

Bahamas International Extradition Treaty with the United States

March 9, 1990, Date-Signed

September 22, 1994, Date-In-Force

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

102D CONGRESS

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, October 28, 1991.

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 Commonwealth of The Bahamas signed at Nassau on March 9, 1990. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is designed to update and standardize the conditions and procedures for extradition between the United States and The Bahamas. Most significant, it substitutes a dual criminality clause for a current list of extraditable offenses, so that, inter alia, certain additional narcotics offenses will be covered by the new Treaty. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes against the laws of the Requesting State.

The Treaty further represents an important step in combating terrorism by excluding from the scope of the political offense exception serious offenses typically committed by terrorists; e.g., crimes against a Head of State or first family member of either Party, aircraft hijacking, aircraft sabotage, crimes against internationally protected persons, including diplomats, hostage-taking, narcotics trafficking, and other offenses for which either the United States or The Bahamas may have an obligation to extradite or submit to prosecution by reason of a multilateral treaty, convention, or other international agreement.

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

into force, it will supersede the existing Extradition Treaty between the United States and The Bahamas.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

GEORGE BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, DC, September 19, 1991.

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 Commonwealth of The Bahamas signed at Nassau on March 9, 1990. I recommend that this Treaty be transmitted to the Senate for advice and consent to ratification.

The Treaty follows generally the form and content of extradition treaties recently concluded by the United States. It represents a concerted effort by the Department of State and the Department of Justice to modernize the legal tools available for the extradition of serious offenders such as narcotics traffickers and terrorists.

Upon entry into force, this Treaty will supersede the Extradition Treaty between the United States of America and Great Britain, signed at London December 22, 1931, and continued in force between the United States and The Bahamas by an exchange of notes done at Nassau and Washington March 7, June 19 and [*4] August 17, 1978.

Article 1 obligates each State to extradite to the other, in accordance with the provisions of the Treaty, any persons who are charged with, or have been found guilty of, an extraditable offense.

Article 2 adopts a dual criminality approach in determining whether a particular offense is extraditable, replacing the list of extraditable offenses contained in the 1931 Treaty currently in force. This modern extradition practice emphasizes extradition based on underlying criminal

conduct rather than the particular designation of the offense contained in our respective criminal codes. A dual criminality clause permits extradition for any conduct that is punishable in both States by imprisonment or other detention for at least one year. Inclusion of a dual criminality clause obviates the need to renegotiate or supplement the Treaty as offenses, such as computer-related crimes or money laundering, become punishable under the laws of both States.

An offense is further extraditable under Article 2(3) notwithstanding any interstate transportation or mail-use elements required to establish U.S. Federal jurisdiction. This provision will allow the United States to obtain extradition for such offenses even though the Bahamian laws do not include analogous jurisdictional elements for similar underlying criminal behavior. Extraterritorial offenses are extraditable so long as the law of the Requested State provides for extraterritorial jurisdiction under similar circumstances.

Article 2 further requires extradition for any unlawful participation in a crime including attempt, conspiracy, aiding, abetting, counselling, causing, procuring and accessory.

Article 3 incorporates a political offense exception similar to provisions contained in extradition treaties concluded in recent years with a number of other countries. It provides a mandatory ground to deny extradition for an offense of a political character. It expressly excludes from the reach of such exception any offense for which either the United States or The Bahamas has an international treaty obligation to extradite the person or submit the case for prosecution; e.g., aircraft hijacking pursuant to The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, and entered into force October 14, 1971, (22 U.S.T. 1641; TIAS 7192), aircraft sabotage pursuant to the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal September 23, 1971, and entered into force January 26, 1973, (24 U.S.T. 564; TIAS 7570); crimes against internationally protected persons, including diplomats, under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, done at New York December 14, 1973 (20 U.S.T. 1975; TIAS 8532), and entered into force February 20, 1977; hostage taking, pursuant to the International Convention against the Taking of Hostages, done at New York on December 17, 1979, which entered into force June 3, 1983, and for the United States January 6, 1985 (TIAS 11081); and narcotics trafficking under the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna December 20, 1988, and entered into force November 11, 1990. This limitation will also extend to crimes similarly defined in future multilateral treaties; e.g.,

maritime terrorism under the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome March 10, 1988; the United States intends to deposit its instrument of ratification upon the enactment of implementing legislation.

The Article likewise excludes from the reach of the political offense exception a murder or other willful crime against the life or physical integrity of a Head of State of a Contracting State or a member of that person's family.

