

Hungary International Extradition Treaty with the United States

December 1, 1994, Date-Signed

March 18, 1997, Date-In-Force

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

104TH CONGRESS

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, May 8, 1995.

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 Treaty Between the Government of the United States of America and the Government of the Republic of Hungary on Extradition, signed at Budapest on December 1, 1994. Also transmitted for the information of the Senate is the report of the Department of State with respect to this Treaty.

The Treaty is designed to update and standardize the conditions and procedures for extradition between the United States and Hungary. Most significantly, it substitutes a dual-criminality clause for the current list of extraditable offenses, thereby expanding the number of crimes for which extradition can be granted. 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 combatting 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 the United States and Hungary have an obligation to extradite or submit to prosecution by reason of a multilateral treaty, convention, or other international agreement. The United States and Hungary also agree to exclude from the political offense exception major common crimes, such as murder, kidnapping, and placing or using explosive devices.

The provisions in this Treaty follow generally the form and content or extradition treaties recently concluded by the United States. Upon entry into force, it will supersede the Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases Between the Government of the United States of America and the Austro-Hungarian Empire, signed at Washington, July 3, 1856, with certain exceptions.

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.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, April 14, 1995.

The PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of the Republic of Hungary on Extradition (the "Treaty"), signed at Budapest on December 1, 1994. I recommend that the Treaty be transmitted to the Senate for its 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 Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases, between the Government of the United States of America and the Austro-Hungarian Empire, signed at Washington, July 3, 1856.

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

In Article 2, the Parties agree that an offense punishable by both parties by imprisonment or other form of detention for more than one year, or by a more severe penalty shall be extraditable. The Article also provides that attempts and conspiracies to commit these offenses, and participation in the commission of the offenses, are extraditable. Inclusion of a dual-criminality clause without a list of offenses covered by the Treaty obviates the need to renegotiate or supplement the Treaty as offenses become punishable under the laws of both parties. Among other things, the Article further provides that in determining whether an offense is covered under the Treaty, the offense shall be considered an extraditable offense whether or not the laws in the Contracting Parties place the offenses within the same category of offenses or describe the offense by the same terminology. With regard to offenses committed outside the territory of the Requesting State, the Requested State has discretionary authority under Article 2(4) to refuse extradition if the laws of the Requested State would not provide for jurisdiction in a similar situation.

Article 3 provides that surrender may be refused on the grounds that the person sought is a national of the requested State, but that each party's Executive Authority--in the case of the United States, the Secretary of State--shall have the power to extradite its nationals, unless prohibited by its domestic legislation, if, in its discretion, it deems it appropriate to do so. Article 3(2) provides that in cases in which extradition is so refused, the Requesting State may request that the case be submitted to the competent authorities of the Requested State for prosecution.

Article 4 incorporates a political offense exception to the obligation to extradite. Article 4(1) states generally that extradition shall not be granted for political offenses. Article 4(2) expressly excludes from the reach of the political offense exception several categories of offenses:

(i) a murder or other willful crime against the person of a Head of State of one of the Contracting Parties, or of a member of the Head of State's family;

(ii) an offense for which both Parties are obliged pursuant to a multilateral international agreement to extradite the person sought 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; 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, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation done at Montreal on February 24, 1988; 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, 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, and entered into force June 3, 1983, and for the United States January 6, 1985; and narcotics trafficking under the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna December 20, 1988, which entered into force November 11, 1990;

(iii) specified crimes, including murder, manslaughter, other offenses involving substantial bodily harm, kidnapping, and placing of certain explosive, incendiary or destructive devices;

(iv) a conspiracy or attempt to commit the offenses described above, or participation in the commission of those offenses.

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) provides that the executive authority of the Requested State can refuse extradition for an offense under military law which is not an offense under ordinary criminal law.

Article 5 bars extradition when the person sought has been convicted or acquitted in the Requested State for the same offense, 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 provides that extradition shall not be granted if at the time the Requested State receives the extradition request the prosecution or the enforcement of the penalty or the detention order has become barred by lapse of time under the law of the Requesting State.

Under Article 7, when an offense for which surrender is sought is punishable by death under the laws of the Requesting State and is not so punishable under the laws of the Requested State, the Requested State may refuse extradition unless the Requesting State provides assurances that the death penalty will not be imposed or, if imposed, will not be carried out.

Articles 8--10 address the procedures by which extradition is to be accomplished. Article 8 describes the documents that are required to support a request for extradition. Article 9 establishes the procedures under which documents submitted pursuant to Article 8 shall be received

and admitted into evidence in the Requested State. Article 10 provides that all documents submitted by the Requesting State shall be translated into the language of the Requested State.

Article 11 provides for the provisional arrest and detention of the person sought for no more than sixty days pending receipt by the executive authority of the Requested State of a fully documented extradition request in conformity with Article 8. The discharge of the person sought from custody pursuant to this Article explicitly does not prejudice subsequent rearrest and extradition upon later delivery of the extradition request and supporting documents.

Article 12 provides that the Requested State may request that a Requesting State supplement a request for extradition if the Requested State considers that the information furnished in support of a request for extradition is not sufficient to fulfill the Treaty requirements, and states that a person sought may be released by the Requested State if the evidence sought is not adequate or is not received within the time specified in the request for additional information. Such release shall not preclude the Requesting State from making another request for the same or a different offense.

Article 13 specifies the procedures to govern the surrender and return of fugitives. The Requested State is required to promptly notify the Requesting State of its decision on extradition and, if the request is denied in whole or in part, to provide an explanation. If the request is granted, the person sought must be removed from the territory of the Requested State within the time prescribed by the law of the Requested State or, since Hungary has no such law, within the time set by the decision granting extradition.

Article 14 provides that if a person is being prosecuted or is serving a sentence in the Requested State for a different offense, that State may (a) defer surrender until the proceedings are concluded and the sentence served, or (b) temporarily surrender the person to the Requesting State solely for the purpose of prosecution.

