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1st Session }

SENATE

{ TREATY DOC.
No. 97-8

EXTRADITION TREATY WITH THE REPUBLIC
OF COLOMBIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY OF EXTRADITION BETWEEN THE UNITED
STATES OF AMERICA AND THE REPUBLIC OF COLOMBIA,
SIGNED AT WASHINGTON ON SEPTEMBER 14, 1979



JUNE 1, 1981.—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

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WASHINGTON : 1981

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 28, 1981.*

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 of Extradition between the United States of America and the Republic of Colombia, signed at Washington on September 14, 1979.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the treaty.

The treaty is one of a series of modern extradition treaties being negotiated by the United States. It expands the list of extraditable offenses to include narcotics violations, aircraft hijacking, bribery, and obstruction of justice, as well as many other offenses not covered by our existing extradition treaty with Colombia. Upon entry into force, it will terminate and supersede the existing Extradition Treaty and Supplementary Convention between the United States and Colombia.

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.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 9, 1981.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Extradition Treaty between the United States of America and the Republic of Colombia, signed at Washington on September 14, 1979. I recommend that the treaty be transmitted to the Senate for its advice and consent to ratification.

This treaty follows generally the form and content of extradition treaties recently concluded by this Government. The treaty provides for the extradition of fugitives who have been charged with or convicted of any of thirty-five offenses listed in the schedule annexed to the treaty. Significant newly-listed offenses, which are not in our existing treaty with Colombia, include those relating to narcotics, aircraft hijacking, bribery, and obstruction of justice (both Colombia and the United States are Parties to multilateral conventions which in effect have amended the existing bilateral treaty to include narcotics and hijacking offenses).

Article 1 includes a jurisdictional provision which allows extradition where the offense has been committed outside the territory of the requesting State by a national of that State.

Crimes committed outside the territory of the requesting State may also provide the basis for extradition if the offense so committed would also be punishable under the law of the requested State in similar circumstances. Like provisions are contained in United States extradition treaties with the Federal Republic of Germany, Japan, and Mexico. It is anticipated that such provisions would be useful in the areas of narcotics and counterfeiting violations.

Article 2 includes as extraditable offenses those, whether listed or not, which are punishable under the Federal laws of the United States and the laws of Colombia and carry a term of imprisonment for a maximum period exceeding one year in both countries.

Article 2 also authorizes extradition under certain conditions for an attempt to commit or a conspiracy to commit any extraditable offense. This article also permits the Government of the United States to request the extradition of a person for any extraditable offense when Federal jurisdiction is based upon the use of the mails or other means of carrying out interstate commerce.

Article 3 defines the territorial application of the treaty. This article expands the normal context of that concept to include aircraft in flight. This provision also extends jurisdiction to acts of aircraft

piracy, whether or not they occur over the territory of either of the Parties.

Article 4 provides that extradition shall not be granted for political or military offenses. It also prohibits extradition where the request, while involving an offense not political in nature, is made for political purposes. Article 4 grants the Executive Authority of the requested State the authority to decide on the application of the political or military offense exceptions unless it is otherwise provided by the laws of that State. This would mean that in the United States the authority rests with the Executive branch.

Article 5 contains a prior jeopardy provision. It excludes extradition in cases where the person requested has been prosecuted in the requested State for the offense for which extradition is requested.

Article 6 precludes extradition where prosecution or enforcement of the penalty for the offense for which extradition is sought has become barred by lapse of time according to the laws of the requested or requesting Party.

Article 7 permits refusal of extradition in capital cases unless satisfactory assurances are received that the death penalty will not be imposed or, if imposed, will not be executed for an offense not punishable by death in the country from which extradition is requested. A similar article has been included in most recent treaties.

Article 8 deals with the extradition of nationals. It is similar to provisions in some of our other recently signed extradition treaties. It grants the Executive the discretionary power to extradite nationals of its own country. If extradition is denied on the basis of nationality, however, the requested Party undertakes to submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense. This article thus takes into account the law of Colombia which normally prohibits extradition of Colombian nationals but allows for their prosecution in Colombia for offenses committed abroad.

Article 8 also contains an innovation. It imposes an obligation on the requested State to extradite all persons, including its nationals, in cases where the offense involves punishable acts in both countries and the offense was intended to be consummated in the requesting State. This provision is especially important in prosecuting exporters of dangerous drugs and narcotics.