Article 3 further mandates the denial of extradition whenever the executive authority of the Requested State determines that the request was politically or racially motivated or that it was made for the primary purpose of prosecuting or punishing the person for an offense of a political character. Finally, Article 3 sets forth a discretionary basis for refusing extradition for offenses under military law which are not offenses under criminal law.

Article 4 precludes the refusal of extradition on the basis of the nationality of the fugitive.

Article 5 bars extradition on the basis of double jeopardy when the person sought has been convicted or acquitted for the same offense in the Requested State, but does not bar extradition if the competent authorities in the Requested State have declined to prosecute or have decided to discontinue criminal proceedings.

Article 6 mandates the denial of extradition if prosecution is barred by the statute of limitation of the Requesting State, without regard to the corresponding statute of limitation in the Requested State.

Article 7 permits the Requested State to deny extradition for capital offenses, other than murder, which are not punishable by death in the Requested State, if the Requesting State fails to provide sufficient assurance that the death penalty will not be imposed or carried out.

Article 8 specifies the procedures by which extradition is to be accomplished. The procedures provided therein are similar to those found in other modern extradition treaties.

Article 9 provides for the submission of additional information whenever the Requested State considers the information provided with the request to be insufficient. It requires that State to seek such additional information and enables the Requesting State to obtain a reasonable extension of time to obtain and transmit the supplemental information in order to cure any defects found by either the court or the government

authorities in the Requested State.

Article 10 provides for the provisional arrest and detention of a fugitive for no more than 60 days pending receipt of a fully documented extradition request in conformance with Article 8. The discharge of a fugitive from custody does not prejudice subsequent rearrest and extradition upon later receipt of the extradition request and supporting documents.

Article 11 requires the Requested State to promptly notify the Requesting State of its decision on extradition and, if denied in whole or in part, to provide an explanation. If granted, the fugitive must be removed from the territory of the Requested State within the time proscribed by the law of the Requested State.

Article 12 allows the Requested State to defer surrender of a fugitive being proceeded against or serving a sentence in its territory until the conclusion of the proceedings and the full execution of any punishment. Under this provision the Requested State has the discretion to choose to surrender the fugitive temporarily to the Requesting State while he is still serving a prison sentence in the Requested State for the sole purpose of early prosecution in the Requesting State. This provision will allow a person serving a long sentence in the Requested State to be tried promptly in the Requesting State and to be returned to the Requested State to complete his sentence. This alternative of temporary surrender is routinely included in our modern extradition treaties.

Article 13 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 14 expressly incorporates into the Treaty the rule of speciality. This article provides, subject to specific exceptions, that a person extradited under the Treaty may not be detained, tried, or punished for an offense 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 or unless the person extradited fails to leave the Requesting State within thirty days of being free to do so or, having left the Requesting State, voluntarily returns to it. Similarly the Requesting State may not extradite the individual to a third state unless that individual consents or remains after thirty days or leaves and voluntarily returns.

Article 15 permits surrender without formal proceedings where the person sought agrees in writing to surrender after having been advised by a competent judicial authority of his or her right to a formal proceeding.

Article 16 provides for the seizure and surrender to the Requesting State of all property related to the offense for which extradition is requested. This obligation is subject to the rights to third parties.

Article 17 governs the transit through the territory of one of the Contracting States of a person being surrendered to the other Contracting State by a third State.

Article 18 provides that the Requested State shall represent the Requesting State in any proceedings in the Requested State arising out of a request for extradition and bear all costs other those arising out of the translation of documents and transportation of the fugitive.

Article 19, like the parallel provision in almost all recent United States extradition treaties, stipulates that the Treaty is retroactive, in the sense that it applies to offenses committed before as well as after its entry into force, provided the offense was an offense under the laws of both Contracting States at the time of its commission.

Article 20 provides that the Treaty will enter into force upon the exchange of instruments of ratification. Upon entry into force, this Treaty will supersede, between the United States and The Bahamas, the Extradition Treaty between the United States of America and Great Britain signed on December 22, 1931 and continued in force between The Bahamas and the United States by an exchange of notes done on March 7, June 19 and August 17, 1978. It further provides for denunciation of the Treaty by either Party upon six months written notice to the other.

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 an early date.

Respectfully submitted,

LAWRENCE EAGLEBURGER.

Enclosure: As stated.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS

The Government of the United States of America and the Government of

the Commonwealth of The Bahamas:

Recalling the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London December 22, 1931;

Noting that both the Government of the United States of America and the Government of the Commonwealth of The Bahamas currently apply the terms of that Treaty; and

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 States 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) An offense shall be an extraditable offense if it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year or by a more severe penalty.