Article 15 sets forth a non-exhaustive 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 16 provides, to the extent permitted under the law of the Requested State, for that State to seize and surrender to the Requesting State property related to the offense for which extradition is requested. This obligation, however, is subject to an obligation to duly respect the rights of third parties.

Article 17 sets forth the rule of specialty for this treaty. It 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 ten days of being free to do so or, having left the Requesting State, voluntarily returns to it. Similarly the Requesting State 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 the original surrender unless the Requested State consents or unless the individual remains after ten days or leaves and voluntarily returns.

Article 18 permits surrender without further proceedings if the person sought gives his consent. It further provides that the rule of specialty in Article 17 shall not apply to such transfers.

Article 19 governs the transit through the territory of one party of a person being surrendered to the other State by a third State.

Article 20 contains provisions on representation and expenses that are similar to those found in other modern extradition treaties. Specifically, the Requested State bears the expenses for the legal representation of the Requesting State in any proceedings arising out of a request for extradition. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. Article 20(3) clarifies that neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under the Treaty.

Article 21 states that the U.S. Department of Justice and the Hungarian Ministry of Justice may consult with each other directly or through the facilities of the International Criminal Police Organization (INTERPOL) in connection with the processing of individual cases and in furtherance of maintaining and improving the procedures for the implementation of the Treaty. Other ministries, agencies, or government departments competent in extradition matters may be included in the consultations, as appropriate.

Article 22, like the parallel provision in almost all recent United States extradition treaties, states that the Treaty is retroactive, in that it shall apply to offenses committed before as well as after the date the Treaty enters into force.

Article 23 contains final clauses dealing with the Treaty's entry into force

and termination. Paragraph 1 states that the Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible. Paragraph 2 states that the Treaty shall enter into force immediately upon the exchange of instruments of ratification. Pursuant to paragraph 3, upon entry into force of this Treaty, the Convention between the United States and the Austro-Hungarian Empire for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases, signed at Washington July 3, 1856 shall cease to have any effect; nevertheless, the 1856 Convention shall apply to any extradition proceeding in which extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except Article 18 of this Treaty (Simplified Extradition) shall be applicable to such proceedings. It further states that Article 17 (Rule of Specialty) shall apply to persons found extraditable under the prior treaty. Under paragraph 4, either party may terminate the Treaty at any time upon written notice to the other Party, and the Treaty would terminate 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 an early date.

Respectfully submitted.

STROBE TALBOT.

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF HUNGARY ON EXTRADITION

The Government of the United States of America and the Government of the Republic of Hungary,

Recalling the Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases, signed at Washington July 3, 1856;

Noting that both the Government of the United States of America and the Government of the Republic of Hungary 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. An offense shall be an extraditable offense if it is punishable 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. An offense shall also be an extraditable offense if it consists of an attempt to commit, or participation in the commission of, an offense described in paragraph 1 of this Article. Any type of association to commit offenses described in paragraph 1 of this Article, as provided by the laws of Hungary, and conspiracy to commit an offense described in paragraph 1 of this Article, as provided by the laws of the United States, shall also be extraditable offenses.

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

a. whether or not the laws in the Contracting Parties place the offense within the same category of offenses or describe the offense by the same terminology;

b. 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.

4. If the offense has been committed outside the territory of the Requesting State, extradition shall be granted if the laws of the Requested State provide for the punishment of an offense committed outside of its territory in similar circumstances. If the laws of the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, grant extradition.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by less than one year's deprivation of liberty, provided that all other requirements of extradition are met.

Article 3

Nationality

1. Neither Contracting 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, unless prohibited by domestic legislation, if, in its discretion, it be deemed proper to do so.

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. a murder or other willful crime against the person of a Head of State of one of the Contracting Parties, or of a member of the Head of State's family;

b. an offense for which both Contracting Parties 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;

c. murder, manslaughter, or other offense involving substantial bodily harm;

d. an offense involving kidnapping or any form of unlawful detention, including the taking of a hostage;

e. placing or using an explosive, incendiary or destructive device capable of endangering life, or causing substantial bodily harm, or of causing

substantial property damage; and

f. a conspiracy or any type of association to commit offenses as specified in Article 2, paragraph 2, or attempt to commit or participation in the commission of, any of the foregoing offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

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

Article 5

Prior Prosecution

1. Extradition shall not be granted when the person sought has been convicted or acquitted or the case dismissed by court order with binding and final effect 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 if at the time the Requested State receives the request for extradition the prosecution or the enforcement of the penalty or of the detention order, has become barred by lapse of time under the law of the Requesting State.

Article 7

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 assurances that the

death penalty will not be imposed or, if imposed, will not be carried out.

2. In instances in which a Requesting State provides an assurance in accordance with this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 8

Extradition Procedures and Required Documents

1. All requests for extradition shall be made 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, 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 punishment for the offense; and

e. a statement of the provisions of law describing any time limit on the prosecution, or the enforcement of the penalty, or the detention order.

3. A request for extradition of a person who is sought for prosecution shall also 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 indictment or other document specifying the charges against the person whose extradition is sought; and

c. such information as would justify the committal for trial of the person if the offense had been committed in the Requested State.

4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall also 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;

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; and

d. in the case of a person who has been found guilty in absentia, the documents required by paragraph 3.

Article 9

Admissibility of Documents

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:

a. they are certified by the principal diplomatic or consular officer of the Requested State; or

b. they are certified or authenticated in any other manner accepted by the law of the Requested State.

Article 10

Translation

All documents submitted by the Requesting State shall be translated into the language of the Requested State.

Article 11

Provisional Arrest

1. In case of urgency, a Contracting Party 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 Department of Justice in the United States and the Ministry of Justice in Hungary. 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, if available,

- 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;
 - 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 disposition of its application and the reasons for any denial.
 4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest 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 12

Additional Information

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient to fulfill the requirements of this Treaty, that State may request that additional information be furnished within such reasonable length of time as it specifies.
2. If the person sought is under arrest and the additional information furnished is not sufficient or is not received within the time specified, [*24] the person may be released from custody. Such release shall not preclude the Requesting State from making another request in respect of the same or any other offense.
3. Where the person is released from custody in accordance with

paragraph 2, the Requested State shall notify the Requesting State as soon as practicable.

