

China (Hong Kong) International Extradition Treaty with the United States

December 20, 1996, Date-Signed

January 21, 1998, Date-In-Force

LETTER OF TRANSMITTAL

THE WHITE HOUSE, March 3, 1997. To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification as a treaty, I transmit herewith the Agreement Between the Government of the United States of America and the Government of Hong Kong for the Surrender of Fugitive Offenders signed at Hong Kong on December 20, 1996 (hereinafter referred to as "the Agreement"). In addition, I transmit for the information of the Senate, the report of the Department of State with respect to the Agreement. As a treaty, this Agreement will not require implementing legislation.

This Agreement will, upon entry into force, enhance cooperation between the law enforcement communities of the United States and Hong Kong, and will provide a framework and basic protections for extraditions after the reversion of Hong Kong to the sovereignty of the People's Republic of China on July 1, 1997. Given the absence of an extradition treaty with the People's Republic of China, this Treaty would provide the means to continue an extradition relationship with Hong Kong after reversion and avoid a gap in law enforcement. It will thereby make a significant contribution to international law enforcement efforts.

The provisions of this Agreement follow generally the form and content of extradition treaties recently concluded by the United States. In addition, the Agreement contains several provisions specially designed in light of the particular status of Hong Kong. The Agreement's basic protections for fugitives are also made expressly applicable to fugitives surrendered by the two parties before the new treaty enters into force.

I recommend that the Senate give early and favorable consideration to the Agreement and give its advice and consent to its ratification as a treaty.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

Department of State

Washington, February 4, 1997

The President

The White House

THE PRESIDENT: I have the honor to submit to you the Agreement between the Government of the United States of America and the Government of Hong Kong For the Surrender of Fugitive Offenders, (hereinafter referred to as "the Agreement"), signed at Hong Kong on December 20, 1996. I recommend that the Agreement be transferred to the Senate for its advice and consent to ratification as a treaty as soon as possible so that it may become effective prior to the reversion of Hong Kong to the sovereignty of the People's Republic of China (PRC) on July 1, 1997. Given the absence of an extradition treaty with the PRC, this US-Hong Kong treaty would provide the means to ensure an ongoing extradition relationship with Hong Kong, avoiding a gap in our law enforcement relationship.

The Agreement 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 and also to address the particular issues related to the status of Hong Kong.

Although entitled an "Agreement" to reflect Hong Kong's unique juridical status, for purposes of U.S. law, the instrument will be considered to be a treaty, and therefore I am submitting it to you for transmittal to the Senate for advice and consent to ratification. In that regard, I note that Hong Kong is entering into the Agreement with the authorization of "the sovereign government which is responsible for its foreign affairs." At present, that is the United Kingdom. However, the PRC has also approved the Agreement and authorized its continuation in force after July 1, 1997 through approval of the Sino-British Joint Liaison Group. For ease of reference, the relevant sovereign is referred to in this report as the PRC although there could be a brief period after the treaty enters into force when the sovereign would still be the United Kingdom.

Article 1 obligates each Party to extradite to the other, in accordance with the provisions of the Agreement, any person wanted for prosecution or for the imposition or enforcement of a sentence in respect of an offense described in Article 2.

Article 2 contains an extensive list of offenses for which the Parties agree to surrender fugitive offenders, provided that the offense is punishable by both parties by imprisonment or other form of detention for more than one year, or by a more severe penalty. Significantly, the Agreement follows the modern dual criminality model by including as the last item in the list of offenses, "any other offense which is punishable under the laws of both Parties by imprisonment or other form of detention for more than one year, or by a more severe penalty, unless surrender for such offense is prohibited by the laws of the requested Party." Inclusion of this dual criminality clause obviates the need to renegotiate or

supplement the Agreement as offenses become punishable under the laws of both Parties. In keeping with most recently negotiated U.S. extradition treaties, the Article further provides that in determining whether an offense is an offense under the law of the requested Party, the conduct of the person shall be examined by reference to the totality of the underlying criminal conduct without reference to the elements of the offense prescribed by the law of the requested Party. Article 2(5) contains the standard provision found in other extradition treaties that an offense under military law shall not be considered to be an offense for purposes of paragraph (1) of this Article.

