UK Extradition Arrangements

[Relevant document: The Fifteenth Report from the Joint Committee on Human Rights, The Human Rights Implications of UK Extradition Policy, HC 767.]

7.1 pm

Mr Dominic Raab (Esher and Walton) (Con): I beg to move,

That this House calls upon the Government to reform the UK's extradition arrangements to strengthen the protection of British citizens by introducing as a matter of urgency a Bill to enact the safeguards recommended by the Joint Committee on Human Rights in its Fifteenth Report, HC 767, and by pursuing such amendments to the UK-US Extradition Treaty 2003 and the EU Council Framework Decision 2002 on the European Arrest Warrant as are necessary in order to give effect to such recommendations.

First, may I thank the Backbench Business Committee chaired by the hon. Member for North East Derbyshire (Natascha Engel) for granting this debate? Her Committee is proving to be a shot in the arm for Parliament and our democracy. I also wish to thank the cross-party sponsors of the motion, the right hon. and learned Member for North East Fife (Sir Menzies Campbell), the Chairs of the Joint Committee on Human Rights and the Home Affairs Committee, and the many, many MPs on all sides of the House who signed and support the motion.

The debate was scheduled at relatively short notice, so the right hon. and learned Member for North East Fife and the Chair of the Home Affairs Committee are not here. The right hon. and learned Member for North East Fife is leading a parliamentary delegation in Washington. The Chair of the Home Affairs Committee is also engaged but will join the debate later. Both spoke passionately in the Westminster Hall debate on 24 November. Both asked that I reiterate their firm support for the motion this evening.

The issue before us is technical and legalistic but, at its core, it is about the price we place on the liberty of our citizens, and the value we ascribe to that cornerstone of British justice, innocent until proven guilty. It is not about abolishing extradition, which is vital to international efforts in relation to law enforcement. It is about whether, in taking the fight to the terrorists and the serious criminals after 9/11, the pendulum swung too far the other way. I want to praise the Minister and the coalition for their efforts to defend our freedoms and their achievements to date, and for taking seriously the case for extradition reform. My purpose today is to encourage their best instincts and inject a dose of common sense into the blunt extradition regime that we now have in place.

What went wrong? Let us take, first, the UK-US treaty of 2003. Much has been made of the different evidential thresholds. The review by Sir Scott Baker concluded that there was "no significant difference" between the two tests, probable cause and reasonable suspicion. For my part, I do not believe there is a massive difference between the paper legal tests, but that does not mean that their operation is symmetrical. As Alun Jones QC, who represented the Spanish Government during the Pinochet case, argued and points out in *The Daily Telegraph* today, an American citizen who is subject to an extradition warrant in the US has the constitutional safeguard that a judge must examine

the evidence. In this country, a short recitation of the allegations suffices. That is a very real and important imbalance.

Richard Ottaway (Croydon South) (Con): I am grateful to the hon. Gentleman. He says that he believes the evidential test to be higher in the USA than it is in the United Kingdom. Will he acknowledge, however, that the United States has not refused a single request since the treaty was introduced?

Mr Raab: I thank the hon. Gentleman for his intervention. I will take his word on that data, but the key distinction that I am making is between the paper legal test and how it actually works. We are not going to be ivory tower academic lawyers about this. Let us understand the impact on the people affected.

Mr David Davis (Haltemprice and Howden) (Con): Let me correct the record. The Americans may not have refused any British applications for extradition, but they have refused to provide witnesses in other countries' cases, which has led to broken trials.

Mr Raab: I thank the right hon. Gentleman for that clarification.

In practical terms the arrangements are unbalanced too. On the latest data available—I thank the Immigration Minister for his letter correcting earlier replies to parliamentary questions—29 UK nationals or dual nationals were extradited from Britain to the US since 2004. Five Americans were extradited from the US to Britain.

Obviously, states extradite their own nationals and third parties as well, but we in the House are rightly concerned about the treatment of those removed from the home country. In front of the Foreign Affairs Committee, the US ambassador disputed some of the earlier data that I spoke to in the Westminster Hall debate, complaining about untrue accusations being made by MPs and adding:

"The constant use of skewed arguments and wilful distortion of the facts by some to advance their own agendas remains of great concern to the United States".

If there is any dispute about the facts it is not with me or any Member of this House, but with Ministers from the previous Government who failed to record consistently data on the issue between 2004 and 2007. I emphasise that all the figures cited today and in the previous debate were from Government replies to parliamentary questions. Neither the ambassador nor the US embassy, when I later followed up, were able to correct the figures with data based on their own records, so I find it regrettable that the charge of

"wilful distortion of the facts"

is being bandied around without His Excellency being in command of a few of his own.

Jesse Norman (Hereford and South Herefordshire) (Con): I am greatly enjoying what my hon. Friend is saying. I am a thorough supporter of the idea that the extradition rules should be reviewed, but I am still

grappling, in the American case, with the difference between the two tests. Will he give us a sense of how they might come apart?

Mr Raab: The fundamental question is the difference between reasonable suspicion and probable cause. As paper tests, I do not think there is an enormous amount of difference between them, but as Alun Jones QC, whose article in *The Daily Telegraph*I commend, has spelled out, the practical operation—the judicial scrutiny that is available in the US because of the US constitutional guarantees—is higher. That is the key difference.

For all the talk of the evidential burden and the question of reciprocity, in my view, the critical issue in the US arrangements is forum. That is the label for how one decides where, in cross-border cases, the appropriate jurisdiction lies. The Gary McKinnon case is the leading case attracting great controversy at present. At root it is about the injustice in dispatching someone with Asperger's syndrome hundreds of miles from home on allegations of computer hacking when he was apparently searching for unidentified flying objects. Gary McKinnon should not be treated like some gangland mobster or al-Qaeda mastermind.

Steve McCabe (Birmingham, Selly Oak) (Lab): I congratulate the hon. Gentleman on his efforts to secure the debate. Does he agree that whatever the outcome of the debate tonight, it would be helpful if the Government Front-Bench team gave us an update on the Gary McKinnon and Babar Ahmad cases, given that they have been so closely involved in them in the past?

Mr Raab: I thank the hon. Gentleman. It would certainly be useful to have an update on the cases that have attracted so much limelight and controversy.

More generally, we ought to have some discretion in this country to prosecute such cross-border cases here. Jurisdiction ought to be decided transparently, by independent courts, according to clear legal rules, not by prosecutors haggling behind closed doors. That is why the idea of guidelines for prosecutors does not go far enough. Of course, the legislation is already in place under the Police and Justice Act 2006. Let us bring it into force and take the political heat out of these cases, which I respectfully suggest would be in the interests of both countries. The previous Government enacted that legislation, so it is difficult to understand why Labour Front Benchers might seek to block it by opposing the motion.

Stephen Timms (East Ham) (Lab): Many constituents have raised with me the Babar Ahmad case, which my hon. Friend the Member for Birmingham, Selly Oak (Steve McCabe) mentioned. Will the hon. Gentleman clarify what effect he understands his motion, if agreed to, will have on pending cases, as opposed to future cases?

Mr Raab: I thank the right hon. Gentleman for his question. The short answer is that it is not clear. There has been talk about whether it might have some impact on the Babar Ahmad case, and indeed the Gary McKinnon case, but the truth is that it is not clear, and from this position I cannot give legal advice on individual cases.

Steve Baker (Wycombe) (Con): My hon. Friend makes his case with great erudition and I have every admiration for him, but I would like to return to something he said earlier about the practical import of the matter. Does he agree that, whatever the measure's impact, it is essential that never again must anyone spend seven years in prison awaiting extradition?

Mr Raab: My hon. Friend is of course right. That must be a point of principle, even when serious allegations have been laid.

The proposed change in the law might not even necessitate amendment of the treaty. Nevertheless, given its disproportionate value to our American friends, it is inconceivable that they would refuse if pressed to change the treaty. I also note that in the US's extradition treaties with Brazil, Mexico and Australia, to name a few, those countries retain the right to decline extradition in those and far wider circumstances as it affects their nationals. Is it so unreasonable for Britain, a stalwart ally, to ask for that rather modest adjustment?

Caroline Lucas (Brighton, Pavilion) (Green): With regard to an earlier intervention, it might be helpful to the House if I explained that the legal advice I have received—I know that there is plenty of legal advice on all sides—indicates that if it can be demonstrated that there were original flaws in the Babar Ahmad case, as I believe it can, the outcome of the vote could be particularly relevant to that case.

Mr Raab: I thank the hon. Lady for shedding light on some of the legal advice on that.

In my view, the regime in place under the European arrest warrant suffers from far more serious and widespread flaws than the UK-US arrangements, despite the important concerns that have been raised in that regard. If we consider the appalling treatment of Andrew Symeou, we will see the egregious nature of the flaws in the system. Greek police beat identical statements out of witnesses, which were later retracted, and Andrew spent practically a year in appalling prison conditions. He was left with a flea-ridden blanket in a baking-hot cell crawling with cockroaches and was abused by guards. He witnessed a prisoner being beaten to death for drug money. The trial proceeded at a crawl, with translators who spoke little English. Eventually he was cleared after a two-year ordeal.

Nick de Bois (Enfield North) (Con): My hon. Friend is making an excellent argument. He refers to my constituent, Andrew Symeou. Not only did Andrew go through all that before eventually being freed, but the human price his family paid was shocking. They had to put their lives on hold for up to four years, including two years in Greece.

Mr Raab: I thank my hon. Friend for his intervention. Andrew's father, Frank, gave evidence to the Joint Committee on Human Rights, and I am sure that we will hear from the Chair of the Committee later. The damage done and the human suffering not only to the direct victims, but to their families, are very clear. One of the major flaws of the Baker review is that it did not talk to or take evidence from the victims or their representatives.

Jesse Norman: Further to the point about the case of Andrew Symeou, when the European arrest warrant was introduced, did the introducing authorities look at the standards of law, order and punishment across the European countries in order to assure themselves that such conditions could not occur?

Mr Raab: I thank my hon. Friend for his intervention. I will move on to the level of scrutiny later, but the short answer is that the level in that case was not nearly high enough. The question today is whether we in this House have the will to stand up and ensure that the trauma of the Symeou case and many others is not inflicted on other innocent people. Let us be very clear that Symeou was innocent, as are many of the victims under the European arrest warrant.

The Symeou case exposes the fatal flaw in the European arrest warrant. Fast-track extradition in the EU—I think this will answer my hon. Friend the Member for Hereford and South Herefordshire (Jesse Norman)—is based on a leap of faith and an assumption that all European justice systems are of a decent standard. That assumption is a sham. The justice systems in many European countries are well below any acceptable minimum standard. The Baker review proposed no safeguards to prevent a repeat of such miscarriages of justice. The report expressed the aspiration that penal conditions and justice systems across Europe will get better in time. In fact, standards of justice in some of the countries concerned are getting worse. According to Transparency International's corruption perception index—just one benchmark, but an important one—corruption is getting worse in Greece, Hungary, Italy and Bulgaria. Even if standards of justice improve across Europe, as we all hope they will, our duty is to protect our citizens today, not in five or 10 years' time. That is why it is important to take action now and not accept the "hit and hope" counsel of the Baker review.

The Baker review failed to take evidence directly from the victims and hear about the trauma that innocent people and their families have been through. In contrast, the Joint Committee on Human Rights, chaired by the hon. Member for Aberavon (Dr Francis), took evidence from a range of victims, including Frank Symeou, Deborah Dark, Michael Turner and Edmond Arapi.

Angie Bray (Ealing Central and Acton) (Con): I am very much in sympathy with what my hon. Friend is saying. What is the balance between the number of Europeans who are extradited to the UK and the number of British citizens who are extradited to other European countries?

Mr Raab*rose—*

Madam Deputy Speaker (Dawn Primarolo): Order. The hon. Gentleman has been very generous in giving way, but before he replies I gently remind him of the time limit that will apply in the debate and that his introductory remarks were supposed to take about 10 to 15 minutes.

Mr Raab: Thank you, Madam Deputy Speaker. I will make progress. The short answer to my hon. Friend the Member for Ealing Central and Acton (Angie Bray) is that I am moving on to that point.

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Each of the victims had a story to tell about the Kafkaesque operation of the European arrest warrant. In none of those cases have any alleged crimes been upheld, and in this country I believe that we still call that innocent. In the case of Michael Turner, a businessman accused

of defrauding administration fees in Hungary, six years after the alleged offence took place Hungarian prosecutors have still not even charged him with any crime whatever. That warrant was a fishing expedition—no more, no less. If we do not put in place some basic check as the tide of warrants rises, there will be more of those injustices. The case for reform is overwhelming and the starting point should be the recommendations of the Joint Committee. No one is talking about tearing up the European arrest warrant altogether; we are talking about adding some safeguards enumerated in the report. If we do not put some basic checks in place, we are inviting worse to come.

To answer my hon. Friend the Member for Ealing Central and Acton, according the EU Council Secretariat Britain now receives a third of all European arrest warrants, four times more than France and 15 times more than Poland. The number of surrenders is rising. In 2004, 5 British citizens were surrendered in a year, but last year the figure rose to one a week. The case for reform is clear. We must put in place some basic checks so that we can ensure that the innocent are not swept along with those whom we of course want brought to justice.

It is important to stress that no one is suggesting that we should let criminals go free. We want the introduction of basic safeguards. They might add a small delay in some cases, but they will not prevent a single criminal being brought to justice. Let us be crystal clear that there is no law enforcement dividend from selling out the innocent. The motion before us calls on the Government to introduce legislation to remedy the situation. Of course Parliament cannot tie its own hands. The JCHR recommendations should be the benchmark and any legislation must go through proper scrutiny procedures.

At the international level, the motion calls on the Government to pursue renegotiation of the arrangements with our American and European partners. The legislature is not demanding the impossible of the Executive. I hope that the Opposition will support us in this. The Leader of the Opposition has strenuously made the case, with regard to civil liberties, that:

"We should always take the greatest care in protecting them… too often we seemed casual about them. I won't let the Tories or the Liberals take ownership of the British tradition of liberty."

Those are fine words that he will be held to this evening.

I acknowledge the work of the Baker review. Judges and lawyers can give their legal opinions, but ultimately it is Members of this House, as elected law makers, who will decide. Each of us bears the responsibility to protect the liberty of our citizens and defend British justice, and I commend the motion to the House.

Several hon. Members*rose—*

Madam Deputy Speaker (Dawn Primarolo): Order. There are time constraints on this debate, and a large number of Members—as you can see, if you would like to resume your seats—wish to take part. Therefore,

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there is going to be an eight-minute time limit on Back Benchers' speeches from now, but that will have to be reviewed if we look as if we are not going to get in every contribution.

7.20 pm

Mr David Blunkett (Sheffield, Brightside and Hillsborough) (Lab): I congratulate the hon. Member for Esher and Walton (Mr Raab) on obtaining the debate. I shall try to respond briefly in the spirit of accord that we have created over the past few days, including on the broadcast media.

I had the unenviable task of agreeing the framework agreement on the European arrest warrant and the renewed treaty with the United States. When someone has Baroness Helena Kennedy and the *Daily Mail* on their back, they really do need to be on the ball, so I have re-read a lot of material, including Justice Scott Baker's review, and it is worth those who follow parliamentary debates getting on the website and taking a good look at it.