Article 13

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition.
2. If the request is denied in whole or in part, the Requested State shall provide information as to the reasons for the denial of the request. The Requested State shall provide copies of pertinent judicial decisions upon request.
3. If the request for extradition is granted, the competent authorities of the Contracting Parties 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 either by the law of that State or in the decision granting extradition, that person may be discharged from custody, and the Requested State may thereafter refuse extradition for the same offense.

Article 14

Deferred and Temporary Surrender

1. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.
2. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the Requested State, the Requested State may 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 mutual agreement of the Contracting Parties.

Article 15

Requests for Extradition Made by Several States

If the Requested State receives requests from the other Contracting Party 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. whether the requests were made pursuant to treaty;
- b. the place where the offense was committed;
- c. the respective interests of the Requesting States;
- d. the gravity of the offense;
- e. the nationality of the victim;
- f. the possibility of further extradition between the Requesting States; and
- g. the chronological order in which the requests were received from the Requesting States.

Article 16

Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender all articles, documents, and evidence connected with the offense in respect of which 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 property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.
3. The rights of third parties in such property shall be duly respected.

Article 17

Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:

a. the offenses for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

b. any offense committed after the extradition of the person; or

c. an offense for which the executive authority of the Requested State has consented to the person's detention, trial, or punishment. For the purpose of this subparagraph:

i. the Requested State may require the submission of the documents specified in Article 8; and

ii. the person extradited may be detained by the Requesting State for 90 days, or for such longer time as the Requested State may authorize, while the request under this subparagraph is being processed.

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

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

a. that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

b. that person does not leave the territory of the Requesting State within 10 days of the day on which the person is free to do so.

Article 18

Simplified Extradition

If the person sought consents to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings. In this case, Article 17 shall not be applicable.

Article 19

Transit

1. Either Contracting Party 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 or directly between the United States Department of Justice and the Ministry of Justice in Hungary. 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 may be detained in custody during the period of transit.

2. No authorization is required where air transportation is used and no landing is scheduled on the territory of the other Contracting Party. If an unscheduled landing occurs on the territory of the other Contracting Party, that Contracting Party may require the request for transit as provided in paragraph 1. That 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 20

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 by all legal means within its power, in any proceedings arising out of a request for extradition.

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 21

Consultation

The United States Department of Justice and the Ministry of Justice in the Republic of Hungary may consult with each other directly, or through the facilities of the International Criminal Police Organization (Interpol), in

connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty. They may include in any consultations such other ministries, agencies, and departments of government competent in extradition matters as they deem appropriate.

Article 22

Application

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

Article 23

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. Upon the entry into force of this Treaty, the Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases, signed at Washington July 3, 1856, shall cease to have any effect. Nevertheless, the prior Treaty shall apply to any extradition proceeding 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 18 of this Treaty shall be applicable to such proceedings. Article 17 of this Treaty shall apply to persons found extraditable under the prior Treaty.
4. Either Contracting Party may terminate this Treaty at any time by giving written notice to the other Contracting Party, 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 by their respective Governments, have signed this Treaty.

DONE in duplicate at Budapest, this first day of December, 1994, in English and Hungarian, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY:

EXTRADITION TREATY WITH HUNGARY

July 30, 1996. Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

The Committee on Foreign Relations, to which was referred the Treaty Between the United States of America and the Government of the Republic of Hungary on Extradition, signed at Budapest on December 1, 1994, having considered the same, reports favorably thereon with one proviso, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

I. PURPOSE

Modern extradition treaties (1) identify the offenses for which extradition will be granted, (2) establish procedures to be followed in presenting extradition requests, (3) enumerate exceptions to the duty to extradite, (4) specify the evidence required to support a finding of a duty to extradite, and (5) set forth administrative provisions for bearing costs and legal representation.

II. BACKGROUND

On December 1, 1994, the President signed an extradition treaty with Hungary. The Treaty was transmitted to the Senate for its advice and consent to ratification on May 8, 1995. In recent years the Departments of State and Justice have led an effort to modernize U.S. bilateral extradition treaties to better combat international criminal activity, such as drug trafficking, terrorism and money laundering. The United States is a party to approximately 100 bilateral extradition treaties. According to the Justice Department, during 1995 131 individuals were extradited to the United States and 79 individuals were extradited from the United States.

The increase in international crime also has prompted the U.S. government to become a party to several multilateral international conventions which, although not themselves extradition treaties, deal with international law enforcement and provide that the offenses which they cover shall be extraditable offenses in any extradition treaty between the parties. These include: the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague), art. 8: the Convention to Discourage Acts of

Violence Against Civil Aviation (Montreal), art. 8; the Protocol Amending the Single Convention on Narcotic Drugs of 1961, art. 14 amending art. 36(2)(b)(I) of the Single Convention; the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (Organization of American States), art. 3; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, art. 8; the International Convention against the Taking of Hostages, art. 10; the Convention on the Physical Protection of Nuclear Materials, art. 11; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna). These multilateral international agreements are incorporated by reference in the United States' bilateral extradition treaties.

III. SUMMARY

A. GENERAL

An extradition treaty is an international agreement in which the Requested State agrees, at the request of the Requesting State and under specified conditions, to turn over persons who are within its jurisdiction and who are charged with crimes against, or are fugitives from, the Requesting State. Extradition treaties can be bilateral or multilateral, though until recently the United States showed little interest in negotiating multilateral agreements dealing with extradition.

The contents of recent treaties follow a standard format. Article I sets forth the obligation of contracting states to extradite to each other persons charged by the authorities of the Requesting State with, or convicted of, an extraditable offense. Article 2, sometimes referred to as a dual criminality clause, defines extraditable offenses as offenses punishable in both contracting states by prison terms of more than one year. Attempts or conspiracies to commit an extraditable offense are themselves extraditable. Several of the treaties provide that neither party shall be required to extradite its own nationals. The treaties carve out an exception to extraditable crimes for political offenses. The trend in modern extradition treaties is to narrow the political offense exceptions.