Article 3, like most modern extradition treaties concluded by the United States, provides that surrender shall not normally be refused on the ground that the person sought is a national of the requested Party. However, the executive authority of Hong Kong reserves the right to refuse surrender of nationals of the PRC in cases in which: (1) the requested surrender relates to the defense, foreign affairs or essential public interest or policy of the PRC, or (2) the person sought neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement, and the PRC has jurisdiction over the offense and has commenced or completed proceedings for the prosecution of that person. The executive authority of the United States reserves the same right to refuse the surrender of U.S. nationals on grounds of defense, foreign affairs or essential public interest or policy of the United States of America. Article 3(4) provides that in a case in which the person sought by the United States has neither the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement, and the PRC has jurisdiction and is investigating an offense by that person, action on the extradition request by the United States may be deferred until the investigation has been expeditiously concluded. Article 3(5) provides that in cases in which extradition is refused on the grounds of its relation to defense, foreign affairs or essential public interest or policy, the requesting Party may request that the case be submitted to the competent authorities of the requested Party who will consider whether to bring a prosecution. The delegations expressed their shared intention that this Article would rarely be invoked.

Under Article 4, when an offense for which surrender is sought is punishable by death under the laws of the requesting Party and is not so punishable under the laws of the requested Party, the requested Party, may refuse surrender unless the other Party provides assurances that the death penalty will not be imposed or, if imposed, will not be carried out. The United States has agreed to a similar formulation in other modern extradition treaties.

Article 5, following modern practice, bars surrender when the person sought has been convicted or acquitted in the requested Party for the same offense, but does not bar extradition if the competent authorities in the requested Party have declined to prosecute or have decided to discontinue criminal proceedings.

Article 6 incorporates a political offense exception to extradition similar to provisions contained in U.S. Extradition treaties concluded in recent years with a number of other countries. After prohibiting extradition for offenses of a political character, the Article expressly excludes from the reach of the exception 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 decision as to 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 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, 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 on December 14, 1973, and entered into force February 20, 1977; and hostage taking, pursuant to the International Convention Against the Taking of Hostages, done at New York on December 17, 1979, and entered into force June 3, 1983, and for the United States January 6. The article likewise excludes from the reach of the political offense exception murder or other willful crime against the person of the head of state of the United States or the PRC or a member of the Head of State's immediate family. A conspiracy or attempt to commit this offense or the multilateral international agreement offenses described above shall also not be considered to be an offense of a political character.

Article 6 further mandates the denial of extradition if the competent authority of the requested Party, which is expressly designated in the Article as the executive authority in the United States, determines (1) that the request was politically motivated, (2) that the request was made for the primary purpose of prosecuting or punishing the person sought on account of his race, religion, nationality or political opinion, or (3) that the person sought is likely to be denied a fair trial or punished on account of his race, religion, nationality, or political opinions. The United States has agreed to the inclusion of such a comprehensive provision in a few other modern extradition treaties.

Article 7, as in the U.S.-Norway extradition treaty, provides that the competent authority of the requested Party, which is designated as the executive authority in the United States, may in its discretion refuse the surrender of a fugitive when it believes that such surrender is likely to entail exceptionally serious consequences related to the age or health of the fugitive. This provision has rarely been accepted by the United States and the delegations expressed their shared expectation that this Article would apply only in the most unusual and extraordinary circumstances.

Article 8 describes the documents that are required to support a request for extradition, following other modern extradition treaties.

Article 9 establishes the procedures under which documents submitted pursuant to Article 8 shall be received and admitted into evidence in the requested Party. These provisions are also similar to those found in other modern extradition treaties.

Article 10, in keeping with other modern extradition treaties, provides for the provisional arrest and detention of the person sought pending receipt of a fully documented extradition request in conformity with Article 8. Article 10(5) limits the period that the person sought may be so held to no more than sixty days and explicitly provides that the discharge of the person sought from custody due to lapse of time does not prejudice subsequent rearrest and extradition upon later receipt of the extradition request and supporting documents.

Article 11 again reflects U.S. practice in modern extradition treaties, providing that if the executive authority of the requested Party has received requests for the extradition of a fugitive offender from more than one country with which either Party has arrangements for the surrender of fugitive offenders, it shall make its decision having regard to all the circumstances, including the relevant provisions of such agreements or arrangements, the place of commission of the offenses, their relative seriousness, the respective dates of the requests, the nationality of the fugitive offender, the nationality of the victim, and the possibility of subsequent surrender to another jurisdiction.

