105TH CONGRESS, 1st Session | SENATE | TREATY DOC. 105–30

EXTRADITION TREATY WITH INDIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA, SIGNED AT WASHINGTON ON JUNE 25, 1997

SEPTEMBER 23, 1997.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
39–118 WASHINGTON : 1997

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 23, 1997.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of India, signed at Washington on June 25, 1997.

In addition, I transmit, for the information of the Senate, a related exchange of letters signed the same date and the report of the Department of State with respect to the Treaty. As the report states, the Treaty will not require implementing legislation.

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

Upon entry into force, this Treaty would enhance cooperation between the law enforcement authorities of both countries, and thereby make a significant contribution to international law enforcement efforts. With respect to the United States and India, the Treaty would supersede the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London, December 22, 1931, which was made applicable to India on March 9, 1942, and is currently applied by the United States and India.

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, September 8, 1997.

THE PRESIDENT: I have the honor to submit to you the Extradition Treaty between the Government of the United States of America and the Government of the Republic of India (the "Treaty"), signed at Washington on June 25, 1997. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification. Accompanying the Treaty is a related exchange of letters signed the same date. I recommend that these letters be transmitted for the information of the Senate.

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

The Treaty marks a significant step in bilateral cooperation between the United States and India. Upon entry into force, it would supersede (with the exception noted below) the Extradition Treaty between the United States and Great Britain signed at London on December 22, 1931, entered into force on June 24, 1935, and made applicable to India from March 9, 1942. The United States and India continued to apply that Treaty following India's independence in 1947. That treaty has become outmoded, and the new treaty will provide significant improvements. The Treaty can be implemented without new legislation.

Article 1 obligates each Party to extradite to the other, pursuant to the provisions of the Treaty, any person charged with or found guilty of an extraditable offense in the Requesting State, whether such offense was committed before or after entry into force of the Treaty.

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

Article 2(2) defines an extraditable offense to include also an attempt or a conspiracy to commit, aiding or abetting, counseling or procuring the commission of or being an accessory before or after the fact to, any extraditable offense as described in Article 2(1).

Additional flexibility is provided by Article 2(3), which provides that an offense shall be considered an extraditable offense: (1) whether or not the laws of the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology; (2) 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; or (3) whether or not it relates to taxation or revenue or is one of a purely fiscal character.

With regard to offenses committed outside the territory of the Requesting State, Article 2(4) provides that an offense described in Article 2 shall be an extraditable offense regardless of where the act or acts constituting the offense were committed. Article 2(5) provides that 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 other offenses are punishable by less than one year's deprivation of liberty, provided that all other requirements for extradition have been met.

Article 3 provides that extradition shall not be refused on the ground that the person sought is a national of the Requested State. Neither party, in other words, may invoke nationality as a basis for denying an extradition.

As is customary in extradition treaties, Article 4 incorporates a political offense exception to the obligation to extradite. This exception is substantially identical to that contained in several other modern extradition treaties including the treaty with Jordan, which recently received Senate advice and consent. Article 4(1) states generally that extradition shall not be granted if the offense for which extradition is requested is a political offense. Article 4(2) specifies eight categories of offenses that shall not be considered to be political offenses: (a) a murder or other willful crime against the person of a Head of State or Head of Government of one of the Contracting States, or of a member of the Head of State's family; (b) aircraft hijacking offenses; (c) acts of aviation sabotage; (d) crimes against internationally protected persons, including diplomats; (e) hostage taking; (f) offenses related to illegal drugs; (g) any other offense for which both Parties are obliged pursuant to a multilateral international agreement to extradite the person sought or submit the case to their competent authorities for decision as to prosecution; and (h) a conspiracy or attempt to commit any of the offenses described above, or aiding or abetting a person who commits or attempts to commit such offenses.

Article 5(1) provides that the executive authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law (e.g. desertion). Article 5(2) provides that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated. Letters exchanged by the Parties at the time of the signing of the Treaty, and included herewith for the information of the Senate, set forth the understanding of the Parties that if either Party is considering prosecution or punishment upon extradition under law laws or rules of criminal proce-

dure other than the Requesting State's ordinary laws or rules of criminal procedure, then the Requesting State must request consultations and make such a request for extradition only upon the agreement of the Requested State. This exchange of letters creates an important and useful limitation on the obligation to extradite fugitives where the prosecution or punishment would be based on extraordinary laws and procedures.