The review may have flaws, but it is an extraordinarily good examination of precisely what was agreed, what has happened and, therefore, the reality of decisions taken and how they compare, for instance, with the Extradition Act 1989 and European convention rights, which are currently being tested by Babar Ahmad, because his case has gone to Strasbourg. In the case of Gary McKinnon, a review of the medical evidence is taking place for a report back to the Home Secretary, so high-profile cases are being dealt with almost outside, and in addition to, the procedure that we are debating tonight. In other words, the process is being exhausted and carried further, as it should be in cases of controversy and in extenuating circumstances.

Mr David Burrowes (Enfield, Southgate) (Con): The right hon. Gentleman raises the issue of Gary McKinnon, my constituent, and makes a new point, because I understand that he made representations for Mr McKinnon to stand trial via a TV link from this country and, if convicted, to serve his sentence here. Does that not make the case for a forum bar, which would enable such considerations to be transparent, rather than conducted perhaps privately, as the previous Home Secretary did?

Mr Blunkett: The forum bar carries forward convention rights and changes the balance, as Scott Baker's review indicates. Although I do not disagree with a great deal of the report by the Joint Committee on Human Rights, I note that elements of it would not only prolong the process—it has been mentioned already that some people have been awaiting extradition for a very long time—but alter the balance that we are trying to achieve.

If I were negotiating the 2003 treaty and the accompanying Extradition Act 2003 again, I would want a codicil, detailing alongside the treaty the nature of the process in order to assure people that there was a clear balance between the processes adopted in the United States and here.

In 2009 and 2010, I had the opportunity, which I took up privately, to visit the US Department of Justice. I kept it private for two years, because, in reporting back to the Home and Justice Secretaries under the previous and current Governments, I felt that there was some progress to be made by stating the views of the

Department of Justice, as indicated to me, on the possibility of taking decisions about any trial, the nature of any sentence and whether, if applied, it might be served in this country.

Those are difficult issues, because we should not presume that somebody would be found guilty. The hon. Member for Enfield, Southgate (Mr Burrowes) is close to Mr McKinnon's case, so he will be familiar with Lord Justice Stanley Burnton's commentary on it, and there is undoubtedly the major issue of medical evidence, which is under examination.

Let me deal briefly with where we should be going. We should return to the issues relating to the European arrest warrant, because, as we have just heard spelt out, extradition arrangements have been distorted in cases from eastern Europe to Greece, partly because there has not been a de minimis rule on sentences and, therefore, whether it applies; because people have been returned to—rather than dealt with originally—years after the case arose; and because EAWs have been presented to people outside the United Kingdom when no attempt has been made to serve a warrant inside. All those matters need reviewing for the sake of the sensible application of justice, because once people feel that justice is not being applied, as we have seen from campaigns and in tonight's debate, justice is questioned.

On the American issue, however, I shall talk about not just balance, but the rule of law, because we must have sensible arrangements that do not rest on whether we think an individual's case is a good one. The Americans quite rightly put to me, "What about Abu Hamza? Whose hands are going up for a type 1 diabetic who is a double amputee, and for his associate, who is alleged to be bipolar? Who feels they ought to run such campaigns on their behalf to stop extradition?" How do the United States see the issue when they are trying to ensure that principles are applied and a precedent not set which would then create complete havoc in the justice system? The rule of law has to apply equally and sensitively, but it has to include rules to which we can all adhere.

The NatWest three, or the Enron three as the Americans prefer to call them, were totally innocent according to their campaigns, and even I began to be convinced that they were, until of course they reached the United States and pleaded guilty.

John Hemming (Birmingham, Yardley) (LD): The Enron three told me that if they pleaded not guilty in America and were found guilty they would get 35 years, but that if they pleaded guilty they would get five years. They were concerned about being forced into pleading guilty in America.

Mr Blunkett: That is often undertaken—albeit not to the degree that has just been described—in our court system to ensure that people can enter a plea bargain, so it is not unfamiliar to any of us.

Charlie Elphicke (Dover) (Con): Will the right hon. Gentleman give way?

Mr Blunkett: I will not give way any more, because I will lose time.

On the American treaty, there is therefore room for negotiation on the side to take account of my central point: we live in an entirely different world with cyber-

attacks. Cyber-attacks from our country on installations in our own country can easily be dealt with, but cyber-attacks from a country on the installations or businesses of another country, such as the Pentagon, raise all sorts of issues about how we go forward.

There are rogue and emerging states in terms of cyber-attack and cyber-terrorism to which we would certainly not want to say, "Please would you try the individual in the state from which the attack took place," and, as such attacks are trans-border and affect installations throughout the world, we need to sit down and work out how we deal with that entirely new eventuality, which affects people across the globe. If we do not, we will rue the day.

With an agreement between prosecuting authorities, it would be perfectly feasible to use video conferencing so that the accused could not only take part in the trial and be questioned, but view the trial and, if found guilty, serve their sentence in a friendly state, where everyone agreed that conditions were acceptable. Let us have the further review on the back of Scott Baker. We have had the review that people wanted, and they do not like it. By all means let us keep reviewing it, but let us do so with a degree of common sense and balance, in the spirit of this debate.

I am aware that there will not be a vote this evening. I know that the Government will take this seriously, but I also know that they will have to govern and they will have to do business with a friendly state where the judicial system is free, open and based on rights, and we should respect it as such.

7.30 pm

Mr David Davis (Haltemprice and Howden) (Con): It is a particular pleasure to follow the right hon. Member for Sheffield, Brightside and Hillsborough (Mr Blunkett). He and I crossed swords many times when he was Home Secretary. I am not remotely surprised to hear his reasonable tone in this debate or to hear of his compassionate action on Gary McKinnon, as both are entirely in line with his character. What is more, I can understand only too clearly why he took the stance that he did in the early 2000s, because at that time the extradition situation around Europe and elsewhere was a mess, and it was sometimes very difficult to get people extradited from other countries. It is therefore wholly unsurprising that after 9/11 he took the action that he did. That does not mean that I agree with him about that action, but it is entirely understandable that it was taken. The House will not be surprised that I think it went too far because of, in my view, the pre-eminence of justice in this matter. There is a balance between justice and security, but security without justice is a very fragile security. It is our job to defend our lives and way of life, and in this respect I do not think that we have done so.

Unlike my hon. Friend the Member for Esher and Walton (Mr Raab), I do not speak as a criminal lawyer. What I am about to say is no doubt obvious to all criminal lawyers, but not necessarily so to the rest of us who are laymen. Let me make a simple point. In this country, we presume innocence. That has all sorts of implications that we do not think about most of the time. For example, it means that unless there is a threat to a jury, an ongoing threat to the public, or a risk of absconding, we generally give bail—we do not imprison people who are awaiting trial if we can avoid it. If we do

imprison someone, we put them on remand, where they are treated as innocent. They wear their own clothes; they are not made to work; they are called "Sir": all sorts of things apply to prisoners on remand that do not apply to other prisoners, either in this country or, indeed, abroad. The presumption of innocence has a distinct effect on how we treat people.

Let us compare that with people who are extradited. They feel as though they have been deported. They are in a foreign prison, often with lower standards; my hon. Friend referred to that in terms of Greece. They are not only in a different culture, but often surrounded by people speaking a different language. They are, in effect, in psychological isolation; one might think of it as psychological solitary. They are often thousands of miles away from their family. They are viewed as an alien in the institution in which they are held. That, of itself, is a very serious punishment of people we are presuming innocent at this stage of the process.

In addition, such people face a different justice system; I will describe it only as lightly as that. As was alluded to in the context of the NatWest three, this is a justice system that is not above saying, "Here is a plea bargain. Either you plead guilty or you're going to stay in this nasty Texan jail for the next two years while we think up the case against you." That is different from what they face here—and, frankly, I do not think that it is justice. As worst, it is a justice system that is actually corrupt, as we have seen in Greece. Although I understand the ex-Home Secretary's point of view, this was not new to us even when the EAW was created. I had a constituent who was one of the plane spotters and who was locked up, in effect, for political reasons and not given what I would judge to be anything like a fair trial—and, of course, he was tried for doing something that was not illegal in this country. That is, at this stage, how we treat people who are presumed innocent under our system.

John Hemming: I very much agree with my right hon. Friend. Does he agree that that supports a strong argument that, where possible, any prosecutions where there are alternative forums should be in the home forum?

Mr Davis: I entirely agree. That is very much the thrust of what I will say in the next few minutes.

Let me come back to the thought process behind this—the intent behind what the then Home Secretary was trying to achieve, with which, as I said, I sympathise. The EAW, the extradition treaty and the 2003 Act were all aimed at dealing with terrorism. What has been the consequence of that? A parliamentary answer told us that between 2003 and 2009 there were 63 extraditions to the USA, of which precisely one involved a terrorist. A number of the others involved serious crimes—although I have to wonder about the two people who were extradited for "satellite signal theft"; Rupert Murdoch's reach is obviously longer than I thought—but there was only one terrorist extradition. When I looked at it the other way around—extraditions from the Americans to us—I was unable to find any record of terrorists being extradited here. I asked people in the Library to look at it for me. They searched through all the available records and could not find any examples. We should keep in mind that the rather draconian process that we have,

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which was put in place to defend us against terrorism, does not appear to have had much impact in that respect. In practice, the outcome is much more mundane. The truth of the matter is that we will have far more Gary McKinnons extradited than Osama bin Ladens.

Because of the terrorist problem, the international crime problem, and the pressure for a fast agreement, we have left out some proper protections in the agreements that we have made, particularly with America. Debating this when he was in opposition, the current Attorney-General said that

"we chose in the 2003 Act, bizarrely, to get rid of the protection that existed in article 7(1) of the 1957 convention on extradition, which allowed an extradition to be prevented if the person was being sent to an inappropriate forum for the trial…Every other country has that safeguard. The Irish, who regard themselves as close partners and friends of the United States, and who have an extradition arrangement, have a forum clause in their treaty, which enables the question of the appropriate forum to be considered."—[*Official Report*, 12 July 2006; Vol. 448, c. 1419.]

He is right. Not only the Irish, but Norway, Switzerland, Holland, France and Germany all have such provision. In fact, the Germans' law will not allow the extradition of any of their citizens outside their country. Similarly, two Commonwealth countries—Australia and New Zealand, two of America's closest allies in the war on terror—have total discretion over who among their own nationals they allow to be extradited. The idea that we are somehow at odds with the accepted—and, indeed, acceptable—approach among the western nations in their battle with terrorism is nonsense.

Mr Blunkett: On 16 December 2004, the idea of treating one's nationals, as opposed to overseas citizens, differently in this country was ruled out by the House of Lords. I should know, because section 4 of the Anti-terrorism, Crime and Security Act 2001 was at stake.

Mr Davis: I am sure that the right hon. Gentleman is right. My point is that we are dealing with the situation as it is now and what is acceptable among the anti-terrorist community, if I might put it in those terms, and I am afraid that what is acceptable is something far tougher than we have been claiming.

Let me look at the other side—American reciprocity. Much of this is about reciprocity, so how have the Americans behaved? My hon. Friend the Member for Croydon South (Richard Ottaway), who is the Chairman of the Foreign Affairs Committee, asked how many cases have been refused. I have worked in the murky world of international relations in the Foreign Office, and I know that the number of requests refused is zero—but of course it does not work like that. If one wants to turn something down, one rings up one's ally and says, "Would you mind withdrawing it?" The US subsequently withdrew 5% of its applications, whereas we withdrew 20% of ours. I wonder why. I do not think that the Americans can claim a very great moral high ground in terms of reciprocity. Indeed, the attitude taken to that by many countries, including Canada, Spain, France, Germany and Italy, has traditionally been much more robust than ours.

So what should we do? My hon. Friend the Member for Esher and Walton has made this point in some detail, so I will be quick. We should change the forum arrangements. They should pay proper attention to not

accidentally punishing the innocent or over-punishing those guilty of minor crimes. I do not know why the Americans should think it better for Gary McKinnon to spend two years in an American prison than for two American witnesses to spend two weeks in a hotel in Britain while the case is tried. We should have prima facie evidence requirements so that we do not repeat the Symeou experience of somebody spending a year in a foreign prison before eventually being proven innocent. Finally, we should introduce a filter for cases that are

acceptable using dual criminality, seriousness and timeliness, so that justice does not become so heavy handed that it tips over into being injustice.

7.40 pm

Dr Hywel Francis (Aberavon) (Lab): It is a great pleasure to follow the right hon. Member for Haltemprice and Howden (Mr Davis) and my right hon. Friend the Member for Sheffield, Brightside and Hillsborough (Mr Blunkett). It is striking that they both spoke, in essence, about what I will concentrate on this evening, which is the way in which the debate in Westminster Hall and the debate this evening have arrived at a consensus for reform on this major issue.

I congratulate the hon. Member for Esher and Walton (Mr Raab) on securing this debate, just as I congratulated him two weeks ago when he secured the debate in Westminster Hall. He is a stalwart member of the Joint Committee on Human Rights and he is beginning to call me comrade. I also thank the Backbench Business Committee for agreeing to this debate, following the recent and successful Westminster Hall debate, which showed such impressive, unanimous support for extradition reform and for strengthening the human rights of UK citizens, as recommended in my Committee's report earlier this year.

I remind Members that this debate is about human rights. My purpose is simple: it is to give the motion my full support as Chair of the Joint Committee on Human Rights. I do so officially on behalf of the Joint Committee. I confirm that the motion embraces all the key recommendations of the Committee's report, which was adopted unanimously. I got the sense that the two previous contributions endorsed the recommendations of my Committee. We await the Government's response to our report and to the Baker review. Perhaps we will get a response this evening.

I respectfully suggest that there is a way forward for the Government. I believe that it will emerge in this debate, if it has not done so already. The debate will draw out the positives of the report by the Joint Committee on Human Rights and the Baker review. Notwithstanding the criticisms of the Baker review, I think it is fair to say that there is a degree of consensus between the two. Without going into the details, I believe that there is consensus on legal representation, proportionality, a road map for suspects' rights, the removal of European arrest warrant alerts, excessive pre-trial detention, time limits, people serving sentences in the UK, which many speakers have mentioned, and the Secretary of State's discretion. The Government should see the merit of proceeding with that consensus as a starting point.

Beyond that, the Government should look carefully at the big fairness and human rights issues on which my Committee is more unequivocal and forthright, such as rebalancing the US-UK treaty, mistaken identity and

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the use—or, as I would say, the misuse—of the European arrest warrant as an aid to investigation, which is sometimes a travesty of justice.

I cannot recall a time in the decade since I entered the House when there has been such unanimity across the Back Benches. For that unanimity to be achieved on such a major policy area as the human rights of our citizens is gratifying to me as the Chair of the Joint

Committee on Human Rights, particularly given that extradition engages so many fundamental human rights, such as the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, the prohibition of discrimination, the right to respect for private and family life and, most fundamentally of all, the right to a fair trial. I believe that all Members are united in striving to achieve those fundamental human rights and long may that continue, throughout the length of this Parliament and beyond. I will end, Madam Deputy Speaker, by paraphrasing one of your great heroes and a fellow feminist, Eleanor Roosevelt, who was a great champion of human rights. She asked: if we do not defend human rights in our own back yard, how on earth can we fight for human rights universally?

