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CANADA/USA EXTRADITION TREATY

DEPARTMENT OF EXTERNAL AFFAIRS
MINISTÈRE DES AFFAIRES EXTÉRIEURES

A Treaty on Extradition between Canada and the United States was signed today in Washington by the Secretary of State for External Affairs, the Honourable Mitchell Sharp, and the Secretary of State, Mr. William Rogers. This Treaty is subject to ratification following its approval by the legislatures of the two countries - in the case of Canada by a resolution of approval in the Canadian Parliament and in the case of the United States by advice and consent of the Senate to ratification.

The Treaty is the result of extended negotiations between officials of the two governments culminating in the initialling of a final draft text in Ottawa in June of this year. The Treaty when ratified will expressly terminate and replace the extradition arrangements now in force between Canada and the United States which are based on a Treaty between the United Kingdom and the United States and a number of Conventions dating back to the Colonial period of Canadian history. The outdated character of these existing extradition arrangements have rendered them increasingly inadequate to deal with the reciprocal law enforcement requirements of the two countries. The new Treaty is designed to consolidate the extradition arrangements between Canada and the United States in a single instrument and at the same time revise and update the list of extraditable crimes. Generally speaking the Treaty enumerates offences in respect to which extradition may be sought by one contracting party in the territory of the other and the conditions under which a fugitive can be surrendered.

Among the more salient provisions of the new Treaty are:

- a) Extradition offences covering unlawful seizure of aircraft (hijacking) and conspiracy to commit or being a party to any of the offences extraditable under the Agreement;
- b) A stipulation that extradition cannot be refused with respect to offences against a person to whom a contracting party has the duty according to international law, to afford special protection and the offence of unlawful seizure of aircraft on the grounds that the offence was committed under circumstances making it of a political character.

The latter provision clearly establishes the resolve of Canada and the United States to refuse asylum under any circumstance to fugitives who have committed such crimes within the jurisdiction of either country and will insure prompt prosecution in the country where the main incidence of the crime falls.

This Treaty is of particular significance to Canada given its geographic proximity to the United States and the fact that the vast majority of Canadian extradition cases arise from requests for rendition of fugitives to or from the United States.

--- The text of the Extradition Treaty is attached.

TREATY ON EXTRADITION BETWEEN
CANADA AND THE UNITED STATES
OF AMERICA

Canada and the United States of America, desiring to make more effective the co-operation of the two countries in the repression of crime by making provision for the reciprocal extradition of offenders, agree as follows:

ARTICLE 1

Each Contracting Party agrees to extradite to the other, in the circumstances and subject to the conditions described in this Treaty, persons found in its territory who have been charged with, or convicted of, any of the offences covered by Article 2 of this Treaty committed within the territory of the other, or outside thereof under the conditions specified in Article 3(3) of this Treaty.

ARTICLE 2

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the offences listed in the Schedule annexed to this Treaty, which is an integral part of this Treaty, provided these offences are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year.

(2) Extradition shall also be granted for attempts to commit, or conspiracy to commit or being a party to any of the offences listed in the annexed Schedule.

(3) Extradition shall also be granted for any offence against a federal law of the United States in which one of the offences listed in the annexed Schedule, or made extraditable by paragraph (2) of this Article, is a substantial element, even if, transporting, transportation, the use of the mails or interstate facilities are also elements of the specific offence.

ARTICLE 3

(1) For the purpose of this Treaty the territory of a Contracting Party shall include all territory under the jurisdiction of that Contracting Party, including air space and territorial waters and vessels and aircraft registered in that Contracting Party or aircraft leased without crew to a lessee who has his principal place of business, or, if the lessee has no such place of business, his permanent residence in, that Contracting Party if any such aircraft is in flight, or if any such vessel is on the high seas when the offence is committed. For the purposes of this Treaty an aircraft shall be considered in flight from the moment when power is applied for the purpose of the take-off until the moment when the landing run ends.

(2) In a case where offence 26 of the annexed Schedule is committed on board an aircraft at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, such offence and any other offence covered by Article 2 committed against passengers or crew of that aircraft in connection with such offence shall be considered to have been committed within the territory of a Contracting Party if the aircraft was registered in that Contracting Party, if the aircraft landed in the territory of that Contracting Party with the alleged offender still on board, or if the aircraft was leased without crew to a lessee who has his principal place of business, or, if the lessee has no such place of business, his permanent residence in that Contracting Party.

