

Austria International Extradition Treaty with the United States

January 8, 1998, Date-Signed

January 1, 2000, Date-In-Force

Message from the President of the United States

105TH CONGRESS

2d Session

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, June 11, 1998.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Austria, signed at Washington on January 8, 1998.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty. As the report explains, the Treaty will not require implementing legislation.

This Treaty will, upon entry into force, enhance cooperation between the law enforcement communities of both countries. It will thereby make a significant contribution to international law enforcement efforts. This Treaty will supersede and significantly improve upon the Treaty between the Government of the United States and the Government of Austria for the extradition of fugitives from justice, signed at Vienna on January 31, 1930, and the Supplementary Extradition Convention signed at Vienna on May 19, 1934.

The provisions in this Treaty follow generally the form and content of extradition treaties recently concluded by the United States.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, May 11, 1998.

The PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Austria ("the Treaty"), signed in Washington on January 8, 1998. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty follows closely the form and content of extradition treaties recently concluded by the United States in most respects. The Treaty represents part of a concerted effort by the Department of State and the Department of Justice to develop modern extradition relationships to enhance the United States' ability to prosecute serious offenders including, especially, narcotics traffickers and terrorists.

The Treaty marks a significant step in bilateral cooperation between the United States and Austria. Upon entry into force, it will replace the Treaty between the Government of the United States and the Government of Austria for the extradition of fugitives from justice, signed at Vienna on January 31, 1930, and the Supplementary Extradition Convention signed at Vienna on May 19, 1934. Those treaties have become outmoded, and the new Treaty will provide significant improvements. The Treaty does not require implementing legislation.

Article 1 obligates each Party to extradite to the other, pursuant to the provisions of the Treaty, any person whom the Authorities in the Requesting State have charged with or found guilty of an extraditable offense.

Article 2(1) defines an extraditable offense as one punishable under the laws in both Parties by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. Use of such a "dual criminality" clause rather than a list of offenses covered by the Treaty obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws of both Parties.

Article 2(2) provides that if extradition is sought for the enforcement of a

prison sentence or a preventive measure restricting liberty ordered by a criminal court for an extraditable offense, it shall be granted only if at least three months of the sentence or preventive measure remain to be served.

Article 2(3) provides that, if extradition has been granted pursuant to paragraph 1 or 2, it shall also be granted for any other offense requested, provided that all other requirements for extradition are met.

Article 2(4) provides flexibility to enable extradition in three specific situations. An offense is to be considered an extraditable offense:

(A) whether or not the laws in the Parties place the offense within the same category of offenses or describe the offense by the same terminology;

(B) in criminal cases relating to taxes, customs duties, currency control, and import and export of commodities, whether or not the laws of the Parties provide for the same kinds of taxes or customs duties, or controls on currency or on the import or export of the same kinds of commodities; or

(C) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

Article 2(5) specifies that an extraditable offense also includes an attempt to commit or a conspiracy to commit, or participation in the commission of, an offense.

With regard to offenses committed outside the territory of the Requesting State, Article 2(6) provides that extradition may be granted for an extraditable offense regardless of where it was committed. Many United States criminal statutes have extraterritorial application, and the United States frequently makes requests for fugitives whose criminal activity occurred in foreign countries with the intent, actual or implied, of affecting the United States. Austrian criminal law also has broad jurisdictional scope, containing provisions to enable prosecution of Austrian nationals for offenses committed in other countries under certain circumstances.

Article 3(1) provides that neither Party is required to extradite its nationals, but the Executive Authority of the Requested State has the discretionary power to do so, so long as the law of the Requested State

does not preclude such extradition. Under Article 3(2), if extradition is refused solely on the basis of the nationality of the person sought, the Requested State must, at the request of the Requesting State, submit the case for domestic prosecution.