7.46 pm

Conor Burns (Bournemouth West) (Con): I congratulate my hon. Friend the Member for Esher and Walton (Mr Raab) on securing this debate. He has shown his usual tenacity and principle, which are becoming his hallmark.

It is a bit of a relief, on this one-line Whip, to escape the burdens of PPS-dom and speak out on something about which I have felt passionately for some time. I have recently written a pamphlet entitled "The case against the European arrest warrant", which will be published shortly.

I will not trespass on my time by speaking a lot about the United States, except to place on the record my support and sympathy for Gary McKinnon and his family, who in my judgement have been badly treated. The public share that view strongly.

I will concentrate on the European arrest warrant. My hon. Friend's motion is moderate in calling on the Government

"to reform the UK's extradition arrangements to strengthen the protection of British citizens".

As the hon. Member for Aberavon (Dr Francis) said, there is an emerging consensus in this House that that is something the Government should do.

The political and emotional context in which the European arrest warrant emerged after the desperate events in New York on 11 September has been alluded to. In evidence to the Joint Committee on Human Rights at that time, the Liberal Democrat MEP Sir Graham Watson, who was chairman of the European Parliament's justice and home affairs committee, said that

"the proposal would still be on a shelf gathering dust if it hadn't been for the events in New York… Mr. Bin Laden helped make it a reality".

There is a great deal of truth to that.

The workability of the European arrest warrant hinges on the principle of reciprocity between our courts and the courts of other countries. I will not dwell on this point because my right hon. Friend the Member for

Haltemprice and Howden (Mr Davis) and my hon. Friend the Member for Esher and Walton spoke passionately about why that is not a reality.

Another element that is central to making the European arrest warrant work is proportionality in its application. On 9 January 2007, the presidency of the European Council delivered a communiqué to the body's working party on co-operation in criminal matters, examining the application of the proportionality principle in matters relating to the European arrest warrant. Article 5 of the pre-Lisbon treaty on the functioning of the European Union stated that the proportionality principle is applied in respect of the four freedoms of the European Union, chiefly the free movement of goods, services, persons and capital. The treaty stated, however, that

"any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty."

It is surely clear that in its application, the European arrest warrant has gone well beyond proportional use.

Let us look at some of the examples of warrants being issued. They have been issued in respect of offences such as the possession of 0.4 grams of cannabis, 1.5 grams of marijuana or three ecstasy tablets, the theft of two car tyres and even the theft of a piglet. There was also the case of a person arrested while driving a car with a blood alcohol level of 0.81 mg, compared with a UK limit of 0.80 mg. The problem has been recognised even by the European Commissioner with responsibility for justice, fundamental rights and citizenship. She stated last November that

"European arrest warrants should not be issued mechanically, or automatically, for crimes that are not very serious such as bicycle theft."

Then there is the question of the number of European arrest warrants issued, which is also central to the application of the system. In 2009, the total number of arrest warrants issued was 14,789. My hon. Friend the Member for Esher and Walton will doubtless be aware that Bulgaria, Hungary and Italy were unable to provide figures for the number of arrest warrants issued in their countries. That backs up his point about the differences between systems. Poland issued 4,844, and France, a similar-sized country to the United Kingdom, issued 1,240. In the United Kingdom, we issued a mere 220.

We can also examine where those citizens were living when the warrants were issued. Despite the United Kingdom being in the bottom quarter of issuers of warrants, those issued against people in the UK represented 38.8% of all the warrants issued across the whole European Union.

Mr David Davis: Top of the league.

Conor Burns: Indeed.

There is a fundamental question whether the European arrest warrant is compatible with habeas corpus as we understand it in this country. The excellent Lord Vinson of Roddam Dene challenged the Home Office Minister then responsible in the other place, saying:

"The fact remains that hundreds of UK citizens are being compelled to appear before any EU court without the merit of the often frivolous charges being first assessed. They can be locked up without pre-trial. Is she not concerned that this totally

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overrides the ancient liberties of the British citizen enshrined in Magna Carta and habeas corpus? Will she assure the House that this will be resolved?"

The then Minister, Baroness Neville-Jones, responded:

"My Lords, the Government are concerned…with the disproportionate use of the European arrest warrant for trivial purposes."—[*Official Report, House of Lords,* 26 January 2011; Vol. 724, c. 955-56.]

That is another example of the consensus that is emerging across Parliament.

Then there is the question of the principle of dual criminality. Under the European arrest warrant, British citizens or those living in the United Kingdom can be extradited to another European country for crimes that may not necessarily even be offences under United Kingdom law. That concern was raised by the Home Affairs Committee in its report on the application of the European arrest warrant of November 2002. The Committee stated that it had

"grave concerns about the abolition of the dual criminality safeguard. The variety of criminal justice systems and of legislative provisions within the member states of the EU makes it difficult for us to be…confident…that it will be acceptable in all circumstances for a person to be extradited from the UK to face proceedings for conduct that does not constitute"

a crime in the UK. The fact that the European arrest warrant could necessitate a British court extraditing a British citizen for something that would not be illegal in the UK represents an entirely unacceptable incursion into our British criminal justice system.

I am not a lawyer. I think my constituents regard being a politician as crime enough without being a lawyer as well, but to be a law-maker one does not have to be a lawyer. Most of my constituents are not lawyers either, but they smell that something is not right in the exercise of the European arrest warrant. They want the British Government to stand up for British citizens, and they want the freedoms and protections under the law that we have cherished for years.

7.54 pm

Mr Andrew Smith (Oxford East) (Lab): I join in the congratulations given to the hon. Member for Esher and Walton (Mr Raab) and other colleagues on securing the debate. I believe that our extradition procedures need to be kept under review and protection afforded against the abuses and potential abuses that others have mentioned.

Like many constituents who have contacted me, I sympathise with Gary McKinnon for his plight and agree that if he is to face trial, it would be much better if it could be in the United Kingdom, where the alleged offence occurred. I take the points that my right hon. Friend the

Member for Sheffield, Brightside and Hillsborough (Mr Blunkett) made about the wider challenges that we face in the global context, and about how we all have to focus on addressing those challenges.

I also wish to add my voice to those of Members who have raised the case of Babar Ahmad. It cannot be acceptable that someone is held without trial for as long as he has been. To pick up on a point that was made earlier, it is encouraging that if there is a change to the law, it will affect pending cases, so he will no longer face the uncertainty of not knowing what will happen to him, or even when he will find out what will happen to him.

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Given the limited time, I want to focus on the case of one of my constituents, Mr Benny Wenda. Benny was granted refugee status in the United Kingdom in 2003 as a result of his well founded fears of persecution by the Indonesian Government, who disapprove of his activities advocating self-determination for the West Papuan people. He has subsequently been granted British citizenship. In granting him refugee status and then citizenship, the British Government accepted a protective duty towards Benny, but they now appear to be refusing to defend him against the same Government from whom he was granted protection in the first place.

The Indonesian Government have issued an Interpol red notice against Benny for the alleged crimes that he was accused of when he first came to the UK, which will have been considered when he was granted refugee status. Yet a letter that I have had from the Minister of State, Foreign and Commonwealth Office, the hon. Member for Taunton Deane (Mr Browne), states that the Government will not comment on the red notice; will not confirm or deny the existence of an extradition request; will not preclude the possibility of extradition; will not contact other Governments to ask whether they intend to arrest Benny as he travels to make the case for West Papuan self-determination throughout the world; and will not even contact the Indonesian Government to make a complaint about their continued pressure on him. The letter states:

"The issue of a red notice is a matter for the issuing state",

but it does not appear to accept that the protection of a British citizen is very much a matter for the state of which he is a citizen.

I ask the Minister for Immigration, who will be responding to the debate, whether there is any situation in which he would give an undertaking not to extradite a refugee to the country from which he or she had been granted protection. I suggest that it would not interfere with the sovereignty of other nations simply to ask them whether they would arrest someone, in this instance Benny Wenda, if they stepped on their soil. For the UK Government to refuse to ask that of a country that my constituent would have legitimate reason to visit seems to me an abdication of their most basic responsibility—to protect their own citizens.

I ask the Government to reconsider what seems to me to be a hastily cobbled together stance on the matter and accept a meeting of Ministers from the Home Office and Foreign Office, Benny, his representatives and me specifically to discuss the red notice. My constituent's example shows how other Governments, including repressive regimes, can use or abuse the red notice system to intimidate refugees and inhibit their freedom of travel and freedom of

speech. As others have said, our Government should stand up for British citizens who are threatened in such a way, and I urge them to do so in this case.

7.59 pm

Mike Crockart (Edinburgh West) (LD): I, too, begin by welcoming the debate and congratulating my hon. Friend the Member for Esher and Walton (Mr Raab) on securing it. Last week's debate in Westminster Hall and the number of hon. Members present tonight show the strength of feeling on this important issue. It is absolutely right that it is debated on the Floor of the House.

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Some 140,538 individuals have added their signature to the "Free Babar Ahmad" e-petition, which is rightly the catalyst for this debate, although the problem is much wider, as has been shown. I am glad that such cross-party support exists—even the *Daily Mail*, which I do not normally read,supports the campaign—but it was not always so. The Liberal Democrats have been vocal in our criticism of the lopsided extradition arrangements between Britain and the US for many years. Indeed, my hon. Friends the Members for Somerton and Frome (Mr Heath) and for Southport (John Pugh) were the only Members to vote against it in a scrutiny Committee. In 2006, we proposed amendments to the Extradition Act 2003 to protect the freedom and fair judicial treatment of British citizens, but, sadly, the previous Government refused to accept them.

I am pleased that the Liberal Democrats are acting on this issue in government and that my right hon. and learned Friend the Member for North East Fife (Sir Menzies Campbell) will lead a Liberal Democrat review of UK-US extradition arrangements. I await the findings of his report with interest.

No one is denying that extradition remains a necessary process in pursuing the ends of justice. It is rightly founded on the concepts of reciprocity and mutual respect among jurisdictions, although it recognises differences between them. However, extradition also deals with the most basic human right—that of liberty—and as such we must ensure that it is not entered into lightly or without proper process and oversight.

The affect of extradition on that basic right has been examined in detail regularly and recently by the Joint Committee on Human Rights and other Committees of both Houses. Reform is now advocated by Members on both sides of the House, which is to be welcomed. Both in the House and outside, it is recognised that extradition has changed. The process altered significantly in the wake of 9/11, as my hon. Friend the Member for Esher and Walton said. Although the aim of such change was undoubtedly positive, the reality is that arrangements continue to be open to abuse.

A few high-profile cases have demonstrated that to all. The lack of discretion to allow the UK to decline extradition when the case should be prosecuted in the UK has become synonymous with the case of Gary McKinnon; problems with the European arrest warrant and trust in suitably high standards of justice in Europe are synonymous with the case of the British student Andrew Symeou; and the lack of a prima facie safeguard, previously an integral part of UK extradition law, is synonymous with the case of Babar Ahmad. High Court rulings even today give examples of further concerns, on, first, the definition of a "judicial authority"

and whether that authority is truly independent; and, secondly, on whether extradition should be allowed when no charges have been laid, or whether it should be limited to being for the purpose of trial or sentence.

Those concerns add to the feeling that there is no reciprocal arrangement in practice. For every person extradited to Britain from the EU, we surrender nine back. We have surrendered 50% more of our citizens than the US. Today's motion would implement the JCHR recommendations, which offer basic safeguards to prevent miscarriages of justice and deal explicitly with the concerns highlighted by those cases. The Committee suggests a forum clause that would allow

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UK courts to refuse extradition when an individual should be tried in our country; a requirement for any requesting country to show a prima facie case; and proportionality checks to ensure that EAWs are not issued for minor offences.

As well as proportionality, the presumption that human rights are respected equally in EU member states is another significant issue with EAWs. The JCHR was minded to agree that judges are reluctant to refuse extradition on human rights grounds because of that presumption. As such, we agreed with evidence given by Liberty that highlighted the clear difference between equal protection of all rights in practice and protection in law, which means that there is a need to give defendants the ability to rebut the presumption of equality.

The Committee is clear that we need to deal with significant EAW issues, even if that means renegotiation of the framework decision. I am heartened by the Government's willingness to act on that.

Charlie Elphicke: My hon. Friend is making an excellent speech. Does he support the principle of renegotiating things in Europe to get the right balance in our relations with the EU?

Mike Crockart: I do indeed. That is exactly what the JCHR report asks for. It supports that unequivocally, as do I—[Hon. Members: "Hear, hear!"] That does not make me anti-European, however.

I am not saying that the use of EAWs has not been beneficial to the UK and Europe in the fight against serious and organised crime, or, to a certain degree, helpful in establishing a common area of freedom, security and justice, but we should not ignore the problems to support such advances.

The independent Baker review focused on five areas of extradition. Although I disagree with many of its findings, I share many of its points. On the Home Secretary's power to extradite, I instinctively have grave reservations in giving Ministers further powers when the distinction between state and judiciary becomes blurred. I believe that human rights considerations are more appropriately examined by the judiciary rather than a Minister, with proper consideration of relevant case law.

The Baker review also calls for a strengthening of legal representation in both issuing and executing states; an improvement in the process for the removal of EAW alerts, which was

highlighted by the dreadful treatment received by Deborah Dark; and the prevention of excessive pre-trial detention. As a side comment, I would say that seven years is almost certainly excessive. There is a degree of unanimity on the need to act on those points.

One fundamental consideration is lost in the detail: whether our constituents—British citizens—have sufficient protection in respect of their safety and human rights. As Liberty eloquently wrote in its 11 November letter to the Home Secretary, that is a balancing act:

"There is, of course, a balance to be struck in any system of extradition between the public interest in expeditious extradition to enable prosecution of crime and the provision of essential safeguards to ensure procedural fairness for the accused…the Extradition Act 2003 secures the former at the dangerous expense of the latter."

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I agree that the balance is wrong, and commend the Government's willingness to re-address it and secure the fundamental rights of the nation's citizens. However, I trust that the Minister will put a time scale on the willingness to act that is more precise than the one he articulated in last week's debate. Such affronts to justice have waited too long. We must put them right and do so soon.

8.7 pm

Caroline Lucas (Brighton, Pavilion) (Green): Let me begin by congratulating the hon. Member for Esher and Walton (Mr Raab) on his role in securing this important debate.

The motion calls on the Government to introduce

"as a matter of urgency"

a Bill to enact the safeguards recommended by the Joint Committee on Human Rights in its recent report. The motion calls for urgent legislation rather than simply legislation because a number of British citizens face the risk of extradition at any moment—this is an urgent issue. Babar Ahmad's father started a grass-roots e-petition with no formal organisation and no big newspaper backing, but none the less it garnered more than 140,000 signatures.