(3) When the offence for which extradition has been requested has been committed outside the territory of the requesting State, the executive or other appropriate authority of the requested State shall have the power to grant the extradition if the laws of the requested State provide for jurisdiction over such an offence committed in similar circumstances.

ARTICLE 4

(1) Extradition shall not be granted in any of the following circumstances:

(i) When the person whose surrender is sought is being proceeded against, or has been tried and discharged or punished in the territory of the requested State for the offence for which his extradition is requested.

(ii) When the prosecution for the offence has become barred by lapse of time according to the laws of the requesting State.

(iii) When the offence in respect of which extradition is requested is of a political character, or the person whose extradition is requested proves that the extradition request has been made for the purpose of trying or punishing him for an offence of the above mentioned character. If any question arises as to whether a case comes within the provisions of this subparagraph, the authorities of the Government on which the requisition is made shall decide.

[(2) The provisions of subparagraph (iii) of paragraph (1) of this Article shall not be applicable to the following:

(i) A kidnapping, murder or other assault against the life or physical integrity of a person to whom a Contracting Party has the duty according to international law to give special protection, or any attempt to commit such an offence with respect to any such person.

(ii) When offence 26 of the annexed Schedule, or an attempt to commit, or a conspiracy to commit, or being a party to the commission of that offence, has been committed on board an aircraft engaged in commercial services carrying passengers.]

ARTICLE 5

If a request for extradition is made under this Treaty for a person who at the time of such request, or at the time of the commission of the offence for which extradition is sought, is under the age of eighteen years and is considered by the requested State to be one of its residents, the requested State, upon a determination that extradition would disrupt the

social readjustment and rehabilitation of that person, may recommend to the requesting State that the request for extradition be withdrawn, specifying the reasons therefor.

ARTICLE 6

When the offence 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 offence, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

ARTICLE 7

When the person whose extradition is requested is being proceeded against or is serving a sentence in the territory of the requested State for an offence other than that for which extradition has been requested, his surrender may be deferred until the conclusion of the proceedings and the full execution of any punishment he may be or may have been awarded.

ARTICLE 8

The determination that extradition should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use all remedies and recourses provided by such law.

ARTICLE 9

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

(2) The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the laws of the requesting State describing the offence and prescribing the punishment for the offence, and a statement of the law relating to the limitation of the legal proceedings.

(3) When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting State and by such evidence as, according to the laws of the requested State, would justify his arrest and committal for trial if the offence had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

(4) When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence passed against him in the territory of the requesting State, by a statement showing how much of the sentence has not been served, and by evidence proving that the person requested is the person to whom the sentence refers.

ARTICLE 10

(1) Extradition shall be granted only if the evidence be found sufficient, according to the laws of the place where the person sought shall be found, either to justify his committal for trial if the offence of which he is accused had been committed in its territory or to prove that he is the identical person convicted by the courts of the requesting State.

(2) The documentary evidence in support of a request for extradition or copies of these documents shall be admitted in evidence in the examination of the request for extradition when, in the case of a request emanating from Canada, they are authenticated by an officer of the Department of Justice of Canada and are certified by the principal diplomatic or consular officer of the United States in Canada, or when, in the case of a request emanating from the United States, they are authenticated by an officer of the Department of State of the United States and are certified by the principal diplomatic or consular officer of Canada in the United States.

ARTICLE 11

(1) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. Such application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the requested State.

(2) On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person claimed.

(3) A person arrested shall be set at liberty upon the expiration of forty-five days from the date of his arrest pursuant to such application if a request for his extradition accompanied by the documents specified in Article 9 shall not have been received. This stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE 12

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

(i) He has left the territory of the requesting State after his extradition and has voluntarily returned to it;

(ii) He has not left the territory of the requesting State within thirty days after being free to do so; or

(iii) The requested State has consented to his detention, trial, punishment for an offence other than that for which extradition was granted or to his extradition to a third State,

provided such other offence is covered by Article 2.

(2) The foregoing shall not apply to offences committed after the extradition.

ARTICLE 13

(1) A requested State upon receiving two or more requests for the extradition of the same person either for the same offence, or for different offences, shall determine to which of the requesting States it will extradite the person sought.