As is customary in extradition treaties, Article 4 incorporates a political and military offenses exception to the obligation to extradite. Article 4(1) states generally that extradition shall not be granted for a political offense. Article 4(2) specifies several categories of offenses that shall not be considered to be political offenses:

(A) murder;

(B) any other willful crime against the person of a Head of State of one of the Parties, or of a member of the Head of State's family; and

(C) an offense for which both Parties are obliged pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for a decision as to prosecution.

Article 4(3) provides that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 4(4) permits the Requested State to deny extradition for military offenses that are not offenses under ordinary criminal law (for example, desertion).

Article 5 provides that extradition may be refused if the person sought is proceeded against in the Requested State for the same offense. Article 5(2), however, declares that extradition may be granted if the competent authorities in the Requested State have declined to prosecute for the offenses for which extradition is requested or have decided to discontinue criminal proceedings against the person sought for those acts.

Article 6(1) precludes extradition of a person who has been convicted or discharged with final and binding effect by the competent authorities in the Requested State for the offense for which extradition is requested. Article 6(2) clarifies that an acquittal or a discharge for lack of jurisdiction is not an obstacle to extradition, however.

Article 7 provides that extradition shall not be granted when prosecution or execution of a sentence has become barred by the statute of limitations of the Requesting State.

Article 8(1) permits the Requested State to refuse extradition when an offense is punishable by death under the laws in the Requesting State but not under the laws of the Requested State, unless the Requesting State provides the assurance that the death penalty will not be imposed or, if imposed, will not be carried out.

Article 8(2) declares that the death penalty, if imposed by the courts of the Requesting State, shall not be carried out in cases where the Requesting State has provided an assurance in accordance with Article 8(1).

Article 9 states that extradition may be refused for a person who has been found guilty in absentia, unless the Requesting State supplies assurances that the person has had or will be given an adequate opportunity to present a defense, or that there are adequate remedies or additional proceedings available to the person after surrender.

Article 10 establishes the procedures and describes the documents that are required to support an extradition request. Article 10(1) requires that all requests be submitted through the diplomatic channel. Article 10(3)(c) provides that a request for the extradition of a person sought for prosecution be supported by evidence providing a reasonable basis to believe that the person committed the offense for which extradition is requested and is the person named in the arrest.

Article 11 enables a Requested State to seek from the Requesting State supplementary information necessary to meet the requirements for extradition and to permit courts to grant a reasonable continuance in order to allow the request to be fulfilled.

Article 12 requires that, unless otherwise agreed, all documents submitted by the Requesting State be translated into the language of the Requested State.

Article 13 sets forth procedures for the provisional arrest of a person sought pending presentation of the formal request for extradition. Article 13(4) provides that if the Requested State's executive authority has not received the request for extradition and required supporting documentation within sixty (60) days after the provisional arrest, the person may be discharged from custody. Article 13(5) provides explicitly that discharge from custody pursuant to Article 13(4) does not prejudice subsequent rearrest and extradition of that person upon later delivery of the extradition request and supporting documents.

Article 14 specifies the procedures governing surrender and return of persons sought. Article 14(1) requires the Requested State to provide

prompt notice to the Requesting State regarding its decision on the request for extradition, and, if the request is denied in whole or in part, to provide an explanation of the reasons. If extradition is granted, the authorities of the Contracting Parties shall decide on the time and place for the surrender of the person sought. Article 14(3) provides that the person sought must be removed from the territory of the Requested State within the time prescribed by its law or, if the law does not provide a specific time for surrender, as is the case in Austria, within a reasonable period of time to be determined by the Requested State. In such cases the Requested State may subsequently refuse extradition for the same offense. Article 14(4) provides an additional safeguard by allowing a Contracting Party to postpone surrender if compelled by circumstances beyond its control.

Article 15 concerns postponed and deferred surrender. Article 15(1) provides that the Requested State may postpone the surrender of a person whose extradition has been granted if the person is being proceeded against or is serving a sentence in the Requested State. Alternatively, subparagraph (2) enables the Requested State temporarily to surrender such a person to the Requesting State solely for the purpose of prosecution, subject to return to the Requested State thereafter, in accordance with conditions determined by the Contracting Parties.