The treaties include a clause allowing the Requested State to refuse extradition in cases where the offense is punishable by death in the Requesting State, unless the Requesting State provides assurances satisfactory to the Requested State that the individual sought will not be executed.

In addition to these substantive provisions, the treaties also contain

standard procedural provisions. These specify the kinds of information that must be submitted with an extradition request, the language in which documents are to be submitted, the procedures under which documents submitted are to be received and admitted into evidence in the Requested State, the procedures under which individuals shall be surrendered and returned to the Requesting State, and other related matters.

B. MAJOR PROVISIONS

1. Extraditable offenses: The dual criminality clause

Article 2 contains a standard definition of what constitutes an extraditable offense: an offense is extraditable if it is punishable under the laws of both parties by a prison term of at least one year. Attempts and conspiracies to commit such offenses, and participation in the commission of such offenses, are also extraditable. If the extradition request involves a fugitive, it shall be granted only if the remaining sentence to be served is more than six months.

The dual criminality clause means, for example, that an offense is not extraditable if in the United States it constitutes a crime punishable by imprisonment of more than one year, but it is not a crime in the treaty partner or is a crime punishable by a prison term of less than one year. In earlier extradition treaties the definition of extraditable offenses consisted of a list of specific categories of crimes. This categorizing of crimes has resulted in problems when a specific crime, for example drug dealing, is not on the list, and is therefore not extraditable. The result has been that as additional offenses become punishable under the laws of both treaty partners the extradition treaties between them need to be renegotiated or supplemented. A dual criminality clause obviates the need to renegotiate or supplement a treaty when it becomes necessary to broaden the definition of extraditable offenses.

2. Extraterritorial offenses

In order to extradite individuals charged with extraterritorial crimes (offenses committed outside the territory of the Requesting State) such as international drug traffickers and terrorists, provision must be made in extradition treaties. The Hungary Treaty states that the Requested State shall grant extradition for an offense committed outside the Requesting State's territory if the Requested State's laws provide that an offense committed outside its territory is punishable in similar circumstances (art. 2(4)). If the Requested State's laws do not provide that an offense committed outside its territory is punishable in similar circumstances, under the Hungary Treaty the Requested State nevertheless has discretionary authority to grant extradition (art. 2(4)).

In the proposed treaty an obligation to extradite depends mostly on whether the Requested State also punishes offenses outside its territory "in similar circumstances." This, in effect, appears to be a dual criminality clause applied to extraterritorial offenses. The phrase "in similar circumstances" is undefined in each of the treaties that have such a requirement and in the Letters of Submittal from the Department of State to the President. The phrase appears to be sufficiently vague to give a reluctant Requested State "wiggle room" to avoid its possible obligation to extradite individuals for crimes committed outside its territory.

3. Political offense exception

In recent years the United States has been promoting a restrictive view of the political offense exception in furtherance of its campaign against terrorism, drug trafficking, and money laundering. The political offense exception in the Hungary Treaty is narrower than other U.S. extradition treaties.

The Hungary treaty starts out with standard language that extradition shall not be granted for political offenses (art. 4 (1)). It then goes on to list several categories of offenses that are not considered political: a murder or other willful crime against a head of state or a member of his or her family; certain specified crimes, including murder, kidnapping, and placing explosive devices; an offense for which both parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or submit the case to their authorities for prosecution; and an attempt or conspiracy to commit any of the foregoing acts, or participation in the commission of those acts. The first category of offenses not considered political--a criminal attack on a head of state or members of his family--is a carryover from older extradition treaties.

The exclusion of certain violent crimes, (i.e. murder, kidnapping, and others) from the political offense exception has become standard in many U.S. extradition treaties, reflecting the concern of the United States government and certain other governments with international terrorism. The Hungary Treaty does not contain such an exclusion in their political offense exception.

The exclusion from the political offense exception for crimes covered by multilateral international agreements, and the obligation to extradite for such crimes or submit the case to prosecution by the Requested State, is now a standard exclusion and is contained in the proposed treaty. The incorporation by reference of these multilateral agreements is intended to assure that the offenses with which they deal shall be extraditable under an extradition treaty. But, extradition for such offenses is not guaranteed.

A Requested State has the option either to extradite or to submit the case to its competent authorities for prosecution. For example, a Requested State could refuse to extradite and instead declare that it will itself prosecute the offender.

4. The death penalty exception

The United States and other countries appear to have different views on capital punishment. Under the proposed treaty a party may refuse extradition for an offense punishable by the death penalty in the Requesting State if the same offense is not punishable by the death penalty in the Requested State, unless the Requesting State gives assurances satisfactory to the Requested State that the death penalty will not be imposed or carried out.

5. The extradition of nationals

The U.S. does not object to extraditing its own nationals and has sought to negotiate treaties without nationality restrictions. Many countries, however, refuse to extradite their own nationals. U.S. extradition treaties take varying positions on the nationality issue.

The Hungary Treaty contains the traditional nationality clause providing that neither party is obligated to extradite its own nationals, but that they may do so at their discretion (art. 3). Upon a refusal to extradite, the Requested State may be required by the Requesting State to submit the case to its authorities for prosecution

6. Retroactivity

The proposed treaty states that it shall apply to offenses committed before as well as after it enters into force (art. 22). These retroactivity provisions do not violate the Constitution's prohibition against the enactment of ex post facto laws which applies only to enactments making criminal acts that were innocent when committed, not to the extradition of a defendant for acts that were criminal when committed but for which no extradition agreement existed at the time.