(2) Among the matters which the requested State may take into consideration are the possibility of a later extradition between the requesting States, the seriousness of each offence, the place where the offence was committed, the dates upon which the requests were received and the provisions of any extradition agreements between the requested State and the other requesting State or States.

ARTICLE 14

(1) The requested State shall promptly communicate to the requesting State through the diplomatic channel the decision on the request for extradition.

(2) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested State within such time as may be prescribed by the laws of that State, he may be set at liberty and the requested State may subsequently refuse to extradite that person for the same offence.

ARTICLE 15

(1) To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all articles acquired as a result of the offence or which may be required as evidence shall, if found, be surrendered to the requesting State if extradition is granted.

(2) Subject to the qualifications of paragraph (1) of this Article, the above mentioned articles shall be returned to the requesting State even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

ARTICLE 16

(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 shall be granted on request made through the diplomatic channel, provided that conditions are present which would warrant extradition of such person by the State of transit and reasons of public order are not opposed to the transit.

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

ARTICLE 17

(1) Expenses related to the transportation of the person sought to the requesting State shall be paid by the requesting State. The appropriate legal officers of the State in which the extradition proceedings take place shall, by all legal means within their power, assist the requesting State before the respective judges and magistrates.

(2) 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 18

(1) This Treaty shall be ratified and the instruments of ratification shall be exchanged at Ottawa as soon as possible.

(2) This Treaty shall terminate and replace any extradition agreements and provisions on extradition in any other agreement in force between the United States and Canada; except that the crimes listed in such agreements and committed

prior to entry into force of this Treaty shall be subject to extradition pursuant to the provisions of such agreements.

(3) This Treaty shall enter into force upon the exchange of ratifications. It may be terminated by either Contracting Party giving notice of termination to the other Contracting Party at any time 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 in duplicate, in the English and French languages, each language version being equally authentic, at Washington this day of , one thousand nine hundred seventy one.

FOR CANADA:

FOR THE UNITED STATES OF AMERICA:

SCHEDULE

1. Murder; assault with intent to commit murder.
2. Manslaughter.
3. Wounding; maiming; or assault occasioning bodily harm.
4. Unlawful throwing or application of any corrosive substances at or upon the person of another.
5. Rape; indecent assault.
6. Unlawful sexual acts with or upon children under the age specified by the laws of both the requesting and requested States.
7. Wilful nonsupport or wilful abandonment of a minor when such minor is or is likely to be injured or his life is or is likely to be endangered.
8. Kidnapping; child stealing; abduction; false imprisonment.
9. Robbery; assault with intent to steal.
10. Burglary; housebreaking.
11. Larceny, theft or embezzlement.
12. Obtaining property, money or valuable securities by false pretences or by threat of force 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 pretence.
13. Bribery, including soliciting, offering and accepting.
14. Extortion.
15. Receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained.
16. Fraud by a banker, agent, or by a director or officer of any company.
17. Offences against the laws relating to counterfeiting or forgery.
18. Perjury in any proceeding whatsoever.
19. Making a false affidavit or statutory declaration for any extra-judicial purpose.
20. Arson.
21. Any act done with intent to endanger the safety of any person travelling upon a railway, or in any aircraft or vessel or other means of transportation.
22. Piracy, by statute or by law of nations; mutiny or revolt on board a vessel against the authority of the captain or commander of such vessel.

23. Any unlawful seizure or exercise of control of an aircraft by force or violence or threat of force or violence, or by any other form of intimidation, on board such aircraft.
24. Wilful injury to property.
25. Offences against the bankruptcy laws.
26. Offences against the laws relating to the traffic in, production, manufacture, or importation of narcotic drugs, Cannabis sativa L., hallucinogenic drugs, amphetamines, barbiturates, cocaine and its derivatives.
27. Use of the mails or other means of communication in connection with schemes devised or intended to deceive or defraud the public or for the purpose of obtaining money or property by false pretences.
28. Offences against federal laws relating to the sale or purchase of securities.
29. Making or having in possession any explosive substance with intent to endanger life, or to cause severe damage to property.
30. Obstructing the course of justice in a judicial proceeding, existing or proposed, by a) dissuading or attempting to dissuade a person by threats, bribes or other corrupt means from giving evidence; b) influencing or attempting to influence by threats, bribes or other corrupt means, a person in his conduct as a juror; or c) accepting a bribe or other corrupt consideration to abstain from giving evidence, or to do or to refrain from doing anything as a juror.