Articles 9-18 outline the procedures by which extradition shall be accomplished. Article 9 limits extradition to cases where there is sufficient evidence, according to the laws of the requested State, to bring the person sought to trial had the offense been committed in the requested State or where the person sought is shown to be the person convicted by the courts of the requesting State.

Article 9 also provides that the requested Party shall make all arrangements necessary for internal extradition procedures and employ all legal means to obtain from the judicial authorities the decisions necessary to perfect the extradition request. We expect to continue the present practice under which each country is represented in extradition proceedings by the other's Justice Department.

Article 19 provides that the requesting Party shall pay the costs associated with the transportation of the person sought and with the translation of extradition documents.

VII

Article 20 provides that the treaty is retroactive in effect as to extraditable offenses which were committed before the date of its entry into force if they were punishable under the laws of both Parties when committed.

Article 21 provides that the treaty will enter into force on the date of exchange of the instruments of ratification. Upon entry into force, this treaty will terminate the Treaty of Extradition between the United States and Colombia signed on May 7, 1888 and the Supplementary Convention signed on September 9, 1940.

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

Respectfully submitted,

WILLIAM CLARK.

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF COLOMBIA

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

Desiring to provide for more effective cooperation between the two States in the repression of crime; and

Desiring to conclude a new Treaty for the reciprocal extradition of offenders;

Have agreed as follows:

ARTICLE 1

Obligation to Extradite

(1) The Contracting Parties agree to extradite to each other, subject to the provisions described in this Treaty, persons found in the territory of one of the Contracting Parties who have been charged with an offense, found guilty of committing an offense, or are wanted by the other Contracting Party for the enforcement of a judicially pronounced penalty involving a deprivation of liberty for an offense, committed within the territory of the Requesting State.

(2) When the offense has been committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if:

(a) Its laws would provide for the punishment of such an offense in similar circumstances; or

(b) The person sought is a national of the Requesting State, and that State has jurisdiction to try that person.

ARTICLE 2

Extraditable Offenses

(1) Extraditable offenses under this Treaty are:

(a) Offenses described in the Appendix to this Treaty which are punishable under the laws of both Contracting Parties; or

(b) Offenses, whether listed in the Appendix to this Treaty or not, provided they are punishable under the Federal laws of the United States and the laws of the Republic of Colombia.

(2) For the purposes of this Article, it shall not matter whether or not the laws of the Contracting Parties place the offense within the same category of offenses or denominate an offense by the same terminology.

(3) Extradition shall be granted in respect of an extraditable offense only if the offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a period exceeding one

year. However, when the request for extradition relates to a person who has been convicted and sentenced, extradition shall be granted only if the duration of the penalty still to be served amounts to at least six months.

(4) Subject to the conditions set out in paragraphs (1), (2), and (3) extradition shall also be granted:

(a) For attempting to commit an offense or participating in the commission of an offense. Extradition shall also be granted for association to commit offenses as provided by the laws of Colombia and for conspiracy to commit an offense as provided by the laws of the United States.

(b) For any extraditable offense when, for the purpose of granting jurisdiction to either Contracting Party, transportation of persons or property, the use of the mails or other means of carrying out interstate or foreign commerce is also an element of the specific offense.

(5) When extradition has been granted with respect to an extraditable offense it shall also be granted in respect to any other offense specified in the extradition request that meets all other requisites of extradition except that set forth in paragraph (3) of this Article.

ARTICLE 3

Territorial Application

For the purposes of this Treaty the territory of a Contracting Party shall comprise all territory under the jurisdiction of that Contracting Party, including airspace and territorial waters.

ARTICLE 4

Political and Military Offenses

(1) Extradition shall not be granted when the offense for which extradition is requested is of a political character or is connected with an offense of a political character, or when the person whose extradition is requested proves that the extradition is requested for the exclusive purpose of trying or punishing that person for an offense of the above-mentioned character.

(2) Extradition shall not be granted when the offense for which extradition is requested is of a purely military nature.

(3) The Executive Authority of the Requested State shall decide on the application of this Article, unless otherwise provided by the laws of that State.

ARTICLE 5

Prior Jeopardy for the Same Offense

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

(2) The fact that the competent authorities of the Requested State have decided not to prosecute the person sought for the acts for which

extradition is requested or decided to discontinue any criminal proceedings which have been initiated shall not preclude extradition.