7. The rule of speciality

The rule of speciality (or specialty), which prohibits a Requesting State from trying an extradited individual for an offense other than the one for which he was extradited, is a standard provision included in U.S. bilateral extradition treaties, including the six under consideration. The Hungary Treaty (art. 17) contains exceptions to the rule of specialty that are designed to allow a Requesting State some latitude in prosecuting

offenders for crimes other than those for which they had been specifically extradited.

8. Lapse of time

The Hungary Treaty contains rules that preclude extradition of offenses barred by an applicable statute of limitations. Extradition is barred if the statute of limitations has run under the laws of the Requesting State, not the Requested State (art. 6).

IV. ENTRY INTO FORCE AND TERMINATION

A. ENTRY INTO FORCE

This Treaty shall enter into force upon the exchange of instruments of ratification.

B. TERMINATION

This Treaty may be terminated by either Party, effective six months after receipt of notice by a Party of the intention of the other Party to terminate the Treaty.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed treaty on Wednesday, July 17, 1996. The hearing was chaired by Senator Helms. The Committee considered the proposed treaty on Wednesday, July 24, 1996, and ordered the proposed treaty favorably reported with one proviso by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty.

VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommended favorably the proposed treaty. The Committee believes that the proposed treaty is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. In 1996 and the years ahead, U.S. law enforcement officers increasingly will be engaged in criminal investigations that traverse international borders. Certainly, sovereign relationships have always been important to prosecution of suspected criminals. The first recorded extradition treaty dates as far back as 1280 B.C. under Ramses II, Pharaoh of Egypt. The United States entered into its first extradition treaty in 1794 with Great Britain. Like these early treaties, the basic premise of the treaties is to facilitate, under specified

conditions, the transfer of persons who are within the jurisdiction of one nation, and who are charged with crimes against, or are fugitives from, the nation requesting extradition. Despite the long history of such bilateral treaties, the Committee believes that these treaties are more essential than ever to U.S. efforts to bring suspected criminals to justice.

In 1995, 131 persons were extradited to the U.S. for prosecution for crimes committed in the U.S., and the U.S. extradited 79 individuals to other countries for prosecution. After the Senate ratified an extradition treaty with Jordan in 1995, the U.S. Attorney General was able to take into custody an alleged participant in the bombing of the World Trade Center. His prosecution would not be possible without an extradition treaty. Crimes such as terrorism, transshipment of drugs by international cartels, and international banking fraud are but some of the international crimes that pose serious problems to U.S. law enforcement efforts. The Committee believes that modern extradition treaties provide an important law enforcement tool for combating such crimes and will advance the interests of the United States.

The proposed resolution of ratification includes a proviso that reaffirms that ratification of this treaty does not require or authorize legislation that is prohibited by the Constitution of the United States. Bilateral extradition treaties rely on relationships between sovereign countries with unique legal systems. In as much as U.S. law is based on the Constitution, this treaty may not require legislation prohibited by the Constitution.

VII. EXPLANATION OF PROPOSED TREATY

The following is the Technical Analysis of the Extradition Treaty submitted to the Committee on Foreign Relations by the Departments of State and Justice prior to the Committee hearing to consider pending extradition treaties.

TECHNICAL ANALYSIS OF THE EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND HUNGARY

On December 1, 1994, the United States signed a treaty on extradition with the Republic of Hungary ("the Treaty"). In recent years, the United States has signed similar treaties with many other countries as part of an ongoing effort to modernize our law enforcement relations. The Treaty is intended to replace the current treaty in force between the two countries, the Convention for the Mutual Delivery of Criminals, Fugitives from Justice, in Certain Cases ("the 1856 Treaty"), which is the oldest United States extradition treaty still in force.

It is anticipated that the Treaty will be implemented in the United States

pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed. Hungary has internal extradition legislation that will apply to United States requests under the Treaty.

The following technical analysis of the Treaty was prepared by the United States delegation that conducted the negotiations.

Article 1--Obligation to extradite

This article, like the first article in every recent United States extradition treaty, formally obligates each Contracting Party to extradite to the other persons charged with or convicted of extraditable offenses, subject to the provisions of the Treaty.

Article 1 refers to charges brought by authorities "in" the Requesting State rather than "of" the Requesting State, thereby obligating Hungary to extradite fugitives to the United States for state and local prosecutions as well as federal cases. The term "found guilty" is used instead of "convicted" because in Hungary, a person is not considered convicted until a sentence is imposed, whereas in the United States, a sentence ordinarily is not imposed until after a presentence report is prepared and reviewed. The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee the jurisdiction prior to sentencing.

Article 2--Extraditable offenses

This article contains the basic guidelines for determining what are extraditable offenses. The Treaty, like the recent United States extradition treaties with Jamaica, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted.

Paragraph 1 permits extradition for any offense punishable under the laws of both Contracting Parties by deprivation of liberty (i.e., imprisonment or other form of detention) for more than one year or by a more severe penalty such as capital punishment. Defining extraditable offenses in this manner obviates the need to renegotiate the Treaty or supplement it if both Contracting Parties pass laws dealing with a new type of criminal activity or if the list inadvertently fails to cover an important type of criminal activity punishable in both Contracting Parties.

During the negotiations, the Hungarian delegation stated that key offenses such as drug trafficking, including operating a continuing criminal enterprise, money laundering, and offenses under the RICO statutes are

considered extraditable under the Treaty.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting to commit, or otherwise participating in, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the Treaty be clear on this point. Hungary has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the "dual criminality" rule of paragraph 1 by expressly making conspiracy an extraditable crime. Similarly, this paragraph makes the Hungarian offense of association to commit an offense an extraditable offense.

Paragraph 3 reflects the intention of both Contracting Parties to interpret the principles of this article broadly. Judges in foreign countries often are confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, it will ensure that Hungarian authorities treat United States mail fraud charges in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property in the same manner as unlawful possession of stolen property. Paragraph 3 further requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each Contracting Party. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to hear cases involving offenses committed outside the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction. In Hungary, however, the government's ability to prosecute extraterritorial offenses is very different. Paragraph 4 therefore reflects Hungary's agreement to recognize United States jurisdiction to prosecute offenses committed outside the United States if Hungarian law permits it to prosecute similar offenses committed outside Hungary in corresponding circumstances. If the law of the Requested State does not provide for such prosecution, paragraph 4 nevertheless permits the executive authority of the Requested

State to decide, at its discretion, to grant the extradition. For the United States, this decision is made by the Secretary of State, and for Hungary, by the Minister of Justice. A similar provision appears in several recent United States treaties.