Article 16 complements Article 15 by expressly permitting the Requested State to defer the initiation of extradition proceedings until after a prosecution in that State has been concluded. Article 17(1) sets forth a non-exclusive list of factors to be considered by the Requested State in determining to which State to surrender a person sought by more than one State. Article 17(2) provides that the Requested State, if it gives precedence to another State, to report to the Requesting State on the extent to which it waives the rule of specialty with respect to possible further extradition.

Article 18(1) provides for the seizure and surrender to the Requesting State of property connected with the offense for which extradition is granted, to the extent permitted under the law of the Requested State. Such property may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought. In accordance with Article 18(2), surrender of property may be deferred if it is needed as evidence in the Requested State and may be conditioned upon satisfactory assurances that it will be returned. Article 18(3) imposes an obligation to respect the rights of third parties in affected property. Article 18(4) makes inapplicable to the surrender of such items any restrictive regulations concerning the import and export of articles and foreign currency, thereby removing a potential obstacle under Austria's currency control regulations.

Article 19 sets forth the rule of speciality. Article 19(1) provides, subject to specific exceptions, that a person extradited under the Treaty may not be detained, tried, punished, or subjected to any other restriction on his personal liberty in the Requesting State in relation to an offense committed prior to extradition other than that for which extradition has been granted, unless a waiver of the rule is granted by the executive authority of the Requested State. Similarly, under Article 19(2), the Requesting State may not extradite such person to a third state for an offense committed prior to the original surrender unless the surrendering State consents. However, Article 19(3) makes clear that these restrictions do not apply if the extradited person leaves the Requesting State after extradition and voluntarily returns to it or fails to leave the Requesting State within thirty days of being free to do so. Article 19(4) stipulates that the rule of specialty shall not operate to prevent the Requesting State from taking measures necessary under its law to effect deportation of the extradited person from its territory or to file charges against the person solely to preclude expiration of the statute of limitations.

Article 20 permits surrender to the Requesting State without further proceedings if the person sought consents. The Rule of Specialty set out in Article 19 will not apply to a waiver.

Article 21 governs the transit through the territory of one Party of a person being surrendered to the other State by a third State.

Article 22 contains provisions on representation and expenses that are similar to those found in other modern extradition treaties. Specifically, the Requested State is required to represent the interests of the Requesting State in any proceedings arising out of a request for extradition. The Requesting State is required to bear the expenses related to the translation of documents and the transportation of the person surrendered. Article 22(3) clarifies that neither State shall make any pecuniary claim against the other State arising out of extradition procedures under the Treaty.

Article 23 states that the United States Department of Justice and the Ministry of Justice of Austria may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving Treaty implementation procedures.

Article 24, like the parallel provision in almost all recent United States extradition treaties, states that the Treaty shall apply to offenses committed before as well as after the date the Treaty enters into force. Ratification and entry into force are addressed in Article 25. That Article provides that the Parties shall exchange instruments of ratification at Washington and that the treaty shall enter into force on the first day of the

third month after the exchange of instruments of ratification. Upon entry into force of this Treaty, the Treaty between the Government of the United States and the Government of Austria for the extradition of fugitives from justice, signed at Vienna on January 31, 1930, and the Supplementary Extradition Convention signed at Vienna on May 19, 1934, shall cease to have effect, with certain noted exceptions.

Under Article 26, either Party may terminate the Treaty at any time upon written notice to the other Party, with termination to become effective six months after the date of receipt of such notice.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate at any early date.

Respectfully submitted.

STROBE TALBOT.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA

The Government of the United States of America and the Government of the Republic of Austria, Recalling the Convention between Austria and the United States of America for the extradition of fugitives from justice, and exchange of notes concerning the death penalty, signed at Vienna, January 31, 1930, and the Supplementary Convention thereto signed at Vienna, May 19, 1934;

Noting that both the United States of America and the Republic of Austria currently apply the terms of that Treaty;

Desiring to provide for more effective cooperation between the two States in the suppression of crime and, for that purpose, to conclude a new Treaty for the extradition of offenders;

Have agreed as follows:

ARTICLE 1

OBLIGATION TO EXTRADITE

The Contracting Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with or found guilty of an extraditable offense.