Article 12 contains provisions on representation and expenses that are similar to those found in other modern extradition treaties. Specifically, the requested Party bears ordinary expenses for the legal representation of the requesting Party in any proceedings arising out of a request for surrender of a fugitive offender. In the event that the requesting Party arranges its own additional legal representation and assistance, it bears any additional expenses incurred. Article 12(3) clarifies that neither Party shall make any pecuniary claim against the other Party arising out of the arrest, detention, examination, or surrender of persons sought under the Agreement.

Pursuant to Article 13, a fugitive offender shall be surrendered only if the evidence is found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offense of which he had been accused had been committed in the territory of the requested Party or to establish that he is the person found guilty, convicted or sentenced by the courts of the requesting Party. These requirements are found in many modern U.S. extradition treaties and preserve the “probable cause” standard in cases of requests to the United States.

Article 14 sets forth the standard procedures to govern the surrender and return of fugitive offenders, including the release from custody of a fugitive offender if the requesting Party does not take custody of the person claimed on the date agreed to by the Parties. Like other recent extradition treaties, it provides that, if a request is denied in whole or in part, the requested

Party, to the extent permitted under its law, is to provide an explanation of the reasons for the denial and, at the request of the requesting Party, copies of pertinent judicial decisions.

Article 15 follows other modern extradition treaties in providing that when a person is surrendered, the requested Party shall, so far as its law allows and subject to conditions it may impose to protect the rights of other claimants, furnish the requesting Party with all sums of money and other articles which may serve as evidence in the requesting Party's prosecution or which may have been acquired by the person sought as a result of the offense and are in his or her possession.

Article 16 expressly incorporates into the Agreement a typical formulation of the rule of speciality. It provides, subject to specific exceptions, that a person extradited under the Agreement may not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offense committed prior to his surrender other than that for which extradition has been granted unless the requested Party consents. Furthermore, the requesting Party may not surrender or transfer such person beyond its jurisdiction for the offense for which his surrender was granted or for an offense committed prior to his original surrender without the consent of the requested Party. In the case of Hong Kong, this consent requirement would apply to any proposed surrender or transfer outside of Hong Kong. The limitations imposed under Article 16 do not apply if the person has had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and has not done so within thirty days or leaves and voluntarily returns.

Article 17, which resembles provisions in most recent United States extradition treaties, provides for the temporary or deferred surrender of persons who are serving a sentence or are being prosecuted in the territory of the requested Party.

Article 18 permits surrender without further proceedings if the person sought gives his consent, as is the case in most modern treaties. It further provides that, to the extent required under the law of the requested Party, the rule of speciality in Article 16 shall apply to such transfers. Although U.S. law does not impose speciality limitations in such cases, the Hong Kong negotiators informed the United States delegation that such speciality limitations apply under Hong Kong law.

Article 19 governs the transit through the territory of one Party of a person being surrendered to the other Party by a third state. As with similar provisions in other recent extradition treaties, it provides that either Party may authorize such transit through its jurisdiction and that the person in transit may be detained in custody during the period of transit.

Article 20 contains final clauses dealing with the Agreement's entry into force, termination and application. Of particular importance, Paragraph 3 makes the Agreement's restrictions on capital punishment and on prosecutions and transfers for offenses other than those for which extradition was granted, set forth in Articles 4 and 16, expressly applicable to fugitive

offenders who have been surrendered between the parties prior to the Agreement's entry into force. It also specifies that the Agreement would apply to requests for surrender pending at the date of its entry into force.

Paragraph 1 provides for entry into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for entry into force have been complied with. Such mutual notification will therefore need to take place no later than May 30 in order to avoid a law enforcement gap upon reversion on July 1.

Paragraph 2 provides for termination six months after receipt of written notice by either Party.

Paragraph 4, like the parallel provision in almost all recent United States extradition treaties, stipulates that the Agreement is retroactive, in the sense that it applies to offenses committed both before and after its entry into force, provided that the offense was an offense under the laws of both parties at the time the request is made.

A Technical Analysis explaining in detail the provisions of the Agreement 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,

MADELEINE ALBRIGHT.

AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF HONG KONG
FOR THE SURRENDER OF FUGITIVE OFFENDERS

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The Government of the United States of America and the Government of Hong Kong, having been duly authorised to conclude this Agreement by the sovereign government which is responsible for its foreign affairs (hereinafter called "the Parties");

Desiring to make provision for effective cooperation in the suppression of crime and for the reciprocal surrender of fugitive offenders;

Have agreed as follows:

ARTICLE 1
Obligation to Surrender

The Parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the requested Party and who is wanted by the requesting Party for prosecution or for the imposition or enforcement of a sentence in respect of an offence described in Article 2.

ARTICLE 2
Description of Offences

(1) Surrender of fugitive offenders shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty:

- (i) Murder; manslaughter; assault with intent to commit murder;
- (ii) Aiding, abetting, counselling or procuring suicide;
- (iii) Maliciously wounding; maiming; inflicting grievous bodily harm; assault occasioning actual bodily harm;
- (iv) Offences of a sexual nature, including rape, sexual assault, indecent assault, unlawful sexual acts upon children or persons with mental disabilities;
- (v) Kidnapping; abduction; false imprisonment; dealing or trafficking in slaves or other persons; taking a hostage;
- (vi) Criminal intimidation; blackmail; extortion;
- (vii) Offences against the laws relating to drugs, including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances, and offences relating to the proceeds of drug trafficking;
- (viii) Offences relating to possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;
- (ix) Criminal exploitation of children, whether for sexual or other purposes (including commercial dealing in child pornography);

- (x) Obtaining property or pecuniary advantage by deception; theft; robbery; burglary, housebreaking, or similar offences; unlawful handling or receiving of property; false accounting; embezzlement; any other offence in respect of property involving fraud;
- (xi) Offences involving the unlawful use of computers;
- (xii) Offences against bankruptcy laws;
- (xiii) Offences against the laws relating to corporations or companies, including offences committed by officers, directors and promoters;
- (xiv) Offences relating to securities and futures trading;
- (xv) Any offence relating to counterfeiting; any offence against the laws relating to forgery or uttering what is forged;
- (xvi) An offence against the law relating to bribery of persons, including public officials, as well as unlawful payments connected with public contracting or other expenditures of public funds;
- (xvii) Perjury and subornation of perjury; false statements; attempting to pervert or obstruct the course of justice;
- (xviii) Criminal damage, including arson;
- (xix) An offence against the law relating to firearms, weapons, or explosives;
- (xx) An offence relating to the protection of public health or the environment;
- (xxi) An offence against the laws relating to protection of intellectual property, copyrights, patents, or trademarks;
- (xxii) Offences relating to fiscal matters, taxes or duties, notwithstanding that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, or customs regulation of the same kind as the law of the requesting Party;
- (xxiii) An offence against the laws relating to the control of exportation or importation of goods of any type, or the international transfer of funds;
- (xxiv) Smuggling; offences against laws relating to the import or export of prohibited items, including historical and archaeological as well as other items;

- (xxv) Immigration offences including fraudulent acquisition or use of a passport or visa;
 - (xxvi) Arranging, for financial gain, the illegal entry of persons into the jurisdiction of the requesting Party;
 - (xxvii) An offence relating to gambling or lotteries;
 - (xxviii) Mutiny or other mutinous acts committed on board a vessel at sea;
 - (xxix) Piracy;
 - (xxx) Unlawful use, destruction, possession, control, seizure or hijacking of aircraft, vessels or other means of transportation;
 - (xxxi) Genocide or direct and public incitement to commit genocide;
 - (xxxii) Offences under multilateral international conventions, binding on the Parties, for which fugitive offenders may be surrendered;
 - (xxxiii) Impeding the arrest, detection or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement;
 - (xxxiv) Offences related to unlawful escape from custody, or flight to avoid prosecution;
 - (xxxv) Aiding, abetting, counselling or procuring the commission of, inciting, being an accessory before or after the fact to, or attempting or conspiring to commit any offence for which surrender may be granted under this Agreement;
 - (xxxvi) Any other offence which is punishable under the laws of both Parties by imprisonment or other form of detention for more than one year, or by a more severe penalty, unless surrender for such offence is prohibited by the laws of the requested Party.
- (2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that, in the case of a period of imprisonment or detention, at least six months remain to be served.
- (3) For the purpose of this Article, in determining whether an offence is an offence against the law of the requested Party, the conduct of the person shall be examined by reference to the totality of the acts or omissions alleged against the person without reference to the elements of the offence prescribed by the law of the requesting Party.