Paragraph 5 states that when extradition is granted for an extraditable offense, it shall also be granted for any other offense for which all of the requirements for extradition are met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Hungary agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses charged, as long as those misdemeanors are also recognized as criminal offenses in Hungary. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the perspective of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with Australia, Ireland, Italy, and Costa Rica.

Some recent United States extradition treaties provide that persons who have been convicted of an extraditable offense and sentenced to imprisonment may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served on the outstanding sentence. The Treaty contains no such requirement. Provisions of this kind are an attempt to limit extradition to serious cases because of the significant costs associated with the process. However, the negotiators felt that the particular sentence imposed or outstanding is not necessarily an adequate measure of the seriousness of the crime. They preferred the exercise of discretion and good judgment in considering the remainder of a sentence to be served, not arbitrary limits imposed in the terms of the Treaty, as the better approach to promote the Treaty's goals. A similar provision is found in our extradition treaties with other countries, including Australia, Canada, Jamaica, New Zealand, and the United Kingdom.

Article 3--Nationality

Paragraph 1 specifically states that each Contracting Party has the discretionary power to extradite its own nationals unless prohibited from doing so by internal legislation. This paragraph, like the clause in article IV of the 1901 Treaty that it replaces, is intended to permit the United States to extradite its nationals to Hungary, in accordance with

established United States policy favoring such extraditions. However, since Hungary is barred by its law from extraditing Hungarian nationals, it is unlikely that Hungary will actually surrender its nationals to the United States under the Treaty unless Hungarian law is amended in the future.

Paragraph 2 requires that if the Requested State refuses extradition solely on the basis of nationality, that State must submit the case to its authorities for prosecution if asked to do so by the Requesting State.

Similar provisions are found in many recent United States extradition treaties.

Article 4--Political and military offenses

Paragraph 1 prohibits extradition for political offenses. This is a common provision in United States extradition treaties.

Paragraph 2 describes several categories of offenses that shall not be considered political offenses.

Paragraph 2(a) provides that the political offense exception to extradition does not apply when there is a murder or other willful crime against the life of a Head of State of a Contracting Party, or a member of the head of State's family.

Paragraph 2(b) states that the political offense exception does not apply to offenses for which both Contracting Parties have the obligation, pursuant to a multilateral treaty, convention or international agreement, either to extradite the person sought or to submit the matter for prosecution. The conventions to which this clause applies at present include the Convention on Offenses and Certain Other Acts Committed on Board Aircraft; the Convention for the Suppression of Unlawful Seizures of Aircraft (Hijacking); the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage); the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents; and the International Convention Against the Taking of Hostages. In addition, Hungary is expected to ratify the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances in the near future. In the meantime, both the United States and Hungary are parties to the Single Convention on Narcotic Drugs and the Amending Protocol to the Single Convention; this provision of the Treaty applies to both conventions.

Subparagraphs 2(c), (d) and (e) specify that the Requested State shall not

consider any of the following crimes to be political offenses: murder, manslaughter or any other offense involving substantial bodily harm; offenses involving kidnapping or any form of unlawful detention, including hostage-taking; and placement or use of a device, incendiary, or destructive device capable of endangering life, of causing substantial bodily harm, or of causing substantial property damage. Thus, the Treaty is similar to recent United States extradition treaties with the United Kingdom, Canada, Germany, and Spain, in each of which the scope of the political offense exception is substantially narrowed to eliminate its application to certain crimes typically committed by terrorists.

Paragraph 2(f) states that the political offense exception does not apply to conspiracy or any type of association to commit, attempt to commit, or participation in, the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request is politically motivated. This is consistent with longstanding United States law and practice, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation. Similar provisions appear in many United States extradition treaties.

Paragraph 4 provides that extradition may be denied by the executive authority of the Requested State if the request relates to an offense under military law that is not an offense under ordinary criminal law.

Article 5--Prior prosecution

This article will permit extradition in situations in which the fugitive is charged with different offenses in each Contracting Party arising out of the same basic transaction.

Paragraph 1 prohibits extradition if the fugitive has been convicted or acquitted in the Requested State for the offense for which extradition is requested. This is similar to language found in many United States extradition treaties. The paragraph also permits extradition to be denied if the charges in the Requesting State have been "dismissed by a court order with binding effect. * * *" This refers to the dismissal of charges by the court "with prejudice," a situation which raises double jeopardy concerns. This paragraph will, however, permit extradition in situations in which the activities of the fugitive result in his being charged with different offenses in both Contracting Parties arising out of the same basic transaction.

Paragraph 2 makes it clear that neither Contracting Party can refuse to extradite an offender to the other on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision by the Requested State to forego prosecution, or to drop charges already filed, may be the result of a failure to obtain sufficient evidence or witnesses for trial, whereas the prosecution in the Requesting State may not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction with the better chance of a successful prosecution.

Article 6--Lapse of time

This article states that extradition must be denied if at the time the extradition request is received, the prosecution of the offense or the enforcement of the penalty or detention order is barred by lapse of time under the law of the Requesting State. Similar provisions appear in several United States extradition treaties. The reference to "enforcement of the penalty or of the detention order" reflects the fact that Hungary, like many civil law countries, has a statute of limitations relating to such matters in addition to a statute of limitation on prosecutions. The article indicates that the Requested State should not deny the request if the statute of limitations expires after the requested State receives the request.

Article 7--Capital punishment

Paragraph 1 permits the requested State to refuse extradition in cases in which the offense for which extradition is sought is punishable by death in the Requesting State, but is not punishable by death in the Requested State, unless the Requesting State provides assurances that the death penalty will not be imposed, or, if imposed, will not be carried out. Similar provisions are found in many recent United States extradition treaties.