ARTICLE 6

Statute of Limitations

Extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the Requesting State.

ARTICLE 7

Capital Punishment

When the offense for which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offense, extradition may be refused unless, before extradition is granted, the Requesting State furnishes such assurances as the Requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

ARTICLE 8

Extradition of Nationals

(1) Neither Contracting Party shall be bound to deliver up its own nationals, but the Executive Authority of the Requested State shall have the power to deliver them up if, in its discretion it be deemed proper to do so. However, extradition of nationals will be granted pursuant to the provisions of this Treaty in the following instances:

(a) Where the offense involves acts taking place in the territory of both States with the intent that the offense be consummated in the Requesting State; or

(b) Where the person for whom extradition is sought has been convicted in the Requesting State of the offense for which extradition is sought.

(2) If extradition is not granted pursuant to paragraph (1) of this Article, the Requested State shall submit the case to its competent judicial authorities for the purpose of initiating the investigation or to further the related prosecution, provided that the Requested State has jurisdiction over the offense.

ARTICLE 9

Extradition Procedures and Required Documents

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

(2) The request for extradition shall be accompanied by:

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

(b) A statement of the facts of the case;

(c) The texts of the laws describing the essential elements and the designation of the offense for which extradition is requested;

(d) The texts of the laws describing the punishment for the offense; and

(e) The texts of the laws describing the time limit on the prosecution or the execution of punishment for the offense.

(3) When the request for extradition relates to a person who has not been convicted, it shall be accompanied by:

(a) A copy of the indictment or its equivalent issued by a judge or other judicial authority of the Requesting State;

(b) Evidence proving that the person sought is the person to whom the indictment or its equivalent refers; and

(c) Such evidence as would provide probable cause to suspect, according to the laws of the Requested State, that the person sought has committed the offense for which extradition is requested.

(4) When the request for extradition relates to a convicted person, it shall be accompanied by:

(a) A copy of the judgment of conviction imposed by a court of the Requesting State; and

(b) Evidence proving that the person sought is the person to whom the conviction refers.

If the person has been found guilty but not sentenced, the request for extradition shall also be accompanied by evidence to that effect and by a copy of the warrant of arrest.

If the convicted person has been sentenced, the request for extradition shall also be accompanied by a copy of the sentence imposed and a statement showing to what extent the sentence has not been carried out.

(5) All the documents to be submitted by the Requesting State in accordance with Articles 9 and 10 of this Treaty shall be translated into the language of the Requested State.

(6) The documents which accompany the extradition request shall be admitted into evidence when:

(a) In the case of a request emanating from the United States, they are signed by a judge, magistrate or other judicial officer and authenticated by the official seal of the Department of State and certified by a diplomatic or consular officer of the Republic of Colombia in the United States.

(b) In the case of a request emanating from the Republic of Colombia they are signed by a judge or other judicial authority and are certified by the principal diplomatic or consular officer of the United States of America in the Republic of Colombia.

(7) The Requested State shall review for legal sufficiency documentation in support of an extradition request prior to presentation to the judicial authorities and shall provide for legal representation to protect the interests of the Requesting State before the competent authorities of the Requested State.

ARTICLE 10

Additional Evidence

(1) If the Executive Authority of the Requested State considers that the evidence furnished in support of the request for the extradition of a person sought is not sufficient to fulfill the requirements of

this Treaty, that State shall request the submission of necessary additional evidence. The Requested State may set a time limit for the submission of such evidence and may grant a reasonable extension of the time limit upon application of the Requesting State setting forth the reasons therefor.

(2) If the person sought is in custody and the additional evidence or information submitted is not sufficient, or if such evidence or information is not received within the period specified by the Requested State, that person shall be discharged from custody. However, such discharge shall not bar a subsequent request for extradition for the same offense, and the person sought may be detained again. In this connection it shall be sufficient if reference is made in the subsequent request to the supporting documents already submitted provided these documents are available at the beginning of the new extradition proceedings.

ARTICLE 11

Provisional Detention

(1) In case of urgency, either Contracting Party may request, through the diplomatic channel, the provisional detention of an accused or convicted person. The application shall contain a description of the person sought, a statement of intention to present the request for extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person.

(2) On receipt of such an application the Requested State shall take necessary steps to secure the detention of the person sought.

(3) Provisional detention shall be terminated if, within a period of 60 days after the apprehension of the person sought, the Executive Authority of the Requested State has not received the formal request for extradition and the documents mentioned in Article 9.

