id. at 67.

Reports of abuse of detainees continued. After an Amnesty International mission to Northern Ireland in 1977 that recommended further inquiry into interrogation practices, see Amnesty International, Report of an Amnesty International Mission to Northern Ireland 55, 67 (1978) (AI Index EUR 45/01/78), the British government established the Bennett Committee. This committee examined interrogation procedures and made numerous recommendations designed to safeguard the rights of detainees. Report of the Committee of Inquiry Into Police Interrogation in Northern Ireland, 1979, Cmnd. Ser. 5, No. 7497.

Complaints of ill-treatment during interrogation have decreased since many of the Bennett Committee's recommendations were implemented. Boyle, supra note 44, at 168. 89 Boyle, supra note 44, at 168; Walsh, supra note 22, at 51-52.

Nearly one-half of those answering an unscientific survey reported being subjected to verbal abuse during interrogation. Walsh, supra note 22, at 49, table 5.

91 See supra note 61 and accompanying text.

Subsection 1(c) of article 5 allows "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or fleeing after having done so."93 The regular practice of arresting citizens for the purposes of internment or interrogation violates the rationale underlying article 5.94 Internment in Northern Ireland has been suspended since 1975, but the legal structure remains through which it could be reimplemented.95 Arrest for purposes of interrogation continues to be one of the major means of gathering intelligence in Northern Ireland.96 The broad range of information gathered from these interrogations greatly exceeds what is required in order to bring specific individuals before the "competent legal authority" as permitted by article 5(1)(c).

4. The Right to a Fair Trial

The right to a fair trial has been abridged in Northern Ireland since the recommendations of the Diplock Commission were embodied in the EPA provisions controlling trials of scheduled offenses.97 While the Diplock Commission considered the fair trial requirements of article 6 of the Convention,98 the Commission did not consider compliance with article 6 to be feasible in light of the "emergency" situation in Northern Ireland.99 In other words, the Commission admitted from the start that

93 CONVENTION, supra note 72, at 103, art. 5, § 1(c).
94 The question of arrest for purposes of internment (indefinite detention without trial, see supra note 32 and accompanying text) was litigated in Lawless v. Ireland, 3 Eur. Ct. H.R. (ser. A) (1961). The Court of Human Rights found clear violations of articles 5(1)(c) and 5(3) of the Convention. Lawless, 3 Eur. Ct. at 58. The government of Northern Ireland had not violated the Convention, however, due to the existence of a "public emergency" in the country at the time of the internment. Id. at 56-57.
95 The vast majority of those currently arrested under the EPA or the PTA are released without charge following interrogation. Walsh, supra note 22, at 39 (89.5% of those arrested were released without charge).
96 The scope of the information gathered is broad. In an unscientific survey of those arrested for interrogation, only 28.3% recalled being asked about their involvement in specific incidents. This at least partly explains why so few arrests result in filed charges. In contrast, 65% were questioned about their background and movements or those of their families and associates. Some were shown photos surreptitiously taken and were asked to identify those in the pictures. Questions about political attitudes and feelings were posed to 35% of those detained, and 35% of those detained were urged to pass on information to the police or army. Walsh, supra note 22, at 49-50. "It would seem, therefore, that both police and army are using their wide emergency powers of arrest and detention to build up dossiers of information on the personal life, background, characteristics, interests, and movements of individuals and possibly whole communities in Northern Ireland." Id. at 50.
97 The courts were created pursuant to report recommendations. Diplock Report, supra note 23.
98 Article 6 of the Convention protects the right to a fair trial. CONVENTION, supra note 72, at 104, art. 6.
99 In particular, the Diplock Report was concerned with the intimidation of witnesses. The Diplock Commission considered internment to be the answer to that problem. Since the tribunals considering internment of suspects could not allow state witnesses to be cross-examined because of concerns about possible intimidation of those witnesses, the fair trial requirements of article 6 could not be met. The solution to this dilemma was to make the internment process an extrajudicial process not involving the courts. There can be no derogation from minimal fair trial standards, the reasoning continued, if there is no court involved. Twining, Emergency Powers and Criminal Process: The Diplock Report, 1973 CRIM. L.R. 406, 413-14.
the recommended dichotomous court system, later embodied in the EPA, would not produce a fair trial according to the Convention’s standards. Proceeding from this assumption that the article 6 requirements could not be respected, the Diplock Report recommended a judicial system designed to effect the objectives of the elimination of intimidation and the containment of terrorism. Although the ends are laudable, the various means employed to achieve those ends do not serve the interests of the citizens of Northern Ireland because of the consistent disregard for human rights. United States courts must decide if juryless trials, lowered evidentiary standards, admission of coerced statements of the accused, and conviction on the basis of uncorroborated accomplice testimony are features of a system of justice that meets “even minimal standards within a democratic context.”

5. The Right to Respect for Private and Family Life, Home and Correspondence

The expansive powers that the EPA grants to security personnel to search the premises where a person has been arrested may violate article 8 of the Convention. While the courts have not explored the limits of article 8, it is questionable whether the broad powers to search satisfy the letter or spirit of the Convention. Security forces do not need a warrant to search; indeed, what authorization that is required comes not from the judiciary but from the Secretary of State. The civil rights protections in the EPA search and seizure provisions are minimal; the potential for abuse of these provisions is great.