The Hungarian delegation insisted on this provision because Hungary has abolished the death penalty and usually denies extradition in cases in which the person sought might be executed. However, the Hungarian delegation assured the United States delegation that in an extraordinarily egregious case, Hungary might be persuaded to grant extradition without assurances pursuant to this paragraph.

Paragraph 2 provides that when the Requesting State gives assurances in accordance with paragraph 1, the assurances shall be respected, and the death penalty, if imposed, shall not be carried out.

Article 8--Extradition procedures and required documents

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to articles in the most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the fugitive under article 11, and provisional arrest request need not be initiated through diplomatic channels if the requirements of article 11 are met.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Paragraph 3 describes the additional information needed when the person is sought for trial in the Requesting State; paragraph 4 describes the information needed, in addition to the requirements of paragraph 2, when the person sought has already been tried and found guilty in the Requesting State.

Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, paragraph 2(e) calls for "a statement of the provisions of law describing any time limit on the prosecution or enforcement of the penalty or the detention order," thereby enabling the Requested State to determine easily whether lapse of time would be a valid basis for denying extradition under article 6.

Paragraph 3 requires that if the fugitive has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide a copy of the outstanding arrest warrant, the formal charges, and "such evidence as would justify the committal for trial of the person if the offense had been committed in the Requested State." This is consistent with fundamental extradition jurisprudence in the United States, under which this language is interpreted to require evidence of probable cause. n28 The Hungarian delegation assured the United States delegation that under Hungarian law, the outstanding United States arrest warrant would constitute sufficient evidence to satisfy this standard.

Paragraph 4 lists the information needed to extradite a person convicted of an offense in the Requesting States. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision. Subsection (d) states that if the person sought was found guilty in absentia, the documentation required for extradition includes both proof of conviction and the documentation required under paragraph 3.

This is consistent with the longstanding United States policy of requiring such documentation in extradition proceedings of persons convicted in absentia.

Article 9--Admissibility of documents

This article governs the authentication procedures for documentation intended for use in extradition proceedings.

Paragraph (a) states that evidence intended for use in extradition proceedings shall be admissible if it is certified by the principal diplomatic or consular officer of the Requested State. This provision primarily accommodates the authentication procedures required by United States law.

Paragraph (b) permits such evidence to be admitted if it is authenticated in any manner accepted by the laws of the Requested State. This provision ensures that relevant evidence that would normally satisfy the evidentiary rules of the Requested State is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process. This clause is especially important because Hungary has no laws or regulations regarding authentication of documents for extradition cases. It was agreed that paragraph (b) ensures that documents in support of United States extradition requests would not require special authentication.

Article 10--Translation

This standard treaty provision requires that all documents submitted in support of an extradition request be translated into the language of the Requested State. Thus, requests from Hungary to the United States would be translated into English and United States requests to Hungary would be translated into Hungarian.

Article 11--Provisional arrest

This article describes the process by which a person in the Requested State may be arrested and detained while the formal extradition request is being prepared by the Requesting State.

Paragraph 1 expressly provides that a request for provisional arrest may be made directly between the United States Department of Justice and the Hungarian Ministry of Justice. The request may also be made via the Interpol channel. Experience has shown that the ability to use such direct channels in emergency situations can be crucial when a fugitive is poised to flee a jurisdiction.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised without delay of the outcome of the request and the reasons for any denial.

Paragraph 4 provides that the fugitive may be released from detention if the executive authority of the Requested State does not receive the fully documented extradition request within 60 days of the provisional arrest. When the United States is the Requested State, the "executive authority" for purposes of paragraph 4 would include the Secretary of State or the United States Embassy in Budapest.

Paragraph 4 states that the person arrested may be released from custody if the documents are not received within the 60-day period. However, the proceedings against the fugitive need not be dismissed, as paragraph 5 makes it clear that the person may be taken into custody again and the extradition proceedings may be re-commenced when the formal request is presented at a later date.

Article 12--Additional information

This article provides for the submission of additional information if the original request, including supporting documentation, is viewed as insufficient by the Requested State. It is intended to permit the Requesting State to cure any defects in the request and accompanying materials which are found by a court in the Requested State or by the attorney acting on behalf of the Requesting State, and to permit the court, in appropriate cases, to grant a reasonable continuance to obtain, translate, and transmit additional materials. This provision also states that the person sought may be released from custody if the additional information is not received within the time specified, but such release shall not preclude a subsequent request on the same or different offenses at a later time. The Requested State must notify the Requesting State of such a release. A similar provision is found in other United States extradition treaties.

Article 13--Decision and surrender

This article requires the Requested State promptly to notify the Requesting State of its decision on the extradition request. If extradition is denied, the Requested State must provide the reasons for the denial. If extradition is granted, the articles requires that the two Contracting Parties agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by

the law of the Requested State or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law requires that surrender occur within two calendar months of the finding that the offender is extraditable, or of the conclusion of any litigation challenging that finding, whichever is later. According to the Hungarian delegation, the law in Hungary does not specify the time in which the surrender must take place, as such matters are usually dealt with the surrender decree signed by the Minister of Justice.

Article 14--Deferred and temporary surrender

Occasionally, a person sought of extradition may be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment imposed. Similar provisions appear in our recent extradition treaties with the Bahamas and Australia.

Paragraph 1 provides that the executive authority to the Requested State may postpone the extradition proceedings against a person who is being prosecuted or serving a sentence in the Requested State until the conclusion of the prosecution or the full execution of the punishment which has been imposed. The provision permits the Requested State to postpone the surrender of the person as well as the initiation of extradition proceedings against a person facing prosecution proceedings against a person facing prosecution or serving a sentence.