ARTICLE 2

EXTRADITABLE OFFENSES

1. Extradition shall be granted for offenses which are subject under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty.
2. Extradition for the enforcement of a prison sentence or a preventive measure restricting liberty ordered by a criminal court for one or more of the offenses referred to in paragraph 1 shall be granted only if at least three months of the sentence or a preventive measure remain to be served.
3. If extradition has been granted pursuant to paragraph 1 or 2, it shall also be granted for any other offenses even if the time conditions established in those paragraphs do not apply, provided that all other requirements for extradition are met.
4. For the purposes of this article, extradition shall be granted:
 - (A) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;
 - (B) in criminal cases relating to taxes, customs duties, currency control, and import and export of commodities, whether or not the laws of the Contracting States provide for the same kinds of taxes or customs duties, or controls on currency or on the import or export of the same kinds of commodities; and
 - (C) whether or not the offense is one for which United States Federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States Federal court.
5. Subject to the conditions set out in paragraph 1, an offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, or participation in the commission of, an offense.
6. Extradition may be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

ARTICLE 3

NATIONALITY

1. Neither Party shall be bound to extradite its own nationals, but the executive authority of the Requested State shall have the power to extradite such persons if, in its discretion, it be deemed proper to do so and provided the law of the Requested State does not so preclude.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution.

ARTICLE 4

POLITICAL AND MILITARY OFFENSES

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.
2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:
 - (A) murder;
 - (B) any other willful crime against the person of a Head of State of one of the Contracting States, or of a member of the Head of State's family; and
 - (C) an offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution.
3. Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.
4. The Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

ARTICLE 5

JURISDICTION OF THE REQUESTED STATE

1. Extradition may be refused if the person sought is proceeded against in the Requested State for the offense for which extradition is requested.

2. Notwithstanding paragraph 1, extradition may be granted if the competent authorities of the Requested State have decided not to prosecute the person sought for the offense for which extradition is requested or decided to discontinue any criminal proceedings which have been initiated against the person for those acts.

ARTICLE 6

NON BIS IN IDEM

1. Extradition shall not be granted when the person sought has been convicted or discharged with final and binding effect by the competent authorities in the Requested State for the offense for which extradition is requested.

2. An acquittal or a discharge for lack of jurisdiction is not an obstacle to extradition.

ARTICLE 7

LAPSE OF TIME

Extradition shall not be granted if the prosecution or the carrying out of the sentence has become barred by lapse of time under the laws of the Requesting State.

ARTICLE 8

CAPITAL PUNISHMENT

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless the Requesting State provides an assurance that the death penalty will not be imposed (in the case of a person sought for trial) or carried out (in the case of a person already sentenced to death at the time extradition is requested).

2. In instances in which a Requesting State provides an assurance in accordance with paragraph 1 of this Article, the Requested State shall grant extradition, and the Requesting State shall fully comply with the assurance.

ARTICLE 9

CONVICTIONS IN ABSENTIA

If the person sought has been found guilty in absentia, the executive authority of the Requested State may refuse extradition unless the Requesting State provides it with such information or assurances as the Requested State considers sufficient to demonstrate that the person was afforded an adequate opportunity to present a defense or that there are adequate remedies or additional proceedings available to the person after surrender.