(2) An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, aiding or abetting, counselling, causing or procuring the commission of, or being an accessory before or after the fact to, an offense described in paragraph 1.

(3) For the purposes of this Article, an offense shall be an extraditable offense:

(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; or

(b) whether or not the offense is one for which United States federal law requires the showing of interstate transportation, or use of the mails or

other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

(4) An offense described in this Article shall be an extraditable offense whether or not the offense was committed within the territory of the Requesting State. However, if the offense was committed outside the territory of the Requesting State, extradition shall be granted if the law of the Requested State provides for punishment of an offense committed outside of its territory in similar circumstances.

Article 3

Political and Military Offenses

(1) Extradition shall not be granted when:

(a) the offense for which extradition is requested is an offense of a political character;

(b) the executive authority of the Requested State determines that the request was made for the primary purpose of prosecuting or punishing the person for an offense of a political character; or

(c) the executive authority of the Requested State determines that the request was politically or racially motivated.

(2) For the purposes of this Treaty, the following offenses shall not be considered to be offenses of a political character within the meaning of paragraph (1) of this Article:

(a) a murder or other willful crime against the life or physical integrity of a Head of State of one of the Contracting States, or of a member of that person's family, including attempts to commit such offenses; or

(b) an offense with respect to which a Contracting State has the obligation to prosecute or grant extradition to the other by reason of a multilateral treaty, convention, or other international agreement.

(3) The executive authority of the Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

Article 4

Nationality

Extradition shall not be refused on the ground that the fugitive is a citizen or national of the Requested State.

Article 5

Prior Jeopardy for the Same Offense

(1) Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.

(2) Extradition shall not be precluded by the fact that the competent authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

Article 6

Lapse of Time

Extradition shall not be granted when all prosecution has become barred by lapse of time according to the laws in the Requesting State.

Article 7

Capital Punishment

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 competent authority of the Requested State may refuse extradition unless:

(a) the offense constitutes murder under the laws in the Requested State; or

(b) the competent authority of the Requesting State provides such assurances as the competent authority of the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.

Article 8

Extradition Procedures and Required Documents

(1) The requests for extradition shall be made through the diplomatic channel.

(2) The requests for extradition shall be supported by:

(a) documents, statements, or other evidence which describe the identity, and probable location of the person sought;

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

(c) a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested;

(d) a statement of the provisions of law describing the punishment for the offense; and

(e) a statement of the provisions of law describing any time limit on the prosecution.

(3) A request for extradition relating to a person who has not yet been convicted of the offense for which extradition is sought shall also be supported by:

(a) a copy of the warrant of arrest issued by a judge or other competent authority together with evidence that the person requested is the person to whom the warrant refers; and;

(b) such evidence as would justify the committal for trial of the person if the offense had been committed in the Requested State or as would justify the committal for extradition of the person in accordance with the laws of the Requested State.

(4) A request for extradition relating to a person convicted of the offense for which extradition is sought shall be supported by the items in paragraph (2) above, and shall also be supported by a certificate of conviction or a copy of the judgment of conviction rendered by a court in the Requesting State. If the person has been convicted and sentenced, the request for extradition shall be supported by a statement showing to what extent the sentence has been carried out. If the person has been convicted but not yet sentenced, the request for extradition shall be supported by a statement to that effect.

(5) All documents submitted by the Requesting State shall be submitted in the English language.

(6) Documents in support of the request for extradition shall be transmitted through the diplomatic channel, and shall be admissible in extradition proceedings if certified or authenticated in such manner as may be required by the law in the Requested State.

Article 9

Additional Information

(1) If the executive authority of the Requested State considers that the information furnished in support of the request for extradition is not sufficient to fulfill the requirements of the Treaty, it shall request the submission of necessary additional information.

(2) The executive authority of the Requested State may fix a time limit for the submission of such information.

(3) Nothing in the foregoing shall prevent the executive authority of the Requested State from presenting to a court of that State information or evidence sought or obtained after the expiration of the time stipulated pursuant to this Article.

Article 10

Provisional Arrest

(1) In case of urgency, either Contracting State may request the provisional arrest of any person accused or convicted of an extraditable offense. Application for provisional arrest shall be made through the diplomatic channel, or directly between the Department of Justice in the United States of America and the Attorney General in the Commonwealth of The Bahamas, in which case the facilities of the International Criminal Police Organization (INTERPOL) may be used.

(2) The application for provisional arrest shall contain:

(a) a description of the person sought;

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

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

(3) On receipt of the application, the Requesting State shall take the appropriate steps to secure the arrest of the person sought. The Requesting State shall be promptly notified of the results of its application.