People signed the petition because they were horrified by the plight of Babar Ahmad, a British citizen who was detained in the UK for more than seven years without charge or trial. He faces extradition to the US with the prospect of solitary confinement for life in super-max conditions, which arguably amount to torture. Babar is not alone in his ordeal. The poet, Talha Ahsan, another UK citizen, is also being held—his case is related to Babar's—without charge or trial under our shocking extradition arrangements. He is entering his sixth year of imprisonment.

Of course, such asymmetric extradition arrangements do not apply only in terrorism cases, and I put on record my deep concern about the Gary McKinnon case, but I want to focus on the case of Babar Ahmad. I pay tribute to the courage and bravery of the families of Babar and Talha in fighting for justice for their sons, and to their MP, the right hon. Member for Tooting (Sadiq Khan), who has worked to support them since their ordeal began.

I have long lobbied for the closure of Guantanamo Bay. As we approach its 10th anniversary, the cases of Talha and Babar remind us that one of the most fearful things about Guantanamo Bay—people being held without charge or trial—is happening on UK soil, right now, at the behest of the US.

In a debate in Westminster Hall last month, Members heard of the appalling circumstances of Babar Ahmad's arrest in 2003 and the fact that he sustained at least 73 injuries for which he was awarded £60,000 compensation by the High Court in 2009. He is now in his eighth year at a top-security prison without charge. The allegations against him are serious. The US has alleged that Babar was running a website that solicited funds for terrorist organisations, including al-Qaeda and Chechen rebels. That is a grave accusation and there should of course be a trial. Indeed Babar and his family desperately want the case to come to trial so that they can clear his name. They want it to take place in the UK and not in the US partly because Babar is a British citizen and is accused of committing crimes in the UK.

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Jeremy Corbyn (Islington North) (Lab): I congratulate my hon. Friend on taking up this case and on what she is saying. Does she agree that if Babar Ahmad were to face trial in this country, it is likely that the case would collapse because of the way he has been treated, the conditions under which he has been held and the nature of the accusations that have been made against him throughout?

Caroline Lucas: I agree with the hon. Gentleman. I was explaining that Babar wants to stand trial here partly because he is a British citizen and partly because going to the US would separate him from his family, friends, and legal representatives, which would seriously undermine his ability to mount a strong defence.

Interestingly, I have seen extracts from the European Court interim decision on the cases of Babar and Talha. In paragraph 175, it is clear that the European Court has had from the UK Government an acknowledgement that they could be tried here, which runs counter to what is generally asserted. Moreover, Babar's lawyers also point out that other comparable prosecutions are proceeding in the UK. Nevertheless, in July 2004 and December 2006, the CPS and the Attorney-General declared that there was insufficient evident to charge Babar Ahmad with any criminal offence under UK law and that he should therefore be extradited.

If it is agreed today that there should be a Bill and a new approach, it would be even more essential for there to be new prosecutorial decisions in these very disturbing cases. In Babar Ahmad's case, it is my understanding that his lawyers are requesting a new prosecutorial decision on the basis that there has not been a proper one to date. That should mean that the changes that we are calling for today need not be retrospective but, rather, current in relation to these new prosecutorial decisions. Those decisions are needed because of these very disturbing cases in which it is clear that things have gone wrong.

The night before the debate on extradition in Westminster Hall, there was a shocking turn of events. Babar's lawyers received a letter from the CPS that admitted for the first time that it was never given the evidence that was sent to the US, apart from a few documents. The bulk of the evidence was shipped straight to the US by the police. Astoundingly, although we had previously been led to believe that the CPS had viewed all the evidence and judged it insufficient to bring the case to trial in the UK, we now have a confession that it had not even

seen all the evidence let alone investigated it properly. Quite simply, a proper decision has not been made on whether a prosecution can go ahead in the UK. That is shocking and it raises serious questions about why evidence that should have been given to the CPS was not and why Babar was not told about it. Who directed and authorised that circumvention of the CPS, apparently in deference to and at the behest of the US? Given the seriousness of what the CPS has told Babar Ahmad's lawyers, we need not just new prosecutorial decisions but a full public inquiry into what has gone on in this case.

The second major failure of prosecutors relates to human rights. Decisions to prosecute or not to prosecute here should not be relinquished so easily in favour of the US. There are grave human rights implications that have not been properly taken into account. In these cases over whether and where to prosecute and whether

to extradite, it is incredibly important for us to understand that the police, the CPS, the Home Office, the Foreign Office and the Attorney-General's office are all bound to consider the implications of the Human Rights Act 1998 in relation to every one of their decisions. That means that it is extremely relevant that concern has already been expressed, both by the courts here and now by the European Court, that the human rights issues that lie at the heart of the ongoing consideration in Strasbourg clearly never even formed part of the CPS's original decision in Babar's case and that the evidence was almost immediately conveyed to the US.

That in itself demonstrates that there has been a failure in the fundamental duty of prosecutors, which has not been adequately addressed to date. We cannot and should not tell the CPS who to prosecute, but we can and we should tell it to do its job properly and to insist on it receiving and properly reviewing all the UK evidence.

Let me say a little more about the significance of the current role of the European Court in Babar's case. The European Court of Human Rights has been wrestling with fundamental issues that relate not just to Babar Ahmad's case but to many others for the past four years. The final decision is expected imminently. The European Court has been considering two key issues: whether the use of extreme isolation for prisoners in prisons in the US before trial and post-trial amounts to a violation of article 3 of the European convention on human rights—the article prohibiting torture—and whether the length of sentences in the US, in particular the imposition of life imprisonment without parole or of 80 to 100 years, also violates article 3 of the convention. Whether or not the European Court finds for the applicants, in which case the UK cannot extradite them as long as those two potential fates await them, it is shocking that things have come to this. Courts here and the court in Europe have expressed their concern that what faces UK citizens if they are extradited to the US in a number of cases might arguably constitute what the law defines as torture.

These cases raise, in the most fundamental way, a convergence of issues between whether these men should be prosecuted here and the extreme consequence of what would happen to them if they were extradited to the US. Now we have today's debate. It is a matter of weeks before we hear the result of four years of anxious scrutiny by the European Court of Babar's case. I ask hon. Members to support the motion that has been tabled today because it is a crucial opportunity for us to send a clear message to say that the extradition laws in this country need to be radically reformed. If we do not do that, we are failing in our most basic

duty of protecting British citizens. That is why it is so significant that there has been huge Back-Bench support for this motion, and I hope that it will be demonstrated when it comes to a vote—if it does—later tonight.

8.16 pm

Stephen Phillips (Sleaford and North Hykeham) (Con): I congratulate my hon. Friend the Member for Esher and Walton (Mr Raab) on securing this debate and on the fierce advocacy that he has deployed both in his speech this evening and generally in relation to this issue. There have been a number of powerful contributions from both sides of the House. The contribution on the

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European arrest warrant from my hon. Friend the Member for Bournemouth West (Conor Burns) was particularly impressive. He said that he was not a lawyer and that being a politician was criminal enough in his constituency. All I can say is that I will not be taking my holiday in Bournemouth this year.

Extradition serves an extraordinarily useful function in the administration of criminal justice throughout the world. Merely fleeing a jurisdiction should not be equated with acquittal. It is very important that decent and proper extradition arrangements exist between civilised nations so that those who are accused of crimes, or at least of serious crimes, can be brought before the criminal courts of the jurisdiction in which those crimes are alleged to have been committed—provided of course that appropriate safeguards are in place, along the lines indicated by my right hon. Friend the Member for Haltemprice and Howden (Mr Davis), to recognise that those accused of crimes are not guilty of those crimes until such time as a jury, or in some cases a judicial body, has said so. There was nothing more inimical to justice than the spectre, after the end of the second world war, of many war criminals who were guilty of genocide being able to travel to jurisdictions where there were no extradition arrangements with European nations, and in those circumstances being able to evade justice for a considerable period. During the debate, we should not lose sight of the fact that there are victims of crime who are as much entitled to justice as those who are accused of crimes and who are in fact innocent.

As has been recognised in the debate—we have begun to reach a consensus on both sides of the House—a balance needs to be struck between, on one hand, the protection of the fundamental right of a citizen not to be extradited abroad if there are inadequate safeguards to protect that citizen from an unfair trial and, on the other, the need to prosecute very serious crimes. A number of principles pervade this area of law but, given the events at the beginning of this century that led to the Extradition Act 2003, sufficient regard might not have been paid to them.

The first of those principles is that trivial offences should not trigger extradition at all. In circumstances such as some of those alluded to by my hon. Friend the Member for Bournemouth West, it is entirely inappropriate that any citizen be removed from his own jurisdiction, taken to a foreign place, perhaps not granted bail and locked up, and prosecuted for something that, on the face of things, is minor.

The second important principle is that of speciality, of which no mention has been made during this debate but which requires that the only offences with which someone extradited to a foreign jurisdiction can be charged be those for which he has been extradited in the first place. Two of the problems in this area that perhaps have not been properly grappled with by the Extradition Act are the absence of enforceable assurances from some countries seeking extradition from this country and the fact that the Home Secretary and the courts cannot take the principle of speciality properly into account in those circumstances.

There is also the principle that there should not be double jeopardy—that nobody should be tried twice for the same offence—save perhaps in limited circumstances. Again, I do not think that any mention has been made

of that in the debate. Furthermore, there are principles surrounding the protection of people's human rights—the principle that we do not require those domiciled in this country, regardless of whether they are citizens, to be extradited if they might face capital punishment. That was alluded to by the hon. Member for Brighton, Pavilion (Caroline Lucas)—although I could not agree with all her remarks about torture.

Two issues have arisen out of the 2003 Act. The first concerns the disparity—or lack of reciprocity—perceived to exist between the arrangements that we have in place for extradition to the United States and the arrangements that the United States has in place for the extradition to this country of those accused of crimes here. Notwithstanding what was said by the then Attorney-General, Baroness Scotland, when the commencement provisions of the 2003 Act were debated in the other place, I agree with the Baker report that there is little difference between the tests applied on this side of the Atlantic and on the other side. Fundamentally, there is no difference between probable cause and reasonable suspicion.

What so concerns our constituents—certainly in my constituency—and many lawyers is that whereas in the United States the fourth amendment to the constitution, which requires probable cause to be shown, requires that an extradition request go before a court, there is no such requirement in this country. In those circumstances, it is perceived—I think, perhaps, correctly—that citizens or anybody domiciled in this jurisdiction whose extradition is sought to the United States are being denied a right that they might otherwise have had.

The commencement of the forum provisions contained in the Police and Justice Act 2006, in so far as they amended the 2003 Act, would go some way to meeting these difficulties. I agree with the Joint Committee on Human Rights that it is difficult to understand why those provisions have not been commenced, including by the previous Government. Liberty obtained advice from leading counsel, Edward Fitzgerald and Julian Knowles, that no amendment to the treaty between this country and the United States would be required were those provisions to be commenced. I would like to hear from the Minister, therefore, that the Government will at the very least bring forward the commencement of those provisions.

Richard Fuller (Bedford) (Con): My hon. and learned Friend is talking about the immediacy and the timing of some of these issues. That Babar Ahmad, who is the most pertinent example, has still not been brought to trial after seven years is further evidence of a scar on general jurisprudence in this country. Does that not give a sense of the importance of immediacy?

Stephen Phillips: I agree with my hon. Friend that it is a stain on justice in this country and, in my view, on justice in the United States that Babar Ahmad has been locked up for seven years. If Babar Ahmad wanted a trial, he could have one in the United States, but one of the great difficulties with forum issues is this: why on earth should he have to do so? Why should he be taken to a foreign jurisdiction, when the witnesses, the evidence and his legal representatives might be here, to defend himself against these very serious accusations? As the hon. Member for Brighton, Pavilion pointed out, these

are very serious allegations indeed. I was horrified to hear her comments about the absence of evidence before the Crown Prosecution Service. I hope that that matter will be looked into and that the Minister will assure us that the evidence will be made available.

The other area of debate has been the European arrest warrant, the problem with which is that the standards of justice that prevail in this country and other countries in Europe, such as Ireland, Germany and France, are not necessarily those that prevail all over the European Union. I regret to say that I do not share the hope of the Joint Committee on Human Rights and the Baker report that the system will sort itself out. That is the triumph of hope over experience.

8.26 pm

Jeremy Corbyn (Islington North) (Lab): I start by congratulating the Backbench Business Committee on securing this debate and the hon. Member for Esher and Walton (Mr Raab) on how he introduced it. I also place on the record my pleasure that, after the unfortunate way in which the debate was punted into Westminster Hall, we now have it on the Floor of the House. I thank those concerned and those who campaigned to ensure that these huge petitions were responded to properly.

When I was first elected to the House, I never would have dreamed it possible that public campaigns and public concern could result in a debate in the House of Commons. We spent years trying to secure debates on the Birmingham Six, the Guildford Four and several other cases that turned out to be serious miscarriages of justices and which, in the current atmosphere, would undoubtedly have attracted the same number of petitioners as the cases being discussed tonight. We should welcome the fact that Parliament has manoeuvred itself into a position where it can be more responsive to public concerns and justice issues. I hope that it continues. After all, that is what we are sent here for—not only to write laws and change laws but to consider issues of miscarriages of justice.

I want to refer briefly to three cases and then make a couple of general points. I shall not talk at great length about the first one because others have done so. The case of Gary McKinnon has been well reported and documented, and his mother and family have campaigned so assiduously on it, as has his own MP and many others. It is time that we understood that the McKinnon case goes to the heart of a whole load of inadequacies, of both our system and our relationship with the United States, which, as the hon. and learned Member for Sleaford and North Hykeham (Stephen Phillips) pointed out a minute ago, is not a reciprocal arrangement, but something fundamentally different.

Stephen Phillips: I am extremely grateful to the hon. Gentleman for giving way so soon. Is not one of the problems with the McKinnon case that there is nothing in the 2003 Act to enable the Home Secretary to take into account either mental or physical illness? That means that Gary McKinnon's Asperger's cannot be taken into account when deciding whether he should be extradited.

Jeremy Corbyn: The hon. and learned Gentleman makes an excellent point, and I agree with him. That is the fundamental weakness in the 2003 Act, which does

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not allow that discretion which any sensible, right-thinking person would apply straight away on a humanitarian basis.

I was not going to mention the General Pinochet case until I got to the end, but I may as well do so now, as it fits with the hon. and learned Gentleman's point. Like many others, I fought to get Pinochet extradited so that he could go on trial. We won the cases all the way through, but unfortunately the then Home Secretary decided that there was an overriding medical reason for allowing General Pinochet to return on the "Lazarus flight" to Chile, where he walked off the plane and seemed to be perfectly healthy.

Chris Bryant (Rhondda) (Lab): I rather agree with my hon. Friend about General Pinochet, not least as several of my friends were killed by his police force in Chile. My hon. Friend said that any sensible person would want to change the leeway allowed to the Secretary of State, but unfortunately the report that we are discussing this evening says:

"We note the arguments for increasing the role of the Secretary of State in the surrender of persons…We are not convinced that changes should be made".

Jeremy Corbyn: I am sorry that the authors of the report are not convinced, but it is up to us in this House to try to convince the Government to make those changes. Although I welcome the examination of the issue, as well as this debate, it is absolutely up to us to ensure that that happens.