Article 6 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 against the person sought.

Article 7 provides that extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State.

Under Article 8, when an offense for which extradition is requested is punishable by death under the laws in the Requesting State and is not so punishable under laws in the Requested State, the Requested State may refuse extradition unless the offense constitutes murder under the laws in the Requested State or the Requesting State provides assurances that the Death penalty, if imposed, will not be carried out.

Article 9 establishes the procedures and describes the documents that are required to support a request for extradition. It requires that all requests be submitted through the diplomatic channel. Article 9(3) provides that a request for the extradition of a person sought for prosecution must be supported by such evidence as would justify committal for trial if the offense had been committed in the Requested State. This is a lesser evidentiary standard than that contained in the current extradition treaty and, therefore, should enhance the ability of the United States to obtain extradition of fugitives from India.

Article 10 establishes the procedures under which documents submitted pursuant to the Treaty shall be received and admitted into evidence. Article 11 provides that all documents submitted by the Requesting State shall be in English.

Article 12 sets forth procedures for the provisional arrest of a person sought pending presentation of the formal request for extradition. Article 12(4) provides that if the Requested State's executive authority has not received the request for extradition and supporting documentation within sixty days after the provisional arrest, the person may be discharged from custody. Article 12(5) provides explicitly that discharge from custody pursuant to Article 12(4) does not prejudice subsequent rearrest and extradition upon later delivery of the extradition request and supporting documents.

Article 13 specifies the procedures governing the surrender and return of persons sought. The Requested State is required to notify the Requesting State promptly through the diplomatic channel of its decision on extradition and, if the request is denied in whole or in part, to provide an explanation of the reasons for the denial of the request. If the request is granted, the authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.

Article 14 concerns temporary and deferred surrender. If a person whose extradition is sought is being proceeded against or is serving a sentence in the Requested State, that State may temporarily surrender the person to the Requesting State solely for the purpose of prosecution. The Requested State may also postpone the extradition proceedings until its prosecution has been concluded and any sentence imposed has been served.

Article 15 sets forth a non-exclusive list of factors to be considered by the Requested State in determining to which State to surrender a person sought by more than one State.

Article 16 provides for the seizure and surrender to the Requesting State of all articles documents and evidence connected with the offense for which extradition is granted, to the extent permitted under the law of the Requested State. Such property may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought. Surrender of property may be deferred if it is needed as evidence in the Requested State and may be conditioned upon satisfactory assurances that it will be returned as soon as practicable. Article 16(3) imposes an obligation to respect the rights of third parties in affected property.

Article 17 sets forth the rule of specialty. It provides that a person extradited under the Treaty may not be detained, tried, or punished in the Requesting State for an offense other than that for which extradition has been granted unless the offense is based on the same facts on which extradition was granted (provided such offense is extraditable or is a lesser included offense); the offense was committed after the extradition of the person; or a waiver of the rule of specialty is granted by the executive authority of the Requested State. Similarly, the Requesting State may not extradite the person to a third state for an offense committed prior to the original surrender unless the Requested State consents. These restrictions shall not prevent the detention, trial, or punishment of an extradited person, or that person's extradition to a third State, if the extradited person leaves the Requesting State after extradition and voluntarily returns to it or fails to leave the Requesting State within fifteen days of being free to do so.

Article 18 permits surrender to the Requesting State without further proceedings if the person sought consents to surrender.

Article 19 governs the transit through the territory of one Contracting State 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 is required to represent the interests of the Requesting State in any proceedings arising out of a request for extradition. The Requesting State is required to bear the expenses related to the translation of documents and the transportation of the person surrendered. Article 20(3) clarifies that neither State shall make any pecuniary claim against the other State related to the arrest, detention, examination, custody, or surrender of persons sought under the Treaty.

Article 21 states that the competent authorities of the United States and India may consult with each other directly or through

the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving the procedures for the implementation of the Treaty.