Apparently, abuses of these search powers do occur. Between 1971 and 1978, security forces searched homes over 300,000 times. This figure is, numerically, approximately seventy-five percent of the households in Northern Ireland. Although the figure includes repeated searches of single dwellings, the scale on which these intrusions occur is still enormous. The searches are typically very thorough; they are general in scope rather than specific. The searches may be based on a variety of suspicions concerning the connection of the home or its occupants to scheduled offenses. The apparent abuse of such broad powers does

100 See supra notes 45-70 and accompanying text.
101 See supra note 19.
102 “Everyone has the right to respect for his private and family life, his home and his correspondence.” CONVENTION, supra note 72, at 104-05, art. 8.
103 F. JACOBS, supra note 92, at 126-27.
104 Section 19 of the EPA empowers a soldier to “enter any premises or other place . . . if he considers it necessary to do so in the course of operations for the preservation of the peace or the maintenance of order.” Additionally, if authorized by the Secretary of State, soldiers may seize or destroy property and interfere with private or public rights in property.
105 C. RICE, supra note 28, at 24; Foley, supra note 28, at 294.
106 Foley, supra note 28, at 294.
107 Section 15 of the EPA authorizes searches for the purpose of uncovering munitions or radio transmitters. A dwelling-house is to be searched only if there is suspicion that the items sought are on the premises. Section 17 allows security forces to enter and search any premises where they suspect a person is held hostage. Section 13 allows a constable, once he enters any premises for the
not guarantee the rights of the citizens of Northern Ireland; United States courts should take notice of such abuses when considering extradition requests.

C. The "Emergency" Situation in Northern Ireland

Great Britain justifies the limitations placed on the civil rights of the citizens of Northern Ireland by noting the levels of violence that have destabilized the country and the continuing efforts to undermine the Unionist/British rule in the province. Since 1961, such justifications have precluded any finding that Great Britain has violated the European Convention on Human Rights. Article 15(1) of the Convention provides for derogation from the provisions of the convention "[i]n time of war or other public emergency threatening the life of the nation" and requires only that the Secretary-General of the Council of Europe be kept fully informed of the measures taken and the reasons for those measures.

Under the standards of the Convention, an emergency situation has existed in Northern Ireland since 1957. The existence of a protracted state of emergency in Northern Ireland has, in the eyes of the Court of Human Rights, justified the United Kingdom's breaches of the Convention in the years since 1957.

This supposed state of emergency is perhaps the most disturbing of the many issues that United States courts will face when considering requests for the extradition of Northern Irish citizens. The fact that the emergency situation is now in its thirtieth year suggests that the "emergency" has become the status quo. In fact, emergency legislation of one kind or another has been in effect since 1922.
has been raised under various laws that restrict personal liberties and freedoms in the name of the emergency situation.

United States courts must decide whether the means used to control politically motivated violence in Northern Ireland should be supported by allowing the extradition of persons suspected of having committed scheduled offenses. The security forces now employ the EPA to amass detailed intelligence about the private lives of Catholics and Protestants alike, significantly abridging citizens' rights in the process. In addition, confessions of dubious reliability have become the basis for the majority of convictions in the juryless Diplock courts that adjudicate politically related offenses. The Northern Irish live in justifiable fear of the "security" forces. They fear arrest and interrogation. They fear being shot if they disobey an order to halt. They fear methods of crowd control that injure and kill. In such an environment, fine questions of whether an "emergency" exists which would somehow justify what is, in effect, the state-sponsored terrorism of its own citizens do not seem appropriate. What seems appropriate are constructive actions that work towards building a system of justice where human rights are respected and protected. People cannot be expected to respect the rights of their fellow man when their government does not do so.

The justification for this system of justice is supposedly the ends it seeks to achieve. However, it is questionable whether the ends that have been achieved in Northern Ireland are the ends toward which contemporary democracies should strive. An atmosphere of abuse and repression will only breed resentment, fear, and contempt for the justice system among the Northern Irish people. Such sentiments cannot be converted into constructive action and cannot be the basis for an improved Northern Irish society.

IV. Conclusion

In future extradition cases where the United Kingdom is the requesting party, the Supplementary Extradition Treaty empowers courts to consider the system of justice in Northern Ireland before granting or denying extradition. Where the request is based on a conviction or allegation of committing a scheduled offense under the EPA, courts should deny the request. In so doing, courts in the United States will be employing article 3(a) of the Supplementary Treaty in a manner that will benefit the citizens of Northern Ireland as a whole, and will encourage the government of Great Britain to protect the rights of those citizens.

Until such time as meaningful changes are made in the entire system of justice in Northern Ireland, changes that respect the human and civil rights of the Northern Irish, the United Kingdom should realize that

114 Courts may wish to consider whether the justice system in Northern Ireland is an appropriate subject for judicial notice. The provisions restricting human and civil rights are plain, and apply with particular force to any Northern Irish citizen charged with the commission of a scheduled offense. Some American courts have taken judicial notice of the existence of a state of uprising in Northern Ireland, see, e.g., In re McMullen, No. 3-78-1099 MG, slip op. at 4 (N.D. Cal. May 11, 1979), reprinted in 132 CONG. REC. S9146-147 (daily ed. July 16, 1986). Extending this to recognizing the unfairness of the attendant system of justice is a reasonable next step.
courts in the United States will be closely examining the existing system when determining whether the article 3(a) criteria have been met. The inherently political nature of the scheduled offenses brings them within the purview of article 3(a) as evidenced by the political definition of "terrorist" scheduled offenses, and the separate system of justice to which scheduled defendants are subject.

Undoubtedly, tensions will result as United States courts deny extradition requests of the United Kingdom; however, such tension may prompt meaningful change in the justice system of Northern Ireland. United States courts should take advantage of this unique opportunity to influence the administration of justice in Northern Ireland and should send a strong signal to Great Britain that the time has come for a change by denying extradition requests for any fugitive of Northern Ireland charged with or convicted of a scheduled offense.

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