The second case that I want to mention is that of Julian Assange and the ongoing attempt to extradite him to Sweden. I want to go on to something else in a second, but let me briefly quote Debra Sheehan, who has been campaigning for Mr Assange not to be extradited to Sweden: "I believe this ruling"—the ruling that he can be extradited—

"sets a very dangerous precedent allowing any UK citizen—and possibly any European citizen—to be extradited without charge. Mr Assange's case shows that the European arrest warrant can be used in a totally disproportionate way without using other less draconian methods of completing police investigations, such as Mutual Legal Assistance."

The European arrest warrant is a serious issue, because, as others have pointed out, it seems that countries with a far from rigorous, fair and open judicial system can gain arrest warrants against British subjects, who are then taken to a different jurisdiction, where they face a much lower threshold of proof before a conviction is obtained. It is not our business to protect criminals, but it is our business to ensure that people get a fair trial and that there is absolutely the presumption of innocence before any conviction is made.

The third case that I want to mention is that of Babar Ahmad, which was brought up excellently by my friend the hon. Member for Brighton, Pavilion (Caroline Lucas). Yesterday I received an e-mail from his father that I would like to quote from:

"I am writing to request that you attend the debate…and…vote in favour of reforming the laws so that they strengthen the protection for British citizens, such as my son Babar Ahmad, who is now in his eighth year of detention-without-trial."

He continues:

"Babar is the longest detained-without-trial British citizen in the modern history of the UK. He is in his 8th year of detention

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in a maximum security institution. He has served the equivalent of a 14 year sentence and if he had been tried and convicted in the UK, he would be probably out by now.

The CPS has recently admitted that it never considered the evidence against Babar before it was sent to the US authorities"—

a point made by my friend, the hon. Lady—

"yet for over seven years, they have allowed him to languish in prison without trial, refusing to prosecute him on the alleged basis that there is 'insufficient evidence' to prosecute him. The crimes for which he stands accused are said to have taken place in the UK. Over 141,000 people and 100 senior lawyers have"

written in his support.

"If extradited to the US Babar faces a period of 3 years pre-trial detention in complete isolation. If convicted he would face life without parole in solitary confinement at a Supermax prison".

Is that really what we want for British citizens under this law? That is what will happen if Babar Ahmad's extradition goes ahead. His father continues:

"On 22 June 2011, Parliament's JCHR explicitly raised concerns over Babar's case recommending that the government urgently re-negotiate the UK-US"

agreement. Finally, just to make the point, he says that this debate is part of the "enormous public interest" in the case, and in particular the examination of it by the Muslim community in this country, which feels that Babar Ahmad's case is indicative of something about the treatment of people where there is any suspicion of the kind of offences in which he is alleged to have been involved. He cannot be tried in this country because of the way he has been treated—the trial would collapse—so why on earth should we even consider allowing him to go to the United States?

Baroness Helena Kennedy, who is extremely eminent on all legal matters and somebody for whom I have enormous respect, wrote an excellent article in *The Guardian* today in which she raised the question of the forum. She wrote:

"To my mind, where there is clear evidence to a criminal standard of a crime being committed either in the UK or from the UK and jurisdiction is being contested, an English court should be required to determine the strength of the evidence and the 'forum conveniens'—that is, the location of any prosecution. The court's decision on forum should be based on clear guidance—the nationality of the defendant and the victim; location of both the prosecution and defence evidence, witnesses, and so forth. Yet as it stands there is no statutory right for a UK defendant to challenge extradition on forum grounds."

I hope that the Minister will be able to respond to that in winding up the debate.

The general point that I want to make is this. We are not here to defend criminals. We are here to ensure that those who have been charged are given a proper hearing and a fair trial. Extradition arrangements must be fair and reciprocal, and in most past cases they have been, in the sense that the Minister for the Interior, or the Home Secretary, has been able to exercise some degree of discretion as to whether or not a person should be extradited. I think that that is right, although one might disagree with the discretion used on certain occasions. What we have here, however, is a completely imbalanced system—as a result of both the European arrest warrant and our arrangements with the United States—which

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I consider to be contrary to all the judicial traditions of this country, and on which I think it right for the House to take a stand.

I hope that the motion will be passed, and that that will send a clear message to the Government about what we want. I understand that there may not even be a vote. That either indicates unanimity or indicates that the dark forces of the Whips' Offices in all parties have taken the night off, but I fear that they are forces that never sleep.

On 11 November the Home Secretary received a long letter from Shami Chakrabarti, general secretary of Liberty, which made points about forum, and many more general points. She wrote:

"The human rights bar in the 2003 Act is of the utmost importance and we continue to encourage its effective application by the British judiciary."

I hope that the Minister will be able to assure us that that letter has received a reply, and will be able to inform us of the Government's general attitude. We are here to stand up for justice and liberty, and I believe that our arrangement with the United States is the opposite of those things.

8.37 pm

Mr David Burrowes (Enfield, Southgate) (Con): I join other Members in congratulating my hon. Friend the Member for Esher and Walton (Mr Raab) on securing the debate.

We usually describe debates of this sort as timely, but, although this evening's debate is timely in the context of the Government's current consideration of the Baker review, it would be hard for my constituent Gary McKinnon, who has been living a nightmare, and who now faces his 10th Christmas awaiting extradition, to see it in those terms, especially given that the outcome for him will be determined not retrospectively through the reform of extradition laws, which I support, but by medical evidence that is before the Home Secretary as we speak.

Parliament has given time to debate the issue of Gary McKinnon and extradition. We had a vote on forum in 2006 during the passage of the Bill that became the Police and Justice Act 2006. We have also had urgent questions, Opposition day debates, the report from the Joint Committee on Human Rights and Westminster Hall debates—and here we are having this debate today. What has not been in short supply is parliamentary attention. What has been in short supply is responsibility—responsibility for the plight of constituents such as Gary McKinnon, and for the injustice that has been done to them. The motion, which is welcome, seeks the restoration, at long last, of responsibility where it should lie.

I want to tell the House about an individual who was blamed for causing the biggest computer hack to hit the United States with an electronic attack on America's biggest port, Houston, in 2001. He was a young British man with Asperger's syndrome. He was not Gary McKinnon, but Aaron Caffrey. He was not extradited to the United States, but was tried in this country and found not guilty.

Then there was the man who was said to be doing

"more harm than the KGB"

and to be the

"No. 1 threat to U.S. security."

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He had UFO posters on his wall. He broke into the United States defence and missile systems. He too could have been, but was not, Gary McKinnon. He was prosecuted in this country, and was fined £1,200. And there was the computer virus that inflicted an estimated $5.5 billion-worth of damage and controlled 50,000 machines, hijacking sites run by a United States Department. Again, that was not Gary McKinnon. It was Andrew Harvey and Jordan Bradley. They were prosecuted here and received six and three months' imprisonment respectively.

Why then is Gary McKinnon being pursued remorselessly by the United States authorities? I believe that one of the motivations is instructive to the debate. The US ambassador on a number of occasions has made his position clear on behalf of the US Government. Indeed, several years ago, I asked him directly why the US authorities were doing that. When he replied, he recounted the alleged damage to US naval systems—he went through that in some detail—but then his voice and emotions rose, the severity of his tone increased and he said, referring to the comments left by Gary McKinnon on various websites, "He mocked us." Many of us would think that Gary McKinnon should be praised for exposing flaws in US systems by typing in passwords and getting through systems, as a terrorist could have got

through their systems, but that comment, “He mocked us”, shows that, whether we like it or not, politics plays a part in extradition.

Look at WikiLeaks. Just before President Obama came to speak to us, the US Attorney-General demanded that Gary McKinnon be extradited. Today, the right hon. Member for Sheffield, Brightside and Hillsborough (Mr Blunkett), a former Home Secretary, talked about how he tried to arrange a TV link for Gary McKinnon’s trial. I understand that that had no legs because video conferencing is illegal under US law. It requires live cross-examination of witnesses.

What should we do to improve the situation? Plainly, it is important that we retain and uphold the importance and independence of prosecutions, even if that independence is not always reciprocated as a point of principle. The opponents of a forum bar say that such a bar would inhibit and delay prosecutions, but I say that a forum bar would help to protect the integrity of prosecutions and avoid those private deals and that pressure, political or otherwise. For example, Gary McKinnon in the early stages was threatened with a lengthy sentence and harsh conditions if he fought extradition, but judicial consideration of forum, bringing it into the open, would ensure that a proper decision was made about where to try a case that crossed jurisdiction boundaries.

The ambassador's comments also remind us that the Home Secretary has a legitimate role, despite what the Baker review says. The modern law of extradition has been developing since 1870. The Home Secretary has a vital role to play in ensuring that defendants are not wrongly extradited. International crime has developed since the 19th century. Global terrorism has emerged. Treaties have been signed, but what remains is that the Home Secretary is the long-stop safeguard against injustice for citizens facing extradition.

The motion seeks to ensure that the courts are the primary safeguard. The protracted battle to stop Gary McKinnon’s extradition has highlighted the need for a

forum bar. The judicial review hearing into the Director of Public Prosecution’s decision not to prosecute was revealing. The judges said that, due to the fact that the matter of forum was not determined by way of a judicial safeguard, through the Police and Justice Act 2006 — forum amendments are absent from that Act—it needed to be decided by someone. The point is that that someone should be in the courts. Otherwise, we are left with a situation in which the Home Secretary says, “I do not have to consider forum because that is a matter for the DPP,” and the DPP says, “We have decided to cede jurisdiction to the US,” leaving Gary McKinnon and defendants like him having to challenge the DPP’s decision not to prosecute by judicial review.

What does the Baker review suggest? It suggests some DPP guidelines. Those would not be adequate. They would not be the lifeline that respected commentators such as Joshua Rozenberg have mentioned. What would happen under those guidelines? Residence and nationality would be considered, but how could one challenge the decision? We are back in the realms of judicial review. Even the Baker review says that

“we anticipate it would be very rare for the court to entertain, and rarer still for the court to grant, such an application.”

The Baker review, then, has done nothing to give that proper safeguard. Tonight we can do something important. We can make Parliament's views abundantly clear. The reform of extradition law is needed to stop more cases like that of Gary McKinnon. The US ambassador felt mocked by Gary McKinnon's words that were left on US systems, but what about these words and the medical evidence that is before the Home Secretary from Professor Jeremy Turk? He said that

"suicide is now a real probability and will be an almost certain inevitability should he experience extradition".

Does not this disproportionate extradition of a suicidal and sectionable person, Gary McKinnon, make a mockery of our extradition laws? Are not the life-threatening effects of extradition avoidable by prosecuting him in this country? As I said in 2009, how ill and vulnerable does Gary McKinnon need to be in order not to be extradited to the United States? Tonight, Parliament can say that it will not be mocked, and that it continues to demand proper judicial safeguards. I support the motion.

8.45 pm

Charlotte Leslie (Bristol North West) (Con): I congratulate my hon. Friend the Member for Esher and Walton (Mr Raab) on securing this debate, and thank all the other Members of various different parties who have worked so hard to bring the debate to the Chamber. I also wish to echo the eloquent comments of my hon. and learned Friend the Member for Sleaford and North Hykeham (Stephen Phillips) on the value of extradition. It is easy to be one-sided in this debate, and to forget the valuable role extradition can play both in international justice and for the families of the victims.

Understandably, the focus so far has been on the European arrest warrant and the US and UK extradition treaty, but I want to address the issue of those countries, including the US, that do not require prima facie evidence for an extradition to be requested. There are 24 of them, one of which is South Africa, and I want to highlight the case of Shrien Dewani, who has been accused of the terrible and tragic crime of murdering

his wife in South Africa. This is not a question of an individual's innocence or guilt; rather, it is a question of what kind of justice system Parliament can in good conscience approve a British citizen to go through.

My constituent Shrien Dewani was arrested more than a year ago, and he has not so far been charged in either country. Judge Howard Riddle assessed his mental health problems following the appalling and traumatic incident to be extremely severe and considered there to be a real risk of suicide. As I have said, South Africa does not require any prima facie evidence to request extradition, and extradition has been granted pending an appeal.

The case of my constituent has been the subject of extensive pre-judicial and prejudicial media coverage in South Africa, so much so that the head of the South African prosecution services is reported to have been removed from his post because he has been deemed not to be fit and proper to hold it as he has publicly prejudged the case. There have also been explicit threats by prison inmates about what would happen to my constituent were he to be

put in a South African jail. It is hard to see how my constituent's mental health can be safeguarded in such a climate.

There are also serious questions about South Africa's record of torture in prisons. In 2010, the United Nations Commission on Human Rights found that South Africa had violated the right of a prisoner, Bradley McCallum, not to be tortured and that it had also violated its obligation to investigate and remedy the violations of that right. Those are serious matters. Can we be happy to extradite a British citizen given that severe climate?

Given the media prejudgement by officials, the public threats by prison inmates to my constituent, the very real risk of suicide and the shadow of UN investigations on torture, can it be right that we do not require any prima facie evidence from a country such as South Africa? Can it also be right that we do not further question our extradition treaties with South Africa and other such countries? I hope other Members agree that that is not right. I support the motion.

8.49 pm

Richard Drax (South Dorset) (Con): I, too, congratulate my hon. Friend the Member for Esher and Walton (Mr Raab) on securing this important debate. I had the privilege of being called to speak in a similar debate in Westminster Hall recently. I was thrilled by that, as was my constituent, Michael Turner, a young man who lives in South Dorset and who has for too long been the victim of an outrageous injustice under the European arrest warrant. As I understand it, and as I believe most hon. Members understand it, the EAW was meant to deal with terrorism and serious crime. My hon. Friend the Member for Bournemouth West (Conor Burns), who is not in his place, talked about proportionality and I believe that when hon. Members have heard me finish my remarks about the case of Michael Turner, they will agree that the Hungarian authorities have shown no proportionality whatsoever.

Michael's story begins in 2002, when he and a friend set up a marketing company operating out of Budapest. Regrettably, like so many other businesses around the world, it folded in 2004. The Hungarian authorities

alleged that the two men acted fraudulently, leaving customers out of pocket to the tune of about £18,000—not a king's ransom, as hon. Members may agree. The two men denied the charge of fraud and still do. In November 2008, after Hungary had joined the EU and Britain had signed up to the European extradition treaty, the Hungarian authorities came for Michael.

Here in the United Kingdom, Michael and his team fought against extradition until 2009, when Mr Justice Collins overruled his appeal in the High Court and ordered the two men to hand themselves over to the Hungarian authorities. Michael's highly respected barrister, Hugh O'Donoghue, was "outraged" at the decision, believing that the European arrest warrant had been incorrectly interpreted and used.

On Monday 2 November 2009, Michael and his friend went to Gatwick airport voluntarily and were handed over to what I believe were Hungarian special forces—they were certainly police—who wanted to wear balaclavas to avoid being identified. I emphasise that the two men went voluntarily, and they were assured that as soon as they arrived in Hungary they

would be allowed to call home. However, no such call was forthcoming, and they were refused bail on the ground that they would abscond—this, when they had gone to Hungary voluntarily. They were locked up, incommunicado, at a police station for three days before being moved to Veniga prison. Meanwhile, Michael's family had to find a Hungarian lawyer to locate him. Even the Foreign Office did not know where he was, as was shown in an e-mail to me dated 4 November 2009, two days after Michael and his friend had been sent to Hungary. It stated:

"We were not initially aware of the case as the Hungarian authorities had not been in contact to notify us of Michael Turner's detention."