- (4) An offence shall fall within the description of offences in this Article:
- (a) whether or not the laws of the Parties place the offence within the same category of offences or describe the offence by the same terminology; or
 - (b) whether or not the offence 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) For the avoidance of doubt, an offence under military law, which is not an offence under ordinary criminal law, shall not be considered to be an offence for purposes of paragraph (1) of this Article.

ARTICLE 3
Surrender of Nationals

- (1) Except as provided in paragraphs (2) and (3) of this Article, surrender shall not be refused on grounds relating to the nationality of the person sought.
- (2) The executive authority of the Government of the United States of America reserves the right to refuse the surrender of nationals of the United States of America in cases in which the requested surrender relates to the defence, foreign affairs or essential public interest or policy of the United States of America.
- (3) The executive authority of the Government of Hong Kong reserves the right to refuse the surrender of nationals of the State whose government is responsible for the foreign affairs relating to Hong Kong in cases in which:
- (a) The requested surrender relates to the defence, foreign affairs or essential public interest or policy of the State whose government is responsible for the foreign affairs relating to Hong Kong, or
 - (b) The person sought neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement, and the State whose government is responsible for the foreign affairs relating to Hong Kong has jurisdiction over the offence relating to the requested surrender and has commenced or completed proceedings for the prosecution of that person.

(4) In cases in which the person sought by the United States of America neither has the right of abode in Hong Kong nor has entered Hong Kong for the purpose of settlement and the State whose government is responsible for the foreign affairs relating to Hong Kong has jurisdiction over the offence and is investigating the offence, action on the request may be deferred until such time as the investigation has been expeditiously concluded.

(5) Where the right to refuse surrender is exercised in accordance with paragraph (2) or paragraph (3)(a) of this Article, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution may be considered.

ARTICLE 4 **Capital Punishment**

(1) When the offence for which surrender is sought is punishable by death under the laws of the requesting Party and is not punishable by death under the laws of the requested Party, the requested Party may refuse surrender unless the requesting Party provides assurances that the death penalty will not be imposed or, if imposed, will not be carried out.

(2) In instances in which a requesting Party has provided an assurance that the death penalty will not be carried out, the death penalty, if imposed by the courts of the requesting Party, shall not be carried out.

ARTICLE 5 **Prior Proceedings**

(1) Surrender shall not be granted when the person sought has been convicted or acquitted in the requested Party for the offence for which surrender is requested.

(2) Surrender shall not be precluded by the fact that the authorities in the requested Party have decided not to prosecute the person sought for the acts for which surrender is requested or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

ARTICLE 6
Political Offences

(1) A fugitive offender shall not be surrendered if the offence of which that person is accused or was convicted is an offence of a political character.

(2) For the purposes of this Article, the following offences shall not be considered to be offences of a political character:

- (a) murder or other willful crime against the person of the Head of State of the United States, or, in the case of Hong Kong, the Head of State whose government is responsible for its foreign affairs, or in either case of a member of the Head of State's immediate family;
- (b) an offence for which both Parties have an obligation pursuant to a multilateral international agreement to surrender the person sought or to submit the case to their competent authorities for decision as to prosecution;
- (c) a conspiracy or attempt to commit any of the foregoing offences, or aiding or abetting a person who commits or attempts to commit such offences.

(3) Notwithstanding the terms of paragraph (2) of this Article, surrender shall not be granted if the competent authority of the requested Party, which for the United States shall be the executive authority, determines:

- (a) that the request was politically motivated;
- (b) that the request for surrender, though purporting to be made on account of an offence for which surrender may be granted, was in fact made for the primary purpose of prosecuting or punishing the person sought on account of his race, religion, nationality or political opinion; or
- (c) that the person sought is likely to be denied a fair trial or punished on account of his race, religion, nationality, or political opinions.

ARTICLE 7
Humanitarian Considerations

The competent authority of the requested Party, which for the United States shall be the executive authority, may refuse the surrender of a fugitive when such surrender is likely to entail exceptionally serious consequences related to age or health.

