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COMMENT

A SWISS-AMERICAN TREATY THAT WILL BENEFIT THE SWISS IMAGE

A treaty of mutual judicial assistance which might put an end to persistent hints that Swiss banks are storing the Mafia's money has been concluded on 25th May. This treaty was signed in Berne on the Swiss side by Dr. Albert Weitnauer, presently Ambassador in London and previously Delegate to Commercial Agreements, and on the US side by Walter J. Stoessel, Assistant Secretary of State for European Affairs, and Mr. Shelby Cullom Davis, American Ambassador in Berne. The Treaty, which is the first judicial assistance agreement ever signed by the US, will have to be ratified by Congress and by the Swiss Parliament. It was finalised after negotiations which were protracted over five years and which required a compromise between two very different legal systems. Dr. Weitnauer took part in the final stage of the talks. The treaty is defined in a 100-page document.

Its central point is that the principle of Swiss banking secrecy is safeguarded, while the concern of the American side to obtain, for judicial purposes, information normally kept secret under Swiss law, is satisfied under certain well-defined conditions.

Although the agreement covers every field of judicial co-operation, the clauses with a bearing on banking secrecy have caused the most interest because the Swiss numbered account has a worldwide "reputation" and, more practically, because it has become an instrument of tax evasion or conversion of illegal funds for organised crime. As Dr. Weitnauer put it after signing the Treaty, "International co-operation also exists, alas, among criminals". This truth has become a growing feature of crime as a whole, and has done more than anything else to bring Swiss banks in the limelight and, occasionally, into disrepute.

Swiss banking secrecy will be lifted under three conditions: If the request by the American side concerns the investigation of a "serious offence"; if the "disclosure is of importance for obtaining or proving facts which are of substantial significance for the investigation"; and if "reasonable but unsuccessful efforts have

been made in the US to obtain the evidence or information in other ways".

Both sides agree to assist each other in "investigations of court proceedings in respect of offences, the punishment of which falls, or would fall, within the jurisdiction of the judicial authorities of the requesting State". The treaty also covers assistance in returning any property or assets taken from the requesting State by means of such an offence.

The main stumbling block of the talks was the fact that fiscal offences, which is the usual way American gangsters can be trapped, are not considered as illegal in Switzerland. It was therefore necessary to prove that these acts were linked to others indictable under Swiss law. The negotiators also had to take account of individual State laws in America. Under many state systems, it would be necessary for inspectors to enquire on Swiss territory. This will be tolerated when proved absolutely necessary. The interrogation will be carried out under Swiss ethical norms and within the framework of a Swiss-led enquiry.

Another important hitch pertained to the disclosure of information derived from opening numbered accounts. The Swiss could not obtain the promise that such facts would be kept secret as under the American Constitution everything must be told in an open court. But the Swiss received assurances that such facts would not be used as evidence against anyone in an unrelated case.

The accord had to be redrafted several times at the insistence of Swiss business circles. Some members of the *Vorort* (equivalent to the British CBI) would have liked to see an additional guarantee against American justice causing troubles to Swiss firms in the US. It was feared that the Americans, urged by some protectionist compulsion, might charge these firms with harbouring the funds of criminal organisations and infringing antitrust laws. But these fears were considered as exaggerated, particularly in view of the fact that the Americans would have to supply the necessary evidence.

The agreement will be welcome by all as embodying Switzerland's participation in an international fight against crime. In view of growing criticism against the consequences of banking secrecy (which are applied in many other

countries but perhaps not so stringently) the time had come for Switzerland to make some practical concessions leaving principles intact.

The insistence that both sides should be convinced that criminal offences have been committed is a must. Although it is fashionable to condemn Swiss banks as the cause of millions of pounds and dollars of lost fiscal revenue, this collective and lofty assessment disregards the legitimate interests of those who have earned money by their efforts and who ask why they should surrender sizeable portions of it to the State. This is why exceptions to banking secrecy must only concern criminal investigations and not tax evasion (or "avoidance"). It is not the future of the Swiss banking establishment which is at stake (although it has amply benefitted by its secrecy laws, it can survive and prosper without them) but the material interests of thousands of people who wish to keep some money of their own in security.

Whatever one's ideology may be, ownership seems a legitimate thing in today's prosperous West. One can imagine the inconvenience of an Anglo-Swiss judicial assistance agreement which would provide for bank-account disclosures for fiscal offences. Thousands of Britons and Swiss residents would find their livelihood in jeopardy. British Treasury sleuths are already a serious menace to Britons owning real-estate abroad, and some even managed to break in a few numbered accounts last year with the connivance of Swiss bank employees. Admittedly, it is immoral for millionaires in famished countries to store their assets in a Swiss bank, but honest, hard-working citizens, particularly if they are foreign residents and already pay high taxes, surely have a right to keep some money where they know it is safe. Seen from that angle, Swiss banking secrecy is a blessing to the international community.

SWISS EVENTS

SWISS ARRESTED ON CURRENCY CHARGES IN ALGERIA

Two Swiss have been arrested and arraigned before a special Algerian Court on charges of having illegally exported Algerian Dinars. Three Swiss — one man and two women — were originally arrested, but one of the women is believed to have been set free. With six Frenchmen and an Italian, they were accused of setting up a currency-ring based in Geneva so as to sell Algerian Dinars abroad. The Algerians claimed that they had bought Dinars cheaply in the country to sell them abroad to expatriate Algerians wishing to invest their capital in their homeland, or to companies operating in Algeria but unwilling to transfer funds to their accounts with Algerian banks. Algeria, being very chary with its money, forbids