A judicial mess of scandalous proportions had begun, but far worse was to follow.

Locked up in this former KGB jail on the outskirts of Budapest, Michael was separated from his partner and friend, and placed in a small cell with three other men for 23 hours a day. Here he remained for the next four months, without charge. That in itself is surely a breach of his human rights—and how often in this country do we hear that expression? His initial request to call the consulate was refused, and the authorities had to be reminded that a call to the consulate was a right, not a privilege. He was allowed a one-hour visit per month and one shower per week—he had to basin-wash in his cell, in front of the other three men, for the other six days. Having reading material, and receiving and sending letters, was made difficult for him, and he was continually shouted at in a language that he did not understand. The appalling conditions soon began to wear on him, as I am sure we can all imagine. Soon, and inevitably, it was being suggested that if Michael pleaded guilty his stay in prison would be shortened, but he rightly and bravely stayed silent. Anyway, why should he plead guilty? In his view, he is innocent.

Behind the scenes, many people were trying to help Michael, and I must pay tribute to the Earl of Dartmouth, a UK Independence party MEP, who visited the prison, and Fair Trials International, which is doing what it can to help. It seems extraordinary to me, and I am sure to many Members in the House and to millions of people in this country, that when so many illegal immigrants

cannot be extradited to their countries because of their so-called "human rights", it appears that a British citizen can be handed over almost on a whim.

None of us is sure why Michael's four-month incarceration in that hellhole came to an end, but on the morning of 26 February 2010, the door opened and Michael was free with no explanation, no apology and still no charge. In April 2010, he returned voluntarily and courageously to Hungary to answer more questions. He was told that police had interviewed more than 500 witnesses and it is calculated that it would take a year, at least, to cross-examine those people alone if the case came to court. Michael returned to the United Kingdom and still faces no charge. The case hangs over him and his family like the sword of Damocles, the emotional, physical and financial cost is hard to gauge and the distress has been absolutely appalling.

Unable to move on with his young life, Michael waits for Hungarian justice, so-called, to take its course, a course that has seen my constituent subjected to imprisonment, psychological

torture—of that, he and I have no doubt—huge expense, unrelenting stress and, worst of all for Members of this House and certainly for him, an understandable loss of faith in this country's ability to look after her own.

Hungary's judicial system is not on a par with ours—far from it. It is primitive, bureaucratic and clearly unjust. In this country, someone is innocent until proven guilty, but it would seem that that is not the case in Hungary. The current extradition treaty is a complete mess. I agree with Members that some sort of treaty is needed, but reform is needed even more. I back the excellent motion tabled by my hon. Friend the Member for Esher and Walton. I am deeply passionate about this subject and I am honoured to attempt to get freedom and democracy for my constituent, Michael Turner.

8.56 pm

Michael Ellis (Northampton North) (Con): I congratulate my hon. Friend the Member for Esher and Walton (Mr Raab) on securing this debate, my hon. Friend the Member for Enfield, Southgate (Mr Burrowes), who is no longer in his place, on his representation of his constituent, and of course my hon. Friend the Member for South Dorset (Richard Drax) on his eloquent representation of his constituent. I also congratulate Her Majesty's Government on putting in place the mechanisms by which this debate can take place, by introducing the Backbench Business Committee.

My comments will be on the United Kingdom-United States extradition arrangements. I accept that there is a problem with the European arrest warrant, particularly as regards proportionality, and I would submit that it has other serious defects in other respects, too. Not only is it inappropriate for there to be extradition in cases where there is considerable doubt about the seriousness of the alleged offence, but there are clearly differences between the judicial and incarceration systems in many of our European neighbour countries.

Mr Robert Buckland (South Swindon) (Con): Does my hon. Friend agree that one of the problems posed by the use of the warrant is that it is sometimes used to aid investigation rather than prosecution, as in the example just given by my hon. Friend the Member for South Dorset (Richard Drax)?

Michael Ellis: I agree. As I said, I acknowledge that there are some serious defects with the European arrest warrant, but the motion conflates the European arrest warrant with the UK-US arrangements and I want to inject an important observation about those arrangements into the debate.

The law enforcement relationship between our two countries is predicated on trust, mutual respect, protecting our peoples and removing safe havens as options for those people who seek to evade justice. It is also important to remember that the United States is, as the Baker report illuminated for those who might not otherwise agree, a rights-based democracy in which accused persons have fundamental protections provided by the constitution to ensure that they are able to participate effectively in a criminal trial process that is conducted fairly. It is important to emphasise that our Anglo-American relations are predicated on those facts and on our acceptance that the United States system of jurisprudence provides a very advanced state of rights-based democracy for accused persons.

Charlie Elphicke: My hon. Friend is making a powerful speech, but let me ask him a question. If I were facing a Texas jury having been extradited from my homeland here in the United Kingdom under the extradition treaty to face trial, would I have recourse to legal aid or something analogous to it under the wonderful rights-based system in the United States?

Michael Ellis: The systems provided by the United States are accepted by the international community as being perfectly amenable to the interests of democracy and the rights of the individual within the state of Texas and other states of the American union.

Approximately a year ago, Her Majesty's Government commissioned a report—the Baker report—to which several colleagues have referred and which I am holding. It is 500 pages long, it took one year to complete and it was conducted by three eminent jurists: Sir Scott Baker, who was called to the Bar some 50 years ago, and two eminent lawyers, both of whom have acted for Governments and for requested persons and have therefore dealt with this issue on many occasions and from both sides of the fence. They came to the conclusion that there was no significant difference or imbalance between the extradition arrangements in the United States and the United Kingdom. That is the crux of this matter. Many of the previous speakers seemed to assume that there were imbalances, which they criticised, but they did not address those alleged imbalances.

I have heard no evidence, and the Baker report came up with no evidence, pinpointing where there is imbalance. There is different terminology, with "reasonable suspicion" being used often in the UK arrangements in relation to the evidential burden that is required, whereas "probable cause" is used by the United States. Those two terms may be slightly different in phraseology but they mean very much the same thing, and those who have analysed the position in some detail, either in the Baker report or elsewhere, have come to that clear conclusion.

Mr David Davis: My hon. Friend has asked for an example. How does he see the circumstances of someone facing trial in Texas who is thousands of miles from their nearest and dearest, isolated from their community

and has no financial support? Does not the plea-bargaining system in America become a predatory process that threatens them with long-term loss of liberty or the prospect of giving in and admitting guilt?

Michael Ellis: There have been extradition arrangements between our two peoples since the later part of the 18th century. As for plea-bargain arrangements, there are also pressures on defendants in the British system. We do not refer to them as plea-bargaining, but defendants know that if they plead guilty they are likely to receive a lesser sentence, so although we have no plea-bargaining arrangement, it is not correct to assume that the two systems are completely different.

The conclusion reached by the Baker report is that there is no significant difference between the tests that either country applies. In all extradition requests that have been submitted to the United Kingdom since 1 January 2004, the United States and many other states have not had to provide prima facie evidence, instead having to provide only the information sufficient to satisfy the extradition legislation. There are many countries, including Australia, Canada and

New Zealand, from which we do not require prima facie evidence before extraditing to them. We should not therefore require the United States to jump over that hurdle when the other allied nations whose legal systems are based on ours do not have to do so. I understand that countries that have signed the European convention on extradition orders do not have to jump through that hoop. Those countries include Turkey and Russia. Those who call for a prima facie standard, as I understand the Joint Committee on Human Rights has done, must explain why Russia should be required to have a lesser standard than America, if America were put under the pressure of proving to a prima facie standard.

Bob Stewart (Beckenham) (Con): Should we not require that standard of everyone? Is that not the way forward?

Michael Ellis: Well, that is one way of looking at it. Certainly, if we were to decide to require everyone to hold to the prima facie standard, that might be fairer, although it would be extremely expensive, bureaucratic and time consuming. For the accused person and for witnesses, the interests of justice are not served by delaying matters, so that would be the problem there. However, before the 2003 Act, I believe there was a requirement to find a prima facie standard. If not, there was certainly an imbalance between the United States and the United Kingdom in that respect. The United States had to apply greater burdens to extradite people from the United Kingdom than the United Kingdom had to supply vice versa.

Mr Raab: My hon. Friend has made the point about the paper test, but the key point made by Alun Jones QC is that the quality of evidence is assessed in extraditions both ways by the US courts—that is a requirement of the US constitution—but in neither case by the UK courts. There is the imbalance. Does my hon. Friend accept that?

Michael Ellis: No, I do not accept that. I agree with the Scott Baker report that there is no fundamental imbalance. It is important to point out that the United

States has not denied a single extradition request from the United Kingdom under the treaty. Although the United States makes more requests to the United Kingdom than it receives, the difference is largely because the population of the United States is five times greater than that of the United Kingdom. There is no imbalance. The Scott Baker report confirms that, and I cannot support the motion.

9.7 pm

Charlie Elphicke (Dover) (Con): It is a pleasure to follow my hon. Friend the Member for Northampton North (Michael Ellis), who made a passionate defence of the current arrangements between the United Kingdom and the United States. I regret that although I agree with him on so very much, on this rare occasion we will have to part company in our legal and political analysis of the situation.

I congratulate my hon. Friend the Member for Esher and Walton (Mr Raab) on securing the debate. It is good to have the debate on the Floor of the House and to see a measure of consensus emerging as the debate has gone on. I have looked at the extradition treaty between the United States and the United Kingdom, so boldly defended by the right hon. Member for

Sheffield, Brightside and Hillsborough (Mr Blunkett) who, sadly, is no longer in his place. As a former Home Secretary entering into that agreement, one would expect that.

I have some difficulties with the treaty. The first of those, which has vexed many, is on the issue of reasonable suspicion versus probable cause. As everyone who has read the Scott Baker report will know, probable cause is reviewed on page 239, paragraph 7.35, where it is defined as

"a reasonable belief that a person has committed a crime".

There is a difference between a reasonable suspicion, which is the arresting standard in our jurisprudence, and America, where probable cause is a reasonable belief that a person has committed a crime. Belief is clearly a higher test than suspicion. As I know from my time in my books, a suspicion that someone has committed a crime is a sense that that might be the case. Belief is a higher level than suspicion. Suspicion is maybe, maybe not; belief is "I'm pretty sure." I think we should be careful about that. Indeed, the Scott Baker report discusses the difference at some length but later glosses over it.

This error, which in my opinion results from the use of different legal definitions in our two systems, has crept into the defence of the treaty. Indeed, His Excellency the American ambassador to the Court of St James, Louis Susman, has decided to take an interest in our internal affairs and wrote in *The Daily Telegraph*today that there is no real difference. I think that in a deep sense there is a difference. He states:

"In all extradition cases, the UK authorities always begin by considering whether an individual can and should be tried in the UK instead of being extradited. Once the UK authorities decide that the case should be tried in the US, all extradition hearings are then held in UK courts",

and then off the person goes. My difficulty with that argument is that I see nothing in the treaty that makes that the case. There is a provision in the treaty that states clearly, in my humble opinion, that just because no action is being taken in the UK the person can be extradited. Nothing states that. Paragraph 4 of article 2 states:

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"If the offense has been committed outside the territory of the Requesting State, extradition shall be granted in accordance with the provisions of the Treaty if the laws in the Requested State provide for the punishment of such conduct committed outside its territory in similar circumstances."

It also seems clear, in the paragraph relating to no prosecution, that if charges are not made in the UK the person can be extradited, but even if charges were laid in the UK, my reading of article 5 is that there is no bar on extradition being sought from the United States in that case either.

My fundamental trouble with the support being given to the US-UK treaty in its current format is very simple: if a crime is committed or alleged to have been committed on British soil so that the act of the crime, what lawyers call the actus reus, was in the UK, meaning that the deed was done in the UK, surely the proper forum is the UK. Many of the cases that we

have discussed tonight and that have caused so much ire are cases where people in the UK have allegedly committed crimes for which the foreign requesting jurisdiction, typically the US, is asking for them, and we know that if a crime has been committed it has been committed in the UK. Surely the right place for that person to be tried is the UK, for all the reasons my right hon. Friend the Member for Haltemprice and Howden (Mr Davis) has given. For example, they have their friends, family and loved ones around one, they have a house, they do not have to pay to maintain themselves and they have access to legal aid.

If people are shipped over to face a jury in Texas, as the NatWest Three or Enron Three were, they will know very well that they will have to maintain themselves, that they are far from their loved ones and best advisers and that they will have to pay all the fees if they want to see the court case through. When someone faces the massive likelihood of a conviction because there is a Texas jury and they are not from Texas, which regrettably can be the case, they will accept a plea bargain that is made to look very enticing and attractive. They can have a massively long sentence of multiple years on the one hand or a very short sentence on the other. What will they do? Of course they will accept the plea-bargain. I think that that is incredibly unfair. If people in that situation have committed a crime, it was in the UK and they should have been prosecuted in the UK.

There is a provision set out in paragraphs 4 and 5 of schedule 13 to the Police and Justice Act 2006 that does not seem to have been commenced, and I wonder whether the Minister for Immigration might be able to enlighten the House on whether it is likely to be commenced, and if so when, so that there can be the kind of forum bar, which I and so many Members have spoken about this evening, to right that balance so that there will not be the lingering feeling of injustice.

The other issue is the European arrest warrant, and I was glad to hear my hon. Friend the Liberal Democrat Member for Edinburgh West (Mike Crockart) say that it was an area for righteous renegotiation with our friends in Europe. I agree. We should renegotiate in the national interest and, indeed, in the interests of the people of this country, when it is right to do so, and that area should be looked at, if only because it has been so massively abused—for fishing expeditions, for investigating crimes and for wrongful processes. We therefore need to rebalance that and to get the balance right.

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9.15 pm

Jacob Rees-Mogg (North East Somerset) (Con): It is a real privilege to follow my learned hon. Friend the Member for Dover (Charlie Elphicke) and to speak in this debate, called by my hon. Friend the Member for Esher and Walton (Mr Raab), who is so right to be defending the ancient rights of the British people. My hon. Friend the Member for South Dorset (Richard Drax) got it absolutely right when he said that we spend a lot of time talking about the human rights of people in this country until, suddenly, extradition comes up and then—bingo!—they have gone, and they are sacrificed to transportation to a foreign land.

The point that we should focus on is the first principle of why we have such protections for the innocent in the criminal law. We have, as we know, a powerful state. The state provides the police and the prosecuting authority, and the state pays the judges and reimburses the juries, and, because of that great power, the state then feels it is right to put in place

protections for the individual who is charged: the right to trial by jury; the right to habeas corpus; and the right to be presumed innocent until found guilty. These are the foundation rights of our criminal justice system and have a history stretching back 1,000 years.