ARTICLE 8
Required Documents

- (1) Requests for the surrender of a fugitive offender shall be made in writing by and to the appropriate authorities of the Parties as may be notified between them from time to time.
- (2) All requests shall be accompanied by:
 - (a) a description of the person sought, together with any other information which would help to establish his identity and nationality including, if known, his whereabouts;
 - (b) information describing the facts of the offence and the procedural history of the case; and
 - (c) a statement of the provisions of the law describing the offence for which surrender is requested and a statement of the punishment which can be imposed therefor and a specification of any time limit which is imposed on the institution of proceedings.
- (3) If the request relates to a person wanted for prosecution, it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify his committal for trial if the offence had been committed within the jurisdiction of the requested Party.
- (4) If the request relates to a person found guilty, convicted or sentenced, it shall also be accompanied by:
 - (a) a copy of any certificate or record in relation to the finding of guilt, the conviction or the sentence; and
 - (b) if the person was found guilty or convicted but not sentenced, a statement or record to that effect by the appropriate court and a copy of the warrant of arrest; or
 - (c) if the person was sentenced, a statement that the sentence is enforceable and indicating how much of the sentence has still to be served.
- (5) All documents submitted by the requesting Party in accordance with this Agreement shall be in or translated into an official language of the requested Party, or any other language agreed upon by the Parties.

ARTICLE 9
Admissibility and Authentication

Documents accompanying a request for surrender shall be received and admitted as evidence if:

- (a) in the case of a request from the United States of America, they are:
 - (i) signed or certified by a state or federal judge, magistrate or official of the United States of America, and
 - (ii) sealed with the official seal of the competent authority of the United States of America;
- (b) in the case of a request from Hong Kong, they are certified by the principal consular officer of the United States resident there; or
- (c) they are certified or authenticated in any other manner accepted by the law of the requested Party.

ARTICLE 10
Provisional Arrest

- (1) In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the requesting Party.
- (2) The application shall contain a description of the person sought, information as to his whereabouts, an indication of intention to request his surrender, a statement of the existence and terms of a warrant of arrest or that the person has been found guilty, convicted or sentenced, a statement of the maximum punishment that can be imposed or the punishment that has been imposed for the offence, and a statement of the acts or omissions (including time and place) alleged to constitute the offence.
- (3) The requesting Party shall be notified without delay of the disposition of its application and the reasons for any refusal.
- (4) An application for provisional arrest shall be in writing and shall be forwarded through the same channels as a request for surrender or through the International Criminal Police Organisation (Interpol).
- (5) The provisional arrest of the person sought shall be terminated upon the expiration of sixty days from the date of his arrest if the request for his surrender supported, as required, by the documents referred to in paragraphs (2) to (4) of Article 8 have not been received by the requested Party. This provision shall not prevent his re-arrest or surrender if the request for his surrender is received subsequently.

ARTICLE 11
Concurrent Requests

If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with which the United States of America or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the executive authority of the requested Party shall make its decision having regard to all the circumstances, including the relevant provisions of such arrangements, the place of commission of the offences, their relative seriousness, the respective dates of the requests, the nationality of the fugitive offender, the nationality of the victim, and the possibility of subsequent surrender to another jurisdiction.

ARTICLE 12
Representation and Expenses

- (1) The requested Party shall at its own expense make the necessary arrangements for the requesting Party's legal representation and assistance in any proceedings arising out of a request for the surrender of a fugitive offender. In the event that the requesting Party arranges its own additional legal representation and assistance, it shall bear any additional expenses incurred.
- (2) The requesting Party shall bear the expenses related to the translation of documents and the international transportation of the person surrendered from the jurisdiction of the requested Party. The requested Party shall bear all other expenses incurred in its jurisdiction.
- (3) Neither Party shall make any pecuniary claim against the other Party arising out of the arrest, detention, examination, or surrender of persons sought under this Agreement.

ARTICLE 13
Standard of Proof

A fugitive offender shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which he is accused had been committed in the territory of the requested Party or to establish that he is the person found guilty, convicted or sentenced by the courts of the requesting Party.

ARTICLE 14
Terms of Surrender

- (1) If a fugitive offender is to be surrendered, the person sought shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as agreed upon by the Parties.
- (2) The requested Party shall promptly notify the requesting Party of its decision on the request for surrender. If the request is denied in whole or in part, the requested Party, to the extent permitted under its law, shall provide an explanation of the reasons for the denial. The requested Party shall provide copies of the pertinent judicial decisions upon request.
- (3) Subject to the provisions of paragraph (4) of this Article, if the requesting Party does not take custody of the person claimed on the date agreed by the two Parties, he may be released from custody, and the executive authority of the requested Party may subsequently refuse to surrender him for the same offence.
- (4) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In such case, except to the extent inconsistent with the law of the requested Party, the two Parties shall agree on a new date for surrender and the provisions of paragraph (3) of this Article shall apply.