Article 22 provides that the Contracting States shall, to the extent permitted by their laws, afford each other the widest measure of mutual assistance in criminal matters in connection with an offense for which extradition has been requested.

Article 23 and 24 contain final clauses dealing with the Treaty's ratification, entry into force and termination. Paragraph 1 of Article 23 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 upon the exchange of instruments of ratification. Paragraph 3 provides that, upon entry into force of this Treaty, the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London, December 22, 1931, shall cease to have any effect between the Government of the United States of America and the Government of the Republic of India, except that the prior Treaty shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested States at the time this Treaty enters in force.

Article 24 provides that either Contract State may terminate the Treaty at any time by giving written to the other Contract State, and the termination shall be effective six months after the date 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 the earliest possible date.

Respectfully submitted,

STROBE TALBOT.

EXTRADITION TREATY

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF INDIA

TABLE OF CONTENTS

Article 1	**Obligation to Extradite**
Article 2	**Extraditable Offenses**
Article 3	**Nationality**
Article 4	**Political Offenses**
Article 5	**Military Offenses and Other Bases for Denial of Extradition**
Article 6	**Prior Prosecution**
Article 7	**Lapse of Time**
Article 8	**Capital Punishment**
Article 9	**Extradition Procedures and Required Documents**
Article 10	**Admissibility of Documents**
Article 11	**Translation**
Article 12	**Provisional Arrest**
Article 13	**Decision and Surrender**
Article 14	**Temporary and Deferred Surrender**
Article 15	**Requests for Extradition Made by More than One State**
Article 16	**Seizure and Surrender of Property**
Article 17	**Rule of Speciality**
Article 18	**Waiver of Extradition**
Article 19	**Transit**
Article 20	**Representation and Expenses**
Article 21	**Consultation**
Article 22	**Mutual Legal Assistance in Extradition**
Article 23	**Ratification and Entry into Force**
Article 24	**Termination**

The Government of the United States of America and the Government of the Republic of India;

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

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

Desiring to provide for more effective cooperation between the two States in the suppression of crime, recognizing that concrete steps are necessary to combat terrorism, including narcoterrorism, and drug trafficking, and, for that purpose, to conclude a new treaty for the extradition of fugitive offenders;

Have agreed as follows:

Article 1

Obligation to Extradite

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, persons who, by the authorities in the Requesting State are formally accused of, charged with or convicted of an extraditable offense, whether such offense was committed before or after the entry into force of the Treaty.

Article 2

Extraditable Offenses

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

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

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

(a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;

(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; or

(c) whether or not it relates to taxation or revenue or is one of a purely fiscal character.

4. Extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

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 for extradition are met.

Article 3
Nationality

Extradition shall not be refused on the ground that the person sought is a national of the Requested State.

Article 4
Political 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 or Head of Government of one of the Contracting States, or of a member of the Head of State's or Head of Government's family;

(b) aircraft hijacking offenses, as described in The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970;

(c) acts of aviation sabotage, as described in the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

(d) crimes against internationally protected persons, including diplomats, as described in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on December 14, 1973;

(e) hostage taking, as described in the International Convention against the Taking of Hostages, done at New York on December 17, 1979;

(f) offenses related to illegal drugs, as described in the Single Convention on Narcotic Drugs, 1961, done at New York on March 30, 1961, the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva on March 25, 1972, and the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna on December 20, 1988;

(g) any other offense for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and

(h) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

Article 5

Military Offenses and Other Bases for Denial of Extradition

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

2. Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 6

Prior Prosecution

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

2. Extradition shall not be precluded by the fact that the 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 7

Lapse of Time

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

Article 8

Capital Punishment

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless:

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

(b) the Requesting State provides assurances that the death penalty, if imposed, will not be carried out.

2. In instances in which a Requesting State provides an assurance in accordance with paragraph (1)(b) of this Article, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 9

Extradition Procedures and Required Documents

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

2. All requests for extradition shall be supported by:

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

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

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

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

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

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 charging document, if any; 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 convicted 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 convicted;

(b) information establishing that the person sought is the person to whom the conviction 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 convicted in absentia, the documents required in paragraph 3.