But, when it comes to extradition, people can go to countries that do not have or follow that tradition. We have heard about how it works in Hungary, and the criminal justice system there, so one is a protected British subject if charged here, with all sorts of possible ways of defending oneself, but suddenly, if one comes under the European arrest warrant, one can languish in a dank Hungarian jail, with all those protections removed.

The United States is our greatest and closest ally, and a country with which we want to have the friendliest of relations, but we have already heard about the extraordinary approach it takes to plea bargaining: one may be threatened with 400 years without the option of parole, or if one pleads guilty one gets a week in a resort near Canada, as happened to the man who was prosecuted at the same point as Lord Black of Crossharbour—his noble lordship. One of them was offered an enormously long sentence, and the other was offered a Canadian golf club.

Michael Ellis: We do not have a system of plea bargaining in this country, but does my hon. Friend not accept that people who plead guilty in the United Kingdom's courts will almost invariably receive a lower sentence than if they are found guilty after trial? There are good public policy reasons why.

Jacob Rees-Mogg: There are, indeed, but that is of a completely different order of magnitude: one gets a little off one's sentence if one pleads guilty early—rather than being threatened with hundreds of years against a week in a golf club. That does not happen under the British system, but we know that it happened to the man who turned the equivalent of Queen's evidence against Conrad Black. We know that it happens in the United States system, but we are willing to risk British subjects going over there.

Thomas Docherty (Dunfermline and West Fife) (Lab): The hon. Gentleman is always worth listening to, even if his arguments are not the strongest of cases. He began by espousing the benefits of English—I must add—history,

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but surely we share that system with our colonial cousins, so having made great merit of the English judicial system he cannot then criticise our American friends.

Mr Deputy Speaker (Mr Lindsay Hoyle): Order. It is up to the hon. Gentleman who takes the intervention, but the Member had only just come in.

Jacob Rees-Mogg: But it is such a pleasure to hear from the hon. Gentleman, and the tone of the House is raised by his gracious presence, so I will respond. Yes, of course we should have a hierarchy of countries to which we feel comfortable extraditing people, and of course New Zealand, Australia and Canada would be very high up on those lists—and the United States would be pretty high up too.

However, I do not think that the ambassador to the Court of St James—the extraordinary plenipotentiary of the United States—behaves in a diplomatic way when he starts telling this

House how we ought to consider our business. I like to think what the noise would be in Washington if our ambassador there decided to suggest to the Senate or to the House of Representatives how they ought to conduct their business. Sitting as he does in his grand fortress in Grosvenor square like some Persian satrap, he should not be telling the House of Commons how to conduct her business. Of course we should have friendly extradition arrangements with the United States, but crucially ones that protect the ancient rights of the British subject whereby they should be innocent until proved guilty and should remain within the jurisdiction of this country until evidence is produced against them.

If we are worried about the United States, how much more worried should we be about some European countries, which can, in effect, arrest people and have them removed from this country without so much as a by-your-leave? We are risking people's freedom and liberty. This House exists to protect the freedoms and the liberties of the British subject. Yes, I know that some of them will be guilty and will deserve severe punishment for the crimes they have committed, but have we not set up our justice system on the basic principle that it is better for 100 guilty men to go free than for one innocent man or, indeed, woman, although women commit fewer crimes—*[Interruption]* It is true; they do—to be imprisoned when innocent? If that is the starting point of our justice system, then surely we ought to apply it when it comes to extradition, and therefore the Government ought to review the arrangements that they have with the United States.

Michael Ellis: Does my hon. Friend give no credence to the fact that in the 500-page Scott Baker report, commissioned by Her Majesty's Government, eminent jurists came to the conclusion that the imbalance that he is assuming between British and American relations regarding extradition does not exist?

Jacob Rees-Mogg: Had my hon. Friend paid closer attention to the excellent speech by my hon. Friend the Member for Esher and Walton, he would understand that there are differing views on that. It is well known

that, with Government reports, the people are appointed who will provide the report that is wanted. That has been practised over many centuries.

Mr Raab: My hon. Friend is making his case in his usual passionate way, laced with history and forensic analysis. Does he agree that lawyers and judges give their legal opinions, but ultimately it is for accountable and elected lawmakers to decide on these matters?

Jacob Rees-Mogg: I entirely agree with my hon. Friend. Of course, we are the ones who must decide what is right for the country, and we must do so on first principles.

Although the American extradition treaty is not entirely satisfactory—I was very much persuaded by my hon. Friend's introductory remarks—I am much more concerned about the European arrest warrant, which risks the freedom of innocent people in this country. I really would rather that we did not manage to arrest a foreign criminal if the exchange for that was allowing an innocent English person to be transported abroad—*[Interruption.]* Or a Scotsman, a Welshman or a Northern Irishman. I do not particularly want the southern Irish to languish in jails unnecessarily either, but that is not my business. It is therefore important

for the Government to reinstate these protections. In fact, it would be quite encouraging if, in our efforts to renegotiate with Europe, we started with this.

9.24 pm

Chris Bryant (Rhondda) (Lab): I must confess that I was looking forward to more of that. I have on occasion referred to the hon. Member for North East Somerset (Jacob Rees-Mogg) as the hon. Member for the 13th century, but I think that that was far too radical a century for his liking.

I congratulate the hon. Member for Esher and Walton (Mr Raab) on securing this debate. He is quite greedy about getting debates. I think he has probably had his fair share for the rest of this Parliament, but he introduced an important matter that is of interest to many.

I also congratulate the many Members who have spoken on behalf of constituents who have had particular problems. I know, from when I was responsible for consular support in the Foreign Office, how often British embassies around the world deal with complicated situations in relation to extradition. In some circumstances, British people did not have to be extradited and were caught up in the criminal justice system in another country, where they did not speak the language, did not understand the system and were a long way from their loved ones, as many hon. Members have said. Some people were languishing in pretty hideous jails. I visited a couple of them in Thailand and Peru and cannot recommend the process to anybody. I therefore commend hon. Members for their comments.

In relation to Andrew Symeou, I tried to ensure, as far as possible, that our embassy in Athens was doing as much as possible to ensure that the family and Mr Symeou had the support that they needed. Of course, we were also trying to provide support to the family who were the victims of the crime in question.

I also congratulate the lawyers who have taken part in the debate. I notice that they keep calling themselves "jurists". They are not going to get away with that. We

know who they are. Unfortunately, I mostly agreed with their contributions, so I will not be rude to them this evening.

It is a fundamental principle that nobody should be arbitrarily arrested without due cause. It inevitably follows that no extradition, no surrender of a person and no arrest under an international warrant should, in the words of the Book of Common Prayer,

"be entered into unadvisedly or lightly; but reverently, discreetly, advisedly, soberly".

Extradition is a vital part of a modern criminal justice system, as many Members have said. It means that nobody can evade justice simply by fleeing the country. In our case, 581 people have been brought back to the UK to face justice as a result of the European arrest warrant since 2004, including the failed 21 July bomber, Hussain Osman, who was extradited from Italy. Indeed, he was removed from Italy fast enough for his interrogation to inform the decisions on charges that had been placed against others, which was an important part of securing justice in that case.

We need at all times to keep our extradition arrangements, both multilateral and bilateral, under review so that nobody's freedom is unjustly deprived by them. It seems to me that there are five key issues: the operation of the European arrest warrant, the question of whether a prima facie case should be made in all situations, the issue of double or dual criminality, the implementation of a forum bar and the purported imbalance of the US-UK treaty.

I will first make a few simple points. The first is that the motion refers to the protection of British citizens, as have many hon. Members. However, many UK extraditions are of course not of UK nationals. Many EAW requests are from countries that want their own nationals to face criminal proceedings back home. The report of the Joint Committee on Human Rights seeks a special threshold of proof for British citizens. Leaving aside the matter of Northern Ireland, I believe that the idea of special arrangements for our nationals, as opposed to anybody else, in the UK courts smacks more of the Russian system of extradition, which prevents the extradition of any Russian national, than the historic British position that the law should be blind to nationality.

Mr David Davis: On that point, the hon. Gentleman could have said that it smacked more of New Zealand, Australia, Germany or France. Why did he pick Russia?

Chris Bryant: It was partly because Russia has made a large number of extradition requests to this country to which we have said no because Timothy Workman, the judge in charge, has decided on each occasion that they were being advanced merely for political reasons, whereas when we make extradition requests, such as for Mr Lugovoy, who is sought for the murder of Alexander Litvinenko, the Russian state simply says that no Russian national will be extradited. I do not think that there should be a distinction between different nationalities.

My second minor point is that I suspect that statistics throw far less light on the matter than one might think. It is true, for instance, as the hon. Member for Esher and Walton mentioned, that the number of extraditions from the UK has risen dramatically since 1975, but then so has international travel. Moreover, although there was just one extradition to Spain in the decade up to

1973 compared with 61 in the past seven years, I suspect that that had more to do with the relations with Franco's regime than with anything to do with the extradition system.

The same is true, I believe, of the US-UK extraditions to which the hon. Gentleman referred. Since 2004 there have been 73 extraditions to the United States from this country, and just 38 to the UK from the US, yet 70% of UK requests for extradition have been successful compared with just 54% of US requests to the UK. In other words, a US request is less likely to succeed than a UK one. Moreover, far more British nationals go to the US every year than the other way around. I know that that seems counter-intuitive, but the Library's figures suggest that roughly 4.5 million British people go to the US every year, and fewer than 2 million come from the US to the UK.

Thirdly, cybercrime almost inevitably crosses borders, whether we are talking about conspiracy to fund terrorism, illegal file sharing or industrial espionage. Consequently, I

agree with hon. Members who have said today that we have to ensure that we have a better way of dealing with the question of where individual matters may be resolved.

Charlie Elphicke: I thank the hon. Gentleman for being so generous in taking interventions. I put it to him that the original arrangements with the United States were entered into under the cloud of the history of 9/11 and terrorism, and now we are hearing cybercrime as the latest excuse. Is there not always another excuse to worry people about why we should go further in taking away their rights and protections?

Chris Bryant: I was actually agreeing with the hon. Gentleman in my remarks about cybercrime. I think it is legitimate for there to be a point at which we decide where is the right place for something to be tried. I believe that was the point that he was trying to make earlier, so I am grateful to him for his support for my argument.

Having dealt with the minor issues, I want to turn to the more significant ones, and first the operation of the European arrest warrant. It is true that there have been several cases in which the justice system in other countries included in the European arrest warrant has been far from ideal. Several hon. Members have mentioned those cases today. We are all mindful of the horrific experiences of some people who have been held for considerable periods for crimes that, as it turns out, they never committed. Incidentally, that is of course sometimes true in the United Kingdom as well.

Although I believe the EAW operates successfully in the main, there is one key matter that I believe needs to be addressed—the question of proportionality. Between 2004 and the end of March 2011, Poland accounted for 1,659 and Lithuania 355 of the UK's 3,107 EAW surrenders. In part, that was because of the prosecutorial system in each of those two countries, but in many cases the warrants were for relatively minor offences. We believe that a proportionality test should apply. Indeed, I believe that the majority of members of the European Union would prefer to see some form of proportionality clause inserted into the provisions. It is important, of course, to bear it in mind that in many cases the UK imposes longer sentences than other countries in Europe, so

there is a danger that if proportionality is introduced some countries will retaliate in the wrong direction. However, I believe that such a clause should be included.

Richard Drax: Does the hon. Gentleman agree that if we left the EU, proportionality could be decided in this country, not by a massive bureaucracy?

Chris Bryant: Oh dear, no. Don't get me started on that. In fact, the hon. Gentleman is wrong about the aetiology of how we got to the European arrest warrant. It was a Conservative Government who ratified our membership of the European convention on extradition in 1991, which has almost all the same provisions and applies to nearly all the same countries. Indeed, in 1993 it also included Hungary.

Secondly, I wish to mention prima facie rules. Under the 2003 Act, there is no prima facie rule in relation to EAW countries, known in the legislation as category 1 territories. However, in countries in whose criminal justice systems we do not have the same legal confidence, a prima facie rule still applies. That includes several Commonwealth countries covered by the

London scheme and many others covered by bilateral treaties, such as Brazil and Argentina—the countries that were formerly quite happy to receive people from Nazi Germany without asking any questions.

There is no prima facie requirement for designated category 2 countries that share our respect for human rights and the rule of law, such as Canada, New Zealand, Australia and the US. The Opposition believe that that distinction is a proper one, even if we would constantly seek to urge reform and modernisation of legal systems in many EAW countries. Hon. Members have said that we cannot just hope that that will happen and that we need to try to ensure that it does. However, we would not do so by suddenly inserting a prima facie case for all EAWs. If we did that, we would be leaving the EAW. Some hon. Members might like us to do that—as well as leaving the EU—but it would be a mistake because of the effects it would have on the UK.

Stephen Phillips: As I understand it, the hon. Gentleman is therefore advocating that it is perfectly acceptable for citizens of this country to be extradited to jurisdictions where conditions in the justice system are less than ideal when no prima facie case is shown. Is that right?

Chris Bryant: The Committee makes it clear in its report that the

"EAW is based on the principle of mutual recognition of judicial decisions and… mutual trust"

between the judicial authorities of EU states. That is a legitimate position for us to adopt, just as it was adopted in 1991 by the Conservative Government when they signed us up to the ECE—*[Interruption.]* The hon. Gentleman is chuntering, but I cannot hear what he says. Unless he wants to chunter louder, I am at a loss—*[Interruption.]* He says he will chunter more quietly, for which I am very grateful.

Jacob Rees-Mogg: Will the hon. Gentleman give way?

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Chris Bryant: Of course I will give way to the hon. Gentleman—he will chunter from a standing position.

Jacob Rees-Mogg: I will indeed. I cannot believe that the hon. Gentleman, wise and sensible as he is, thinks that justice across all European states is equal. It self-evidently is not: some systems are much less good than ours, and none is better.

Chris Bryant: That kind of casual British superiority sometimes does not carry the day when it comes to making decisions about our legal systems—*[Interruption.]* It was a joke. I am sorry. I clearly missed that.

Mr David Davis: Will the hon. Gentleman give way?

Chris Bryant: I am being more generous than I should be, but of course I will give way.

Mr Davis: I rise to get the hon. Gentleman off the hook. He has accepted that judicial and prison systems in other European countries are less than desirable. He says that he does not want a prima facie test. Does he accept that he is therefore proposing, or what exists, will punish innocent people who are sent to those countries and suffer those problems?

Chris Bryant: No I do not accept that. The return question to the right hon. Gentleman would be this: why did he expressly support in 1991 the ratification of the ECE? If Britain had wanted to, it could have insisted on a prima facie case—that was when many member states had even less advanced criminal justice systems than they have today. The honest truth is that Britain came to the decision that it was more important to close down the costa del crime and the many different ways in which people could evade justice around Europe. I agree with his position at that time.

Mr Davis: Will the hon. Gentleman give way?

Chris Bryant: If the right hon. Gentleman does not mind, I am conscious that the Minister's contribution is far more important than mine and I want to move on to a couple of other issues.