(4) A person who is provisionally arrested shall 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 8.

(5) The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 11

Decision and Surrender

(1) The Requested State shall promptly communicate through the diplomatic channel to the Requesting State its decision on the request for extradition.

(2) If the request is denied in whole or in part, the Requested State shall provide such information as may be available as to the reasons for the denial of the request.

(3) If the request for extradition is granted, the competent authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.

(4) If the person sought is not removed from the territory of the Requested State within the time prescribed by the law of that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense.

Article 12

Deferred and Temporary Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted in the Requested State, the Requested State shall, unless its

laws otherwise provide, defer the surrender of the person sought until the conviction, acquittal, or termination of the prosecution against that person.

2. If the extradition request is granted in the case of a person who is serving a sentence in the Requested State, not being a person to whom paragraph 1 applies, the Requested State may defer the surrender of the person sought until the full execution of any punishment that may have been imposed.

3. If the extradition request is granted in the case of a person who is serving a sentence in the Requested State, not being a person to whom paragraph 1 applies, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution for the offense(s) for which he was committed for extradition. 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 prosecution against that person, in accordance with conditions to be determined by agreement of the Contracting States.

Article 13

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 different offenses, 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) the State in which the offense was committed;
- (b) the gravity of the offenses, if the States are seeking the person for different offenses;
- (c) the nationality of the offender;
- (d) the possibility of re-extradition between the Requesting States; and
- (e) the chronological order in which the requests were received from the Requesting States.

Article 14

Rule of Speciality

(1) A person extradited under this Treaty may only be detained, tried, or punished in the Requesting State for the offense for which extradition was granted, or--

(a) any offense committed after the extradition;

(b) any offense in respect of which the executive authority of the Requested State, in accordance with its laws, has consented to the person's detention, trial, or punishment; and for the purposes of this subparagraph the Requested State shall require compliance with the extradition procedures specified in Article 8 and the submission of the documents specified in that Article;

(c) any offense which is a lesser offense proven by the facts before the court of committal; or

(d) any offense dealt with by the Requesting State after--

(i) the person failed to leave the territory of the Requesting State within thirty (30) days of being free to do so; or

(ii) the person has left the territory of the Requesting State and voluntarily returned to it.

(2) A person extradited under this treaty may only be extradited to a third State if--

(a) the Requested State consents; or

(b) the circumstances are such that the person could be dealt with in the Requesting State pursuant to subparagraph (d) of paragraph (1).

Article 15

Simplified Extradition

If the person sought agrees in writing to be surrendered to the Requesting State after being advised by a competent judicial authority of his right to formal extradition proceedings, the Requested State may surrender the person without formal proceedings.

Article 16

Seizure and Surrender of Property

(1) To the extent permitted under the laws of the Requested State, all articles, instruments, objects of value, documents, or other evidence relating to the offense shall be seized by the Requested State, and such items shall be surrendered upon the granting of extradition. The items mentioned in this Article shall 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 assurance from the Requesting State that the property will be returned to the Requested State as soon as practicable, and may defer surrender if the property is needed as evidence in the Requested State.

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

Article 17

Transit

(1) Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel and shall contain a description of the person being transported and a brief statement of the facts of the case.

(2) No authorization is required where air transportation is used and no landing is scheduled on the territory of the Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, transit shall be subject to paragraph (1) of this Article. 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 18

Representation and Expenses

(1) The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, in any proceeding arising out of a request for extradition. However, if the Requesting State retains counsel, no claim for reimbursement shall be made against the Requested State for that counsel's fees.

(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 19

Scope of Application

This Treaty shall apply to extraditable offenses under this Treaty committed before as well as after the date this Treaty enters into force provided that extradition shall not be granted for an offense committed before this Treaty enters into force which was not an offense under the laws of both Contracting States at the time of its commission.

Article 20

Ratification, Entry Into Force, and Termination

(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 immediately upon the exchange of the instruments of ratification.

(3) Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State, and the termination shall be effective six months after the date of the receipt of such notice. Such termination shall not prejudice any request for extradition made prior to the date on which the termination becomes effective.

(4) Upon the entry into force of this Treaty, the Extradition Treaty between the United States of America and Great Britain, signed at London December 22, 1931, shall cease to have effect between the United States of America and the Commonwealth of The Bahamas. Nevertheless, the 1931 Treaty shall continue to have effect in relation to any extradition proceedings pending when this Treaty enters into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE, in duplicate, at the city of Nassau, this 9th day of March, 1990.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE COMMONWEALTH OF THE
BAHAMAS:

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