Article 10

Admissibility of Documents

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

(a) in the case of a request from the United States, they are certified by the principal diplomatic or principal consular officer of the Republic of India resident in the United States;

(b) in the case of a request from the Republic of India, they are certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of India, as provided by the extradition laws of the United States; or

(c) they are certified or authenticated in any other manner accepted by the laws in the Requested State.

Article 11

Translation

All documents submitted by the Requesting State shall be in English.

Article 12

Provisional Arrest

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel. 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;**
- **(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 a 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 pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 9.

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 13

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State through the diplomatic channel of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide the reasons for the denial. The Requested State shall provide copies of pertinent judicial decisions upon request.

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

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

Article 14

Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, the Requested State, subject to its laws, 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 agreement of the Contracting States.

2. 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.

Article 15

Requests for Extradition Made by More than One State

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

(a) whether the requests were made pursuant to treaty;

(b) the place where each offense was committed;

(c) the respective interests of the Requesting States;

(d) the gravity of the offenses;

(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 laws, the Requested State may seize and surrender to the Requesting State 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 the 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 offense 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) an offense committed after the extradition of the person; or

(c) an offense for which the executive authority of the Requested State consents 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 called for in Article 9; and

(ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.

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

3. 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 15 days of the day on which that person is free to leave.

Article 18
Waiver of Extradition

If the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Article 19
Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel. The facilities of 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 Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, the other Contracting State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be

transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

Article 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, in any proceeding 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 competent authorities of the United States and the Republic of India may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 22

Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with an offense for which extradition has been requested.

Article 23

Ratification and Entry into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

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

3. Upon the entry into force of this Treaty, the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London December 22, 1931, shall cease to have any effect between the Government of the United States of America and the Government of the Republic of India. Nevertheless, the prior Treaty shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Article 17 of this Treaty shall be applicable to such proceedings.

Article 24

Termination

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

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

DONE at Washington, in duplicate, this Twenty-fifth day of June, 1997, in the English and Hindi languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:

DEPARTMENT OF STATE
WASHINGTON

June 25, 1997

Dear Mr. Minister:

I refer to the extradition treaty between the Government of the United States of America and the Government of the Republic of India signed today. It is the understanding of the Government of the United States of America that, as a general matter, upon extradition, a person shall be proceeded against or punished under the ordinary criminal laws of the Requesting State, and shall be subject to prosecution or punishment in accordance with the Requesting State's ordinary rules of criminal procedure. If either party is considering prosecution or punishment upon extradition under other laws or other rules of criminal procedure, the Requesting State shall request consultations and shall make such a request only upon the agreement of the Requested State.

I would appreciate receiving confirmation that your Government shares this understanding.

Sincerely,

Strobe Talbott
Acting Secretary

His Excellency
Saleem Iqbal Shervani,
Minister of State for External Affairs of India.

SALEEM I. SHERVANI

विदेश राज्य मंत्री
भारत
MINISTER OF STATE FOR EXTERNAL AFFAIRS
INDIA

June 25, 1997

Dear Mr. Talbott,

I am writing with respect to your letter of June 25, 1997, which reads as follows :

" June 25, 1997

"Saleem Iqbal Shervani
Minister of State for External Affairs
Government of India:

" Dear Mr. Minister:

"I refer to the extradition treaty between the Government of the United States of America and the Government of the Republic of India signed today. It is the understanding of the Government of the United States of America that, as a general matter, upon extradition, a person shall be proceeded against or punished under the ordinary criminal laws of the Requesting State, and shall be subject to prosecution or punishment in accordance with the Requesting State's ordinary rules of criminal procedure. If either party is considering prosecution or punishment upon extradition under other laws or other rules of criminal procedure, the Requesting State shall request consultations and shall make such a request only upon the agreement of the Requested State.

"I would appreciate receiving confirmation that your Government shares this understanding.

"Sincerely,

"Strobe Talbott
"Acting Secretary"

I am pleased to confirm that the Government of the Republic of India shares the understanding expressed in your letter.

Yours sincerely,

(Saleem I. Shervani)

The Honorable Strobe Talbott,
Acting Secretary of State.

○