I fully understand the concern that many have with the abolition of double criminality from the framework decision. I understand those who believe that that could mean that one could be extradited for holocaust denial or other matters that are not criminal offences in this country. However, I ask hon. Members to remember that sections 64(2) and 65(2) of the Extradition Act 2003 make it absolutely clear that the conduct must have happened in the member state where it is a crime, not in this country. When people travel abroad, surely people subject themselves to the laws of those other countries.

Under the forum bar, extradition would not be allowed if, in the words of section 42 of the Criminal Justice Act 2006, which is now section 19B of the 2003 Act,

"a significant part of the conduct alleged…is conduct in the United Kingdom"

and if, in the opinion of the court, it is not

"in the interests of justice for the person to be tried for the offence in the requesting"

country. Many have pointed to some of the problems inherent in such a forum conveniens test—it could further delay complex proceedings, several of the terms are imprecise, and there could be extensive litigation around them—but the Opposition are not opposed to such a test per se, and merely note that the Government have not thus far introduced the relevant motion in this House or the other place.

Let me turn to the imbalance in the US-UK treaty. Members will know that the US constitution requires that nobody can be arrested without a prosecuting authority proving probable cause. That applies equally for a US arrest for US prosecution, for an international arrest warrant or, under the 2003 treaty, for extradition. The requirement for a UK extradition to the US is that information must be provided that satisfies the reasonable suspicion test. Both tests are based on reasonableness and require similar paperwork and evidence to be

submitted. In the case of someone to be extradited from the UK, the US authorities first have to secure a warrant or grand jury indictment, both of which require that the probable cause test is met in the United States of America. The argument that the treaty is imbalanced is simply not made.

Let me briefly turn to the cases of Gary McKinnon and Babar Ahmad, which are much in Members' thoughts today. It is not for this House to decide the guilt or innocence of anyone, nor do I believe that this motion can legally affect either of the two cases, notwithstanding the points that have been made by others. The length of time that these two cases have taken makes it difficult to see how justice is being done in either of them. Whatever changes the Government bring forward will not directly affect them. None the less, I urge the Secretary of State to make a final decision on Gary McKinnon as soon as possible, and the European Court on Human Rights to do the same by Babar Ahmad. Nothing we do tonight will free either of them, but we can ensure that in future others do not suffer in the same way.

9.41 pm

The Minister for Immigration (Damian Green): It is a terrible ministerial cliché to stand at the Dispatch Box and say that this has been a good and useful debate, but tonight it is true. Particular thanks should go to my hon. Friend the Member for Esher and Walton (Mr Raab) and to members of the Backbench Business Committee for securing time in this House to debate these important issues. My hon. Friend made some kind remarks about me at the start of the debate and I should reciprocate by praising not just his energy in pursuit of this campaign—this is our second debate in nine days on the subject—but the considerable legal expertise that he brings to the subject, as well as his contribution to the Joint Committee on Human Rights, whose Chairman also contributed to the debate.

As I made clear in the debate in Westminster Hall, the Government are currently considering what action to take to ensure that this country's extradition arrangements work both efficiently and fairly. I welcome multiple debates on these matters and of course the Government will take them into account when responding to Sir Scott Baker's independent review of extradition along with the work done by the Joint Committee on Human Rights and the Home Affairs Committee.

The debate on extradition in recent years has focused in large part on a number of high-profile cases. Like others tonight, I pay tribute to the hon. Members who

have spoken on behalf of their constituents, including my hon. Friends the Members for Bristol North West (Charlotte Leslie) and for South Dorset (Richard Drax). We understand and take full account of the concerns raised by right hon. and hon. Members in respect of individual European arrest warrant and extradition cases involving their constituents.

As I indicated during the debate, and as my right hon. Friend the Home Secretary has said repeatedly in the context of the extradition review, it is vital that we strike the correct balance between effectively bringing offenders to justice and seeking redress for the victims of crime while protecting the fundamental rights of those who are sought for extradition. That point was made well by my right hon. Friend the Member for Haltemprice and Howden (Mr Davis). For that reason, this further debate is warmly welcomed.

Many interesting points have been made this evening, but the only one with which I flatly disagree was made by my hon. Friend the Member for North East Somerset (Jacob Rees-Mogg), who said that 1,000 years ago habeas corpus was an important part of our constitution. I would normally defer to him in matters of mediaeval history, but I do not remember in the dying decades of the Anglo-Saxon kings, underrated though they are in history, that habeas corpus featured particularly highly.

Jacob Rees-Mogg: As it happens, one can trace habeas corpus back an extremely long way, but I do not think that I said that.

Damian Green: The record will tell us which of us recollects correctly.

Moving rapidly to the 21st century—

Mr Davis *rose—*

Damian Green: Oh dear, I should not have done this.

Mr Davis: For the first time in my life, I am ashamed of my hon. Friend the Minister—actually the record goes back to the Kings of Kent in the eighth century.

Damian Green: I can feel a fascinating and wholly irrelevant debate coming upon us, Mr Speaker.

Mr Blunkett *rose—*

Damian Green: This will be the last intervention on mediaeval history.

Mr Blunkett: I just want to make the obvious point that what matters is not when habeas corpus was agreed in principle but whether people can implement it.

Damian Green: In his known wisdom, the right hon. Gentleman brings me back to the modern era.

When we entered office last year, we recognised that there were long-standing and deeply held concerns about the UK's extradition arrangements with other EU member states and about our extradition treaty with the United States. That is why in the coalition's programme for government we made a clear commitment to review the

operation of the Extradition Act 2003 and the US-UK extradition treaty to ensure that they were even- handed. That was why the Home Secretary announced an independent review to be chaired by Sir Scott Baker and assisted by two lawyers—an important point given some of the criticisms of the Baker commission—who between them had extensive experience of extradition from prosecution and defence perspectives.

As I made clear during the debate in Westminster Hall, that panel undertook an extensive examination of the issues and carefully examined evidence from a range of parties representing all shades of opinion. Contrary to suggestions by some, the panel assessed

representations from those who had experienced extradition first hand and the evidence of their families. It has also been suggested that the panel did not take evidence from solicitors representing the subjects of extradition requests. In fact, one of the panel members was himself an experienced legal representative of those subject to extradition proceedings and brought first-hand insight into the realities of extradition from the UK.

As the right hon. Member for Sheffield, Brightside and Hillsborough (Mr Blunkett) said, the review has evidently reached controversial conclusions, but I hope that we would all acknowledge that it is a serious piece of work, as pointed out by my hon. Friend the Member for Northampton North (Michael Ellis). I have been interested to hear the further points made this evening, and I am happy to assure the House that these opinions will be given the most careful scrutiny before we publish what action we propose to take in response to the review. There is a significant body of opinion from all sides that we need to assess seriously before reaching a decision.

Members on both sides of the House asked that we deal with individual cases of particular concern to them. I am, of course, happy to do that. Let me first summarise what I said about Babar Ahmad's case. He was arrested for extradition purposes in August 2004, and in June 2007 he exhausted all the available domestic avenues for contesting the request for his extradition. He then applied to the European Court of Human Rights. On 12 June 2007, the Court imposed a stay on his extradition and on 8 July 2010 declared his case partially admissible. His case remains under consideration by the Court. The allegations against him in the United States relate to alleged conduct that took place while he was in the United Kingdom. As the House knows, an e-petition on behalf of Mr Ahmad calling for him to be put on trial in the UK has attracted more than 140,000 signatures.

Of course, the Government recognise the concern of those petitioners but it is not for the Government to decide if and when someone should be prosecuted in the United Kingdom.

Caroline Lucas *rose—*

Damian Green: I am about to deal with the hon. Lady's point.

The decision about whether to bring a prosecution is a matter for the independent prosecuting authorities, and the Crown Prosecution Service has to date decided not to prosecute Mr Ahmad in the UK.

Caroline Lucas *rose—*

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Damian Green: If the hon. Lady will hold on a second, I shall deal directly with her point.

The CPS has advised that a small number of documents relating to Mr Ahmad were seized by the Metropolitan police and were submitted to the domestic prosecutor for advice in 2004. The domestic prosecutor was specifically asked to advise on whether any of those documents might disclose offences under the Terrorism Act 2000 with a view to prosecution in the UK. I am advised that, on the material provided, there was insufficient evidence to mount a UK prosecution. However, when the decision was made not to prosecute Mr Ahmad in the UK, prosecutors here were aware of evidence against him in the possession of the US authorities. I

understand that that evidence was far more extensive than that which was in the possession of the UK authorities. Although the CPS extradition team was in possession of some of the US material, it amounted only to that which was necessary to seek extradition, and was provided to the CPS for extradition purposes only.

The extradition proceedings in this country have concluded. The case has been heard extensively through all tiers of the UK extradition process, and extradition has been ordered. The UK courts have held that the US authorities have jurisdiction in relation to the offences of which Mr Ahmad is accused and that they are entitled to seek his extradition. The offences are crimes in both countries, thereby satisfying the extradition test of dual criminality. Mr Ahmad is now challenging extradition before the European Court of Human Rights. The Court has asked a number of questions in relation to the case; both sides have submitted observations on these points on several occasions. The extradition review panel highlighted in its report those cases that awaited a decision by the European Court of Human Rights and the amount of time that they had been before that Court. The panel recommended that the matter of the delay be taken up by the Government urgently and that the Court should be encouraged to give priority to those cases where extradition had been stayed. The Government are considering that recommendation, along with others, but the United Kingdom has pressed, and continues to press, for the Court to reach its decision as soon as possible.

Many concerns have been expressed about the length of time for which Mr Ahmad has been detained in custody awaiting the outcome of the extradition request. This has at all times been on the order of the Court, and we continue to press the Court to reach its decision on the case as soon as possible. Where the Court seeks observations or clarifications from the Home Office on the representations in the case, these are provided as soon as possible. We are acutely aware of the time that has passed since the extradition request was first made and of the importance of dealing with the matters raised as quickly as is consistent with fairness to all sides.

Caroline Lucas: Will the Minister agree to investigate why the CPS acknowledged and admitted that it had not seen all the information only on 23 November, after many, many years in which Babar Ahmad had essentially been in prison? If that information had been available earlier, the process here in the UK could have been much faster.

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Damian Green: I am not sure that the hon. Lady's last point is right, but I take her general point, and obviously the CPS will have heard what she has said.

Let me turn to the case of Gary McKinnon, which has been raised many times, not least by my hon. Friend the Member for Enfield, Southgate (Mr Burrowes). This case is different from Mr Ahmad's, as it falls to be decided by my right hon. Friend the Home Secretary. I shall briefly explain the reasons for this. Mr McKinnon has exhausted all rights of appeal under the Extradition Act 2003, and the European Court of Human Rights refused an application to impose a stay on his extradition. However, under the Human Rights Act 1998 the Home Secretary is under a duty not to act in a manner that is incompatible with a person's rights under the European convention on human rights. She must therefore consider whether, as a result of events occurring after the extradition proceedings, it would be contrary to the convention for a person to be extradited. The sole remaining issue, therefore, is whether

extradition is compatible with Mr McKinnon's convention rights. The Home Secretary sought the independent advice of the chief medical officer, who has provided the names of two experts whom she believes to be well placed to provide evidence on the relevant medical issues. Those experts are preparing a report that will help the Home Secretary to determine whether extradition would contravene Mr McKinnon's convention rights. We hope that the experts will report as soon as possible; but clearly a number of issues will need to be considered in depth.

During tonight's debate, as in the previous debate, a number of concerns have been raised regarding specific European arrest warrant cases. We will take careful account of the points made by right hon. and hon. Members in respect of those cases. In the case of Benny Wenda, which was raised this evening by the right hon. Member for Oxford East (Mr Smith), we understand that an internal red notice for Mr Wenda has been issued by the Indonesian authorities. That does not constitute an extradition request for the purposes of the 2003 Act. Generally, if an extradition request is issued by a country in relation to which the person sought has refugee status, the Home Secretary can refuse to certify the request, and if it comes to the attention of the courts during extradition proceedings that the person sought has refugee status in relation to the country seeking extradition, the courts can discharge the person from extradition proceedings on human rights grounds. I hope that that helps the right hon. Gentleman.

It is worth my repeating what I said on 24 November. We share the concern expressed by my hon. Friend the Member for Esher and Walton (Mr Raab) and many others—including my hon. and learned Friend the Member for Sleaford and North Hykeham (Stephen Phillips) and the hon. Member for Edinburgh West (Mike Crockart) —about the issuing of European arrest warrants for trivial offences. That is a significant issue which the Government seek to address as a matter of urgency. As I said in our earlier debate, I know that Members' concerns are shared by other European Union member states and by the European Commission. While we are considering whether wider action is required to meet the challenge and resolve the problem, we continue to discuss the matter with, in particular, our Polish

counterparts to encourage their prosecutors and courts to consider proportionality before an European arrest warrant is issued.

The debate has made clear that Members in all parts of the House understand that these are complex and important issues and that there is significant evidence to be assessed, all of which requires careful analysis and reflection. The debate has provided much more useful information and analysis, all of which I know the Home Secretary will take carefully into account. As soon as we can, we will announce what action we propose to take in the light of the extradition review.

9.56 pm

Mr Raab: With the House's permission, Mr Speaker, I rise for the second time to wind up what has been an excellent debate. Let me thank the Backbench Business Committee again for making it happen.

We have heard powerful speeches on the basic principles of justice which are at stake. I doubt that I shall have time to mention all of them, but the right hon. Member for Sheffield, Brightside and Hillsborough (Mr Blunkett) started us off with the benefit of his considerable experience as Home Secretary; my right hon. Friend the Member for Haltemprice and Howden (Mr Davis) spoke passionately and at length about the importance of the presumption of innocence; the hon. Member for Aberavon (Dr Francis), the Chair of the Joint Committee on Human Rights, talked about the Committee's review and report; and my hon. Friend the Member for Bournemouth West (Conor Burns) spoke about the flaws in the European arrest warrant. I am sure that we all look forward to the publication of his report in due course.

We also heard compelling speeches from a range of Members representing victims of rough justice under our extradition laws. My hon. Friend the Member for Enfield, Southgate (Mr Burrowes) spoke passionately and powerfully about the arbitrary treatment of Gary McKinnon, while my hon. Friend the Member for South Dorset (Richard Drax) talked about the Michael Turner case. I welcome the Minister's engagement. He has listened very patiently, and I hope that he has been convinced of the case for reform and the strong consensus in favour of it in the House.

I listened carefully to the considered speech of the hon. Member for Rhondda (Chris Bryant). He seems to be rather lukewarm about the whole issue of extradition reform, but I am glad that at least he does not oppose the forum provision enacted by the previous Government.

In truth, it is for Members of Parliament in all parts of the House to stand up for our constituents, to stand up for our citizens, and to stand up for the basic principles of British justice.

Question put and agreed to.

Resolved,

That this House calls upon the Government to reform the UK's extradition arrangements to strengthen the protection of British citizens by introducing as a matter of urgency a Bill to enact the safeguards recommended by the Joint Committee on Human Rights in its Fifteenth Report, HC 767, and by pursuing such amendments to the UK-US Extradition Treaty 2003 and the EU Council Framework Decision 2002 on the European Arrest Warrant as are necessary in order to give effect to such recommendations.