ARTICLE 15
Transfer of Property

When a person is surrendered pursuant to Articles 1 or 18 of this Agreement, the requested Party shall, so far as its law allows and subject to such conditions as it may impose having regard to the rights of other claimants, furnish the requesting Party with all sums of money and other articles:

- (a) which may serve as proof of the offences to which the request relates; or
- (b) which may have been acquired by the person sought as a result of the offence and are in his possession.

ARTICLE 16
Speciality

- (1) A fugitive offender who has been surrendered shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than:
- (a) the offence in respect of which his return is ordered;
 - (b) any lesser offence, however described, disclosed by the facts in respect of which his return was ordered, provided such an offence is an offence for which he can be returned under this Agreement;
 - (c) any other offence for which surrender may be granted under this Agreement in respect of which the requested Party consents to his so being proceeded against, sentenced or detained. For the purpose of this sub-paragraph:
 - (i) the requested Party may require the submission of the documents called for in Article 8; and
 - (ii) the person surrendered may be detained by the requesting Party for up to ninety days while the request is being processed.
- (2) A person surrendered under this Agreement may not be surrendered or transferred beyond the jurisdiction of the requesting Party for the offence for which his surrender was granted, or for an offence committed prior to his original surrender, unless the requested Party consents.
- (3) Paragraphs (1) and (2) of this Article shall not prevent a person being proceeded against, sentenced or detained, or surrendered to another jurisdiction, if he has had an opportunity to leave the jurisdiction of the Party to which he has been surrendered and has not done so within thirty days or has voluntarily returned to that jurisdiction having left it.

ARTICLE 17
Temporary and Deferred Surrender

- (1) If a request for surrender is made in respect of a person who is serving a sentence in accordance with the laws of the requested Party, that Party may temporarily surrender such person to the requesting Party for the purpose of prosecution.

- (2) If a request for surrender is made in respect of a person who is being proceeded against by the requested Party, the requested Party:
- (a) shall proceed with the proceedings for surrender after the prosecution against such person has been concluded and he is acquitted; or
 - (b) may, if such person is convicted and sentenced to imprisonment, proceed with the proceedings for surrender and, upon his committal, temporarily surrender that person to the requesting Party for the purpose of prosecution.
- (3) Where a person is temporarily surrendered, he shall be kept in custody by the requesting Party and be returned to the requested Party after the conclusion of the proceedings against him, in accordance with conditions to be determined by agreement of the Parties.

ARTICLE 18
Surrender by Consent

- (1) If the person sought consents to surrender to the requesting Party, the requested Party may surrender the person as expeditiously as possible without further proceedings.
- (2) To the extent required under the law of the requested Party, the provisions of Article 16 shall apply to a person surrendered pursuant to this Article.

ARTICLE 19
Transit

- (1) Either Party may authorise transportation through its jurisdiction of a person surrendered to the other Party by a third State. A request for transit shall be made in writing and shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.
- (2) No authorisation is required where air transportation is used and no landing is scheduled in the jurisdiction of the Party. If an unscheduled landing occurs in the jurisdiction of the other Party, the other Party may require the request for transit as provided in paragraph (1). That Party 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 ninety-six hours of the unscheduled landing.

ARTICLE 20
Entry into Force, Termination and Application


- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.
- (2) Either Party may terminate the Agreement at any time by giving notice to the other in writing. In that event, the Agreement shall cease to have effect six months after the receipt of the notice.
- (3) This Agreement shall apply to requests for surrender made after its entry into force. It shall also apply to requests for surrender pending at the date of its entry into force. Articles 4 and 16 of this Agreement shall apply to fugitive offenders who have been surrendered between the Parties prior to the entry into force of this Agreement.
- (4) This Agreement shall apply to offences committed before as well as after it enters into force provided that, at the time of making the request, the offence is an offence under the laws of both Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective governments, have signed this Agreement.

DONE at Hong Kong, in duplicate, this twentieth day of December one thousand nine hundred and ninety six in the English and Chinese languages, both texts being equally authentic.



FOR THE GOVERNMENT
OF THE UNITED STATES OF AMERICA:



FOR THE GOVERNMENT
OF HONG KONG: