



REPORT
from the
JOINT COMMITTEE ON FOREIGN AFFAIRS
relating to
EXTRADITION

24 - 10 - 56

Sir P. M. McBride
presented

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1. The Joint Committee on Foreign Affairs, having examined relevant Acts and Treaties, feels that the present situation in regard to extradition from Australia to Communist-controlled countries has unsatisfactory features.

2. In such countries the normal safeguards of justice do not seem to apply, and the authorities there, on their own admission, have fabricated evidence in their own courts, have extorted false confessions, and have thereby condemned and even executed innocent men for political purposes.

3. It is by no means improbable that the authorities in such countries, following their normal course against political opponents, would seek to extradite some of them who have found refuge in Australia, and for such purpose would use the resources of their government to fabricate evidence against them, including evidence of non-political crimes.

4. It used to be a settled axiom of our extradition policy that we should not conclude extradition treaties with countries in which the normal machinery of justice was not in operation; our present extradition arrangements with Communist-controlled countries are mainly due to the adoption of old treaties, concluded before Communist regimes were established there. There are at present six such treaties, namely with Albania, Czechoslovakia, Hungary, Poland, Rumania and Yugoslavia.

5. The Committee feels that the maintenance of extradition treaties with these countries is inappropriate, because of the prima facie possibility that any application for extradition to them would be based on false and concerted evidence, and could not therefore be granted under conditions of natural justice. Although, in our opinion, the existing law and treaties give considerable discretion to the Australian authorities to refuse any particular extradition, this

extradition than can be provided by the exercise of arbitrary authority, however benevolent.

6. In regard to Australian citizens (and this term does not seem to include, in law, British citizens who are not Australian) the Extradition Acts and the Treaties with Communist-controlled countries give to the Governor-General the right to refuse all requests for extradition if he so sees fit. However, circumstances might arise in which even the extradition of an Australian citizen might be demanded by a Communist-controlled country from a weak Australian Government, and in which, although there might be no justice in the demand, there might, for some political reasons, be a reluctance on the part of that Government to refuse it. The Committee feels that the Australian citizen should be given an appeal to the Courts against any such eventuality.

7. In regard to people who are not Australian citizens, the Communist-controlled country would seem, under existing treaties, to have the right to demand extradition upon prima facie evidence, unless the crime alleged were of a political nature, or unless the accused proved to the Australian Court or to the Governor-General that the charge was laid for the purpose of extraditing him with a view to trying or punishing him for a political offence.

8. In regard to the second of these safeguards, it will be noted that the accused must sustain the onus of proof, and, in all the circumstances, this may turn out to be difficult or impossible to discharge. It is true that the proof required may perhaps only be such as is necessary to convince the Governor-General, but the Governor-General in such a matter must act in good faith, and it would be very embarrassing if any other country could assert with any degree of plausibility

Communist-controlled countries to fabricate evidence.

9. The Australian network of extradition treaties is by no means complete, and the abrogation of our treaties with Communist-controlled countries would not therefore occasion any significant change in our capacity to prevent Australian criminals from escaping punishment by flight abroad; and this is especially true in so far as we could scarcely expect such Communist-controlled countries to perform their reciprocal obligations in good faith, unless it suited their own particular purposes at the time.

10. The Committee therefore recommends:-

- (a) That all existing extradition treaties with Communist-controlled countries, viz., the treaties with Albania, Czechoslovakia, Hungary, Poland, Rumania, and Yugoslavia, be denounced, in accordance with the machinery provided in their texts and that no further extradition treaties be concluded with Communist-controlled countries.
- (b) That legislation thereafter be enacted to provide that no person shall be liable to extradition under any treaty made subsequently to the Act -
 - (i) if the alleged offence is of a political character; or
 - (ii) if the alleged offence is not of a political character, unless it is proved to the satisfaction of the magistrate or the court before whom the accused is brought on habeas corpus, that the requisition for his surrender has in fact not been made with a view to try or punish him for an offence of a political character.

31st May, 1956.