(4) The termination of provisional detention pursuant to paragraph (3) shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 9 are delivered at a later date.

ARTICLE 12

Decision and Surrender

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

(2) The Requested State shall give the reasons for the complete or partial rejection of the request for extradition.

(3) If the extradition has been granted, surrender of the person sought shall take place within such time as may be prescribed by the laws of the Requested State. The competent authorities of the Contracting Parties shall agree on the time and place of the surrender of the person sought.

(4) If a warrant or order for the extradition of a person sought has been issued by the competent authority and the person is not removed from the territory of the Requested State within such time as may be prescribed by its laws or, if the laws of the Requested State do not prescribe such time, within 60 days after notification of the

extradition order to the Requesting State, that person shall be set at liberty and subsequently extradition may be refused for the same offense.

ARTICLE 13

Delayed Surrender

After the extradition request has been granted, the Requested State may defer the surrender of the requested person when that person is being proceeded against or is serving a sentence in the territory of the Requested State for an offense other than that for which extradition is sought, until the conclusion of the proceedings or the full execution of any punishment that person may be or may have been awarded.

ARTICLE 14

Requests for Extradition Made by Several States

The Executive Authority of the Requested State, upon receiving requests from the other Contracting Party and from a third State or States for the extradition of the same person either for the same offense or for different offenses, shall determine to which of the Requesting States it will extradite that person.

ARTICLE 15

Rule of Speciality

(1) A person extradited under the Treaty shall not be detained, tried or punished in the territory of the Requesting State for an offense other than that for which extradition has been granted, nor be extradited by that State to a third State, unless:

(a) That person has left the territory of the Requesting State after that person's extradition and has voluntarily returned to it; or

(b) That person has not left the territory of the Requesting State within 60 days after being free to do so; or

(c) The Executive Authority of the Requested State has consented to that person's detention, trial, or punishment for another offense, or to extradition to a third State, provided that the principles of Article 4 of this Treaty shall be observed.

These stipulations shall not apply to offenses committed after the extradition.

(2) If the offense for which the person was extradited is legally altered in the course of proceedings, that person may be prosecuted or sentenced provided:

(a) The offense under its new legal description is based on the same set of facts contained in the extradition request and its supporting documents, and

(b) The defendant is subject to be sentenced to a period of incarceration which does not exceed that provided for the offense for which that person was extradited.

ARTICLE 16

Simplified Extradition

If the extradition of a person sought is not obviously precluded by the laws of the Requested State and provided the person sought irrevocably agrees in writing to the extradition after personally being advised by a judge or competent magistrate of that person's right to formal proceedings and the protection afforded by them, the Requested State may grant the extradition without the formal proceeding having taken place.

ARTICLE 17

Surrender of Articles, Instruments, Objects, and Documents

(1) To the extent permitted under the laws of the Requested State and subject to the rights of third parties, which shall be duly respected, all articles, instruments, objects of value or documents relating to the offense, whether or not used for its execution, or which in any other manner may be material evidence for the prosecution, may be surrendered upon the granting of the extradition even when extradition cannot be effected due to the death, disappearance, or escape of the accused.

(2) The Requested State may demand from the Requesting State, as a condition for the surrender, satisfactory assurances that the articles, instruments, objects of value and documents will be returned to the Requested State, as soon as possible or upon conclusion of the criminal proceedings.

ARTICLE 18

Transit

(1) The right to transport through the territory of one of the Contracting Parties a person surrendered to the other Contracting Party by a third State may be granted on request made through the diplomatic channel if reasons of public order are not opposed to the transit.

(2) The Party to which the person has been extradited shall reimburse that Party through whose territory such person is transported for any expenses incurred by the latter in connection with such transportation.

ARTICLE 19

Expenses

Expenses related to the translation of documents and to the transportation of the person sought shall be paid by the Requesting State. All other expenses related to the extradition request and proceedings shall be borne by the Requested State. No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the Requested State against the Requesting State.

ARTICLE 20

Scope of Application

This Treaty shall apply to offenses encompassed by Article 2 committed before as well as after the date this Treaty enters into force. Extradition shall not be granted, however, for an offense committed before this Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE 21

Ratification; Entry into Force; Denunciation

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

(2) This Treaty shall enter into force on the date of the exchange of the instruments of ratification.