ARTICLE 10

EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

1. All requests for extradition shall be submitted through the diplomatic channel.

2. The request for extradition shall be supported by:

(A) documents, statements, or other types of information which describe the identity, the nationality and probable location of the person sought;

(B) information describing the facts of the offense and the procedural history of the case;

(C) the text of the law describing the essential elements of the offense for which extradition is requested;

(D) the text of the law prescribing the punishment for the offense;

(E) a statement of the provisions of law describing any time limit on the prosecution; and

(F) the documents, statements, or other types of information specified in paragraph 3 or 4 of this article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall be supported by: (A) a copy of the warrant or order of arrest issued by a judge or other competent authority; (B) a copy of the charging document, if any; and (C) documents setting forth sufficient information to provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the warrant of arrest. 4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall be supported by: (A) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that

the person has been found guilty; (B) information establishing that the person sought is the person to whom the finding of guilt refers; and (C) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out. 5. Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization. ARTICLE 11 SUPPLEMENTARY INFORMATION 1. If, at any stage of the extradition proceedings, the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfill the requirements for extradition, that state may request the necessary supplementary information and may fix a reasonable time limit for the receipt thereof. 2. If the supplementary information furnished is not sufficient or is not received within the time specified, and if, as a consequence, the person sought is discharged, such discharge shall not preclude the Requesting State from making a new request for the extradition of the person sought. 3. Where the person sought is discharged from custody, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 12

TRANSLATION

Unless otherwise agreed as appropriate in a specific case, all documents shall be translated by the Requesting State into the language of the Requested State. Translation need not be certified.

ARTICLE 13

PROVISIONAL ARREST

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Austria. The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request.

2. The application for provisional arrest shall contain:

(A) a description of the person sought and information concerning the person's nationality;

(B) the location of the person sought if known;

(C) a brief statement of the facts of the case, including, if possible, the time and location of the offense;

(D) a description of the laws violated and the applicable penalty;

(E) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought; and

(F) a statement that a request for extradition for the person sought will follow.

3. The Requesting State shall be notified without delay of the extent to which its request has been complied with.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the Requesting State if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 10.

5. Termination of provisional arrest pending extradition pursuant to paragraph 4 is not an obstacle to rearrest and extradition if the extradition request is received later.

ARTICLE 14

DECISION AND SURRENDER

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial.

2. If the request for extradition is granted, the authorities of the Contracting Parties shall decide on the time and place for the surrender of the person sought. The Requested State shall make known for what period the person sought was in custody pending extradition.

3. If the person sought is not removed from the territory of the Requested State within the time prescribed by the law of that State or, if the Requested State has no such law, within a reasonable period of time to be determined by the Requested State, that person may be discharged from custody. In such cases the Requested State may subsequently refuse extradition for the same offense.

4. If circumstances beyond its control prevent a Contracting Party from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting Party before the expiration of the time limit. In such a case, the competent authorities of the Contracting Parties may decide upon a new date for the surrender.

ARTICLE 15

POSTPONED AND TEMPORARY SURRENDER

1. If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may postpone the surrender of the person sought. The postponement may continue until the prosecution of the person has been concluded and any sentence has been served.

2. In such cases, the Requested State may also temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by agreement of the Contracting States. The time spent in custody in the territory of the Requesting State shall be counted toward the penalty imposed or to be imposed in the Requested State.

ARTICLE 16

DEFERRAL OF EXTRADITION PROCEEDINGS

In the case of a person who is being prosecuted in the Requested State, that state may defer the extradition proceedings until the prosecution has been concluded.

ARTICLE 17

REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

1. If the Requested State receives requests from the other Contracting State and from any other state or states for the extradition of the same person, either for the same offense or for a different offense, the executive authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

(A) treaty obligations;

(B) the place where each offense was committed;

(C) the respective interests of the Requesting States;

(D) the gravity of the offenses;

(E) the possibility of further extradition between the Requesting States;
and

(F) the chronological order in which the requests were received from the Requesting States.

2. If the requests are based on different offenses and if precedence is given to the request of a third state, the Requested State may report to what extent it waives the rule of specialty with respect to possible further extradition.

ARTICLE 18

SEIZURE AND SURRENDER OF PROPERTY

1. To the extent permitted under its law, the Requested State may seize all articles, documents, and evidence connected with the offense for which extradition is sought. Such items shall be surrendered to the Requesting State if extradition is granted. The items mentioned in this article may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the items will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such items if they are needed as evidence in the Requested State.