Paragraph 2 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to the Treaty will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporarily surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of a successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it permits resolution of the charges sooner; (2) subject to the laws in each Contracting Party, it makes possible serving any sentence in the Requested State concurrently with the sentence in the Requested State; and (3) it permits defense against the charges while favorable evidence is fresh and more likely to be available. Similar provisions are found in many recent extradition treaties.

Article 15--Requests for extradition by several states

This article reflects the practice of many recent United States extradition treaties to list some of the factors that the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more countries for extradition. For the United States, the Secretary of State makes this decision.

Article 16--Seizure and surrender of property

This article provides for the seizure by the Requested State of all property--articles, instruments, objects of value, documents, or other evidence--relating to the offense for which extradition is requested, to the extent permitted by the Requested State's internal law. The article also provides that these objects shall be surrendered to the Requesting State upon the granting of extradition or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to ensure its return as soon as practicable, and may defer surrender altogether if the property is needed as evidence in the Requested State. The obligation to surrender property under this article is expressly made subject to due respect for the rights of third parties in such property.

Article 17--Rule of specialty

This article covers the principle known as the rule of specialty, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of specialty prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of a sentence on different charges that may not be extraditable under the Treaty or properly documented at the time that the request is granted.

Since a variety of exceptions to the rule have developed over the years, this article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser-included offense; (2) offenses committed after the extradition; or (3) other offenses for which the executive authority of the Requested State consents.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third country for an offense committed prior to extradition under the Treaty without the consent of the Requested State. Finally, paragraph 3

permits the detention, trial, or punishment of an extraditee for additional offenses, or extradition a third country, if the extraditee (1) leaves and returns to the Requesting State, or (2) does not leave the Requesting State within ten days of being free to do so.

Article 18--Simplified extradition

Persons sought for extradition frequently elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State as expeditiously as possible without further proceedings. The negotiators anticipated that in such cases, there would be no need for the formal documents described in article 8, or for further judicial or administrative proceedings of any kind.

If the United States is the Requested State and the person sought elects to return voluntarily to Hungary before the United States Secretary of State signs a surrender warrant, the process would not be deemed an "extradition." Longstanding United States policy is that the rule of specialty does not apply to such cases. Therefore, the second sentence of article 18 states that the rule of specialty in article 17 will not apply to cases in which this article is utilized.

Article 19--Transit

Paragraph 1 gives each Contracting Party the power to authorize transit through its territory of persons being surrendered the other Contracting Party by third countries, and to hold such persons in custody during the period of transit. Transit requests under this article, like provisional arrest requests under article 11, may be transmitted via the Interpol channel. Each request for transit must contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which the person is being surrendered to the Requesting State.

Paragraph 2 describes the procedure each Contracting Party should follow when seeking to transport a person in custody through the territory of the other Contracting Party. Under this provision, no advance authorization is needed if the person in custody is in transit to a Contracting Party, is travelling by aircraft, and no landing is scheduled in the territory of the other Contracting Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant the request in its discretion. The Treaty ensures that the person will be kept in custody for up to 96 hours until a request for transit is received and thereafter until its execution.

Article 20--Representation and expenses

Paragraph 1 provides that in extradition proceedings under the Treaty, the Requested State shall advise, assist, and appear in court on behalf of the Requesting State, and shall represent the interests of the Requesting State by all legal means within its power. The phrase "all legal means within its power" was included because the law and practice of the United States and Hungary differ on this issue.

The United States will represent Hungary in connection with requests from Hungary for extradition before courts in the United States. However, under Hungarian law, the Requesting State is not a party to extradition litigation before Hungarian courts and cannot be represented in such proceedings. The Hungarian Public Prosecutor appears in court to represent the interests of Hungary, but does not represent the interests of the Requesting State and cannot be compelled to argue for extradition if the Public Prosecutor believes that the court should deny the request. The Hungarian delegation indicated that there is no possibility that Hungary would modify this aspect of its internal procedure. However, the delegations did agree to revisions of article 20 to address this issue.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which are to be paid by the Requesting State. Cases may arise in which it may be necessary for the Requesting State to retain private counsel to assist in the presentation of the extradition request. It is anticipated that in such cases, the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither Contracting Party shall make a pecuniary claim against the other in connection with extradition proceedings, including the arrest, detention, examination, and surrender of the fugitive. This includes any claim by the fugitive for damages or reimbursement of legal fees or other expenses occasioned by the execution of the extradition request.

Article 21--Consultation

This article provides that the United States Department of Justice and the Hungarian Ministry of Justice may consult with each other directly or through Interpol channels with regard to individual extradition cases and extradition procedures in general. A similar provision is found in other United States extradition treaties awaiting ratification.

As discussed in connection with article 20, the Hungarian Public

Prosecutor appears in court during extradition proceedings but does not represent the interests of the Requesting State. The delegations agreed that article 21 will provide the United States with the opportunity to consult with the Public Prosecutor's Office to the extent necessary to make certain that the attorney appearing in court understands the United States case and intends to argue in favor of extradition.

Article 22--Application

This Treaty, like most other United States extradition treaties negotiated in the past two decades, is expressly made retroactive and accordingly covers offenses that occurred before the Treaty enters into force.

Article 23--Ratification, entry into force, and termination

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington, D.C., and states that the Treaty will enter into force immediately upon the exchange.

Paragraph 3 provides that the 1856 Treaty will cease to have effect upon the entry into force of the Treaty, but extradition requests pending before the courts when the Treaty enters into force will nevertheless be processed to conclusion under the 1956 Treaty. Article 18 of the Treaty, which deals with simplified extradition, will be available in such extradition proceedings. The paragraph also states that article 17 of the Treaty, which concerns the rule of specialty, will apply to persons found extraditable under the 1856 Treaty.

Paragraph 4 contains standard treaty language describing the procedure for termination of the Treaty by either Contracting Party, and indicates that the termination shall become effective six months after notice of termination has been received.

VIII. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Treaty Between The Government of the United States of America and The Government of the Republic of Hungary on Extradition, signed at Budapest on December 1, 1994. The Senate's advice and consent is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President: Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