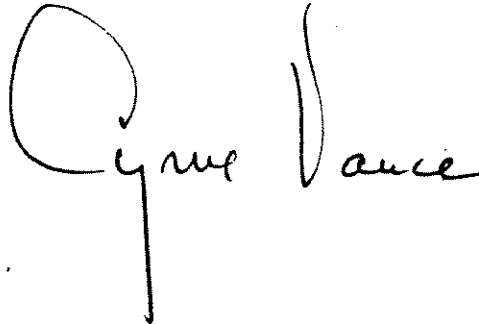
(3) On the entry into force of this Treaty, the Convention for the Reciprocal Extradition of Criminals of May 7, 1888, and the Supplementary Convention of Extradition of September 9, 1940, between the United States of America and the Republic of Colombia shall cease to have effect; however, any extradition proceedings pending in the Requested State at the time this Treaty enters into force shall remain subject to the previous treaties.

(4) Either Contracting Party may terminate this Treaty at any time by giving notice to the other Party and the termination shall be effective six months after the date of receipt of such notice.

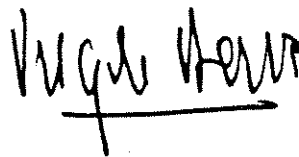
In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at Washington, in duplicate, in the English and Spanish languages, each text being equally authentic, this fourteenth day of September, 1979.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

A handwritten signature in cursive script that reads "Cyrus Vance". The signature is written in dark ink and is positioned below the text "FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :".

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA :

A handwritten signature in cursive script that reads "Hugo Herrera". The signature is written in dark ink and is positioned below the text "FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA :".

APPENDIX

SCHEDULE OF OFFENSES

1. Murder; assault with intent to commit murder.
2. Manslaughter.
3. Malicious wounding; inflicting grievous bodily harm.
4. Rape; indecent assault.
5. Unlawful sexual acts with or upon children under the age specified by the laws of the Contracting Parties.
6. Willful abandonment of a minor or other dependent person when the life of that minor or that dependent person is or is likely to be injured or endangered.
7. Kidnapping; abduction; false imprisonment.
8. Extortion; blackmail.
9. Robbery; burglary; larceny.
10. Fraud, which includes obtaining property, money or valuable securities by false pretenses or by defrauding the public or any person by deceit or falsehood or other fraudulent means, whether such deceit or falsehood or any fraudulent means would or would not amount to a false pretense.
11. Embezzlement; breach of trust; graft.
12. Any offense against the laws relating to counterfeiting and forgery.
13. Receiving or transporting any money, valuable securities or other property knowing the same to have been unlawfully obtained.
14. Arson.
15. Malicious injury to property.
16. Offenses endangering public safety through explosion, flooding, or other destructive means.
17. Piracy, as defined by statute or by law of nations; mutiny or revolt on board an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel.
18. Unlawful seizure of an aircraft or vessel.
19. Any malicious act done with intent to endanger the safety of any person traveling upon a railway, or in any aircraft or vessel or bus or other means of transportation.
- ✓ 20. Offenses against the laws relating to firearms, ammunition, explosives, incendiary devices or nuclear materials.
21. Offenses against the laws relating to the traffic in, possession, or production or manufacture of, narcotic drugs, cannabis, hallucinogenic drugs, cocaine and its derivatives, and other substances which produce physical or psychological dependence.
- ✓ 22. Offenses against public health, such as the illicit manufacture of or traffic in chemical products or substances injurious to health.

23. An offense against the laws relating to importation, exportation or transit of goods, persons, articles, or merchandise, including violations of the customs laws.
24. Offenses relating to willful evasion of taxes and duties.
25. Procuration.
26. Any offense relating to false testimony, perjury, or subornation of perjury.
27. Making a false statement to a government agency or official.
28. Offenses against the laws relating to the administration or obstruction of justice.
29. Bribery, including soliciting, offering and accepting.
30. Offenses against the laws relating to regulation of public administration or abuse of public office.
31. Offenses against the laws relating to the control of companies, corporations, or other juridical persons.
32. Offenses against the laws relating to control of private monopoly or unfair competition.
33. Offenses against the national economy, that is, offenses relating to basic commodities, or of securities and similar documents, including their issuance, registry, commercialization, trading or sale.
- ✓ 34. Offenses against the laws relating to bankruptcy.
35. Any offense against the laws relating to international trade and transfers of funds.