3. The rights of third parties in such property shall be duly respected.

4. When items are surrendered pursuant to this article, restrictive regulations concerning the import and export of articles and foreign currency shall not apply.

ARTICLE 19

RULE OF SPECIALTY

1. A person extradited under this treaty may not be detained, tried, punished, or subjected to any other restrictions of his personal liberty in

the Requesting State in relation to an offense, except for:

(A) an offense for which extradition has been granted or an offense based on the same facts on which extradition was granted, provided such offense is extraditable or is a lesser included offense; or

(B) an offense committed after the surrender of the person; or

(C) an offense for which the executive authority of the Requested State consents to the person's detention, trial, punishment, or other restriction of personal liberty. For this purpose, the Requested State may require the submission of the documents called for in Article 10 and a legal record of any statements made by the extradited person in respect of the request for consent. The person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.

2. A person extradited under this Treaty may not be extradited to a third state for an offense committed prior to his surrender unless the surrendering State consents.

3. The restrictions set forth in paragraphs 1 and 2 of this article shall not apply if the extradited person:

(A) leaves the territory of the Requesting State after extradition and voluntarily returns or is lawfully returned

to it; or (B) does not leave the territory of the Requesting State within 30 days from the day on which that person is free to leave.

4. The provisions of this Article shall not prevent the Requesting State from taking measures necessary under its law to effect the deportation of the extradited person from its territory or to prevent expiration of a right of action through lapse of time.

ARTICLE 20

SIMPLIFIED EXTRADITION

If extradition is not obviously precluded by the laws of the Requested State and if the person sought consents to extradition and surrender without formal extradition proceedings, the Requested State may surrender the person without formal proceedings. In this case Article 19 shall not be applicable, and the Requested State shall so inform the Requesting State.

ARTICLE 21

TRANSIT

1. Either Contracting State may authorize transportation through its territory of a person who is being extradited to the other State by a third State. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Austria. The facilities of the International Criminal Police Organization (INTERPOL) may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

2. No authorization is required where air transportation is used by one Contracting State and no landing is scheduled on the territory of the other State. If an unscheduled landing occurs on the territory of the other Contracting State, that State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 22

ASSISTANCE AND EXPENSES

1. The appropriate authorities of the Requested State shall advise the Requesting State and represent its interests by all legal means within their power in extradition proceedings before the competent judges and officials.

2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that state by reason of the extradition proceedings.

3. Neither state shall make any pecuniary claim against the other state arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

ARTICLE 23

CONSULTATION

The United States Department of Justice and the Ministry of Justice of

Austria may consult with each other directly in connection with the processing of individual cases in furtherance of maintaining and improving procedures for the implementation of this Treaty.

ARTICLE 24

APPLICATION

This Treaty shall apply to offenses committed before as well as after it enters into force.

ARTICLE 25

RATIFICATION AND ENTRY INTO FORCE

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged at Washington as soon as possible.
2. This Treaty shall enter into force on the first day of the third month following the month in which the exchange of the instruments of ratification took place.
3. Upon the entry into force of this Treaty, the Treaty between the Government of the United States of America and the Government of Austria for the extradition of fugitives from justice, and exchange of notes concerning the death penalty, signed at Vienna on January 31, 1930, and the Supplementary Extradition Convention between the Government of the United States and the Government of Austria, signed at Vienna on May 19, 1934, shall cease to have effect. Nevertheless, the prior Treaty and Supplementary Convention shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Article 2 of this Treaty shall be applicable to such proceedings. Articles 15 and 19 of this Treaty shall apply to persons found extraditable under the prior Treaties.

ARTICLE 26

TERMINATION

Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State through the diplomatic channel, and the termination shall be effective six months after the date of the receipt of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have

signed this Treaty.

DONE at Washington, in duplicate, this eighth day of January, 1998, in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA: