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2011 MAR 14 PM 12:02

U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 0548M

IN THE MATTER OF THE)	CR MISCELLANEOUS NO.
EXTRADITION OF)	
)	<u>C O M P L A I N T</u>
OLIVER SCHAPER,)	
)	FOR PROVISIONAL ARREST WARRANT
A Fugitive from the)	PENDING EXTRADITION; ORDER
Government of Germany.)	THEREON
)	
)	

TO: Honorable Charles F. Eick
United States Magistrate Judge
Central District of California

I, Robyn K. Bacon, being duly sworn, depose and state that I am an Assistant United States Attorney for the Central District of California and act for and on behalf of the Government of the Federal Republic of Germany ("Germany"), pursuant to the Extradition Treaty between the United States of America and Germany signed on June 20, 1978 ("the Extradition Treaty"), with respect to the fugitive, Oliver Schaper.

In accordance with Title 18, United States Code, Section 3184, I charge on information and belief as follows:

1 1. That the Government of Germany has requested the
2 provisional arrest of Oliver Schaper, a German national, pending
3 extradition, pursuant to Section 16 of the Extradition Treaty.
4 A copy of the Extradition Treaty is attached hereto as Exhibit
5 1.

6 2. That I am informed through diplomatic channels that on
7 November 11, 2005, the Hanover Local Court issued Judgment
8 against Schaper in Hanover, Germany for the crimes of fraud and
9 breach of trust in violation of Sections 263, 266 and 53 of the
10 German Criminal Code. The Hanover Local Court sentenced Schaper
11 to two years imprisonment, suspended the sentence, and placed
12 Schaper on probation. On August 23, 2006, the Court revoked
13 Schaper's probation for Schaper's failure to comply with the
14 provisions of probation. The court then sentenced Schaper to
15 two years confinement, a decision which became effective on
16 November 8, 2006. On November 15, 2006, the Court issued a
17 warrant for the enforcement of Schaper's sentence.

18 3. That the offense for which Schaper's extradition is
19 sought is covered by Article 2 of the Extradition Treaty.

20 4. That the request for a provisional arrest warrant
21 request contains court records from which the following facts
22 may reasonably be derived:

23 a. From about April 2002 through July 2004, Schaper
24 repeatedly defrauded both individuals and companies by
25 contracting for goods and services and failing to pay for them.
26 Schaper also abused his position as a landlord.

27 b. Schaper and a co-conspirator, Thi Hanh Zobrys,
28

1 deceived two victims, Trung Thanh Nguyen and Dinh Thuan Le, into
2 believing that Schaper would procure, in return for a fee,
3 residence permits in Germany for them. Nguyen paid Schaper
4 3,000 EUR in February 2003, and Le payed 8,000 EUR in January
5 2004 (approximately \$3,228 USD¹ and \$10,073 USD respectively),
6 but they never received any services from Schaper.

7 c. In three cases, Schaper commissioned various
8 individuals and companies to perform services on his newly
9 acquired property, located at Hafenstrasse 47, Essen, Germany
10 ("Hafenstrasse 47"), and never intended to pay anyone for the
11 services. First, he failed to pay 23,254.56 euros ("EUR")
12 (approximately \$21,073 USD) to the company Elektor Wierschem,
13 owned by Markus Wierschem, for extensive electrical work on
14 Hafenstrasse 47. Second, in May 2002, Schaper failed to pay
15 Thomas Nier for extensive cleaning, tiling, and sanitary work in
16 five apartments located in Hafenstrasse 47; in total, Schaper
17 failed to pay Nier 29,282.12 EUR (approximately \$26,535 USD).
18 Third, in July 2002, Schaper commissioned Harald and Brigitte
19 Hovestadt to complete roofing and plumbing work on Hafenstrasse
20 47; however, Schaper, failed to pay the Hovestadts 993.27 EUR
21 (approximately \$982 USD) for their services

22 d. Schaper, in two other cases, commissioned other
23 individuals and companies to perform work on another house,
24 located at Ricklinger Stadtweg 52, Hanover, Germany, but never
25 intended to pay for the services. Specifically, Schaper
26

27 ¹ All amounts listed in U.S. dollars are approximate using
28 historical conversion rates.

1 commissioned Mr. Gohde in June 2002 to install windows, but
2 failed to pay him 8,021.96 EUR (approximately \$7,579 USD) for
3 these services. Then, in October 2002, Schaper failed to pay
4 Biermann GmbH & Co. for renovation work on the house; this work
5 totaled 3,750 EUR (approximately \$3,697 USD)

6 e. Additionally, on August 12, 2002, Schaper had his
7 tenant, Manuela Mutwig, hire the moving company Mobel Schon GmbH
8 to move furniture, but Schaper intentionally failed to pay Mobel
9 Schon GmbH, as agreed, 626.40 EUR (approximately \$613 USD). In
10 another case, Schaper commissioned Siegbert Smolin GmbH in the
11 summer of 2003 to do plumbing work. Schaper intentionally did
12 not pay the company for the services, which totaled 8,105.79 EUR
13 (approximately \$9,386 USD). Further, Schaper, in January 2004,
14 hired the law firm, Bethge and Partner, to represent him in
15 three civil cases. Schaper intentionally never paid Bethge and
16 Partner for the legal services it provided, which totaled
17 1,659.38 EUR (approximately \$2,089 USD).

18 f. In three cases of fraud, Schaper, using the fake
19 company name of "Dr. Oliver Schaper Verwaltungsgesellschaft
20 mbH," commissioned Renziehausen Baugesellschaft in Hanover,
21 Germany to perform renovation work on the basement of Schaper's
22 home on June 28, July 7 and July 26, 2004. Schaper never paid
23 the company for the work in the amount of 28,889.34 EUR
24 (approximately \$35,123 USD).

25 g. Finally, in a breach of trust case, on August 9,
26 2002, Schaper, as landlord, withdrew 579.23 EUR (approximately
27 \$798 USD) from a savings book which had been given to him as the
28

1 landlord of a multi-family house in Hanover to secure rental
2 payments.

3 h. On February 11, 2005, the Hanover Local Court,
4 Federal Republic of Germany, Land of Lower Saxony, issued
5 judgment against Schaper for fraud on a commercial scale in 13
6 cases and for breach of trust according to sections 263, 265 and
7 53 Criminal Code of the Federal Republic of Germany. At the
8 main hearing, Schaper, who was present, admitted the offenses
9 and was sentenced to an aggregate term of imprisonment of two
10 years. Execution of the aggregate term of imprisonment was
11 suspended on probation.

12 i. On August 23, 2006, pursuant to section 56f,
13 subsection 1 of the German Criminal Code, the Hanover Local
14 Court revoked suspension of sentence on Schaper's probation on
15 the grounds that Schaper had not complied with probation.
16 Specifically, according to the Hanover Local Court Order
17 revoking suspension, Schaper had not effected any restitution
18 payments nor had he furnished proof of his inability to comply
19 with the payment conditions of his probation on the grounds of
20 his personal or economic circumstances. In addition, Schaper
21 had failed to react to reminding letters from the court on June
22 29 and August 1, 2006, thus grossly and persistently
23 contravening the imposed conditions of his probation. Upon
24 revocation of his probation, the aggregate term of imprisonment
25 of two years was reinstated for execution in full, except for
26 the deductible pretrial detention term of 71 days, which Schaper
27 served before the sentence.

28

1 j. Under section 79, subsection 3, number 3 of the
2 German Criminal Code, execution of the imposed aggregate term of
3 imprisonment in this case is subject to a limitations period of
4 10 years as of effectiveness of the decision. The judgment of
5 the Hanover Local Court of February 11, 2005, became legally
6 effective, on the same day. However, termination of execution
7 is tolled for the period the accused - as is the case here - has
8 been granted suspension on probation by judgment, pursuant to
9 section 79a number 2b of the German Criminal Code. The
10 revocation of suspension of sentence on probation became legally
11 effective on November 8, 2006. Therefore, execution of
12 Schaper's sentence is not barred by limitation.

13 k. On November 16, 2006, the Hanover Department of
14 Public Prosecution issued an arrest warrant, reference number
15 NZS 2162 Js 56400/04, for Schaper.

16 5. Schaper, a citizen of Germany, was born in Oldenburg,
17 Germany, on March 4, 1975. According to Interpol Wiesbaden,
18 Schaper has a receding hair line and green eyes. In Interpol
19 photographs, Schaper has a nearly shaved head. He is the holder
20 of German Federal Identity card number 149760335 by the State
21 Capital of Hanover. In addition to photographs from Interpol,
22 the German Federal Office of Justice also provided fingerprints
23 and photographs.

24 6. Schaper is in this district and therefore within the
25 jurisdiction of this court. On March 11, 2011, Jesus M. Rocha,
26 Deportation Officer, United States Department of Homeland
27 Security, informed me that a German national named Oliver
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1 Schaper, born in Germany on March 4, 1975, matching Schaper's
2 physical description, and with a German Federal Identity card
3 number 149760335, was ordered removed by an Immigration Judge on
4 June 4, 2010. Schaper has an appeal of the removal order
5 pending and is currently released from Immigration and Customs
6 Enforcement detention on bond. Schaper is believed to be
7 located in Tustin, California in Orange County.

8 WHEREUPON, complainant requests that a warrant be issued,
9 based on probable cause, pursuant to Title 18, United States
10 Code, Section 3184, for the provisional arrest of Oliver Schaper
11 pending extradition; that Oliver Schaper be brought before this
12 Court and the evidence of criminality heard; that if on such
13 hearing this Court deems the evidence sufficient under the
14 provisions of the Extradition Treaty to sustain the charge, the
15 Court certify the same to the Secretary of State in order that a
16 warrant may issue for the surrender of Oliver Schaper to the
17 appropriate authorities of the requesting state, Germany,

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1 according to the Extradition Treaty; and that this Court take
2 such other actions as this Court is required to take under the
3 provisions of the Extradition Treaty and the laws of the United
4 States to meet the obligations of the Extradition Treaty.

5
6 DATED: This 14th day of March, 2011, at Los Angeles,
7 California.

8 Respectfully submitted,

9 ANDRE BIROTTE, JR.
United States Attorney

10 ROBERT E. DUGDALE
11 Assistant United States Attorney
12 Chief, Criminal Division

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ROBYN K. BACON
Assistant United States Attorney

15 Attorneys for Complainant
16 United States of America

17 Subscribed and sworn to before
18 me this 14th day of March, 2011.

19
20 **CHARLES F. EICK**

21 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT 1

Grotensath

96TH CONGRESS }
1st Session }

SENATE

{ EXECUTIVE
A }

EXTRADITION TREATY WITH THE FEDERAL
REPUBLIC OF GERMANY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE EXTRADITION TREATY BETWEEN THE UNITED STATES
OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY
(FRG), SIGNED AT BONN ON JUNE 20, 1978



JANUARY 23, 1979.—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 : 1979

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 19, 1979.*

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 on Extradition Between the United States of America and the Federal Republic of Germany, signed at Bonn on June 20, 1978.

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 aircraft hijacking and narcotics offenses, as well as several other offenses not now covered by our existing Extradition Treaty with the Federal Republic of Germany. Upon entry into force, it will terminate and supersede the existing Extradition Treaty between the United States and the Federal Republic of Germany.

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.

JIMMY CARTER.

(iii)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., October 16, 1978.

THE PRESIDENT,
The White House.

I have the honor to submit to you the Extradition Treaty Between the United States of America and the Federal Republic of Germany (FRG), signed at Bonn on June 20, 1978. I recommended 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 any of the thirty-three offenses listed in the schedule annexed to the treaty. The most significant newly listed offenses, which are not listed in our existing treaty with the FRG, are those relating to narcotics, including psychotropic and other dangerous drugs, and those relating to aircraft hijacking.

Article 1 includes a new jurisdictional provision which allows for extradition where the offense has been committed outside the territory of the requesting state by a national of the requesting state. This provision is regarded by the FRG as an important new element in the effort to combat acts of terrorism.

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. It is anticipated that this provision would be useful in the area of narcotic and counterfeiting violations. Similar provisions are contained in the treaties on extradition with Spain and Norway.

Another important addition to this treaty is a provision in Article 2 which includes as extraditable offenses those which are Federal offenses and punishable by 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. Article 2 permits as well the Government of the United States to request the extradition of a person for any extraditable offense when United States Federal jurisdiction is based upon the use of the mails or other means of interstate communication or transport.

Article 3 defines the territorial application of the treaty. In addition to the normal content of that concept, territorial jurisdiction includes aircraft in flight. This provision extends jurisdiction to acts of aircraft piracy, whether or not they occur over the territory of either of the parties.

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Article 4, which contains the political offense exception clause, includes a provision excluding from the category of political offenses those offenses which a party has an obligation to prosecute by reason of a multilateral international agreement. This clause, which is a variant of that found in some recent extradition agreements, is intended to limit the scope of the political offense exception. This exception has been used in the past by certain governments to refuse the extradition of United States hijackers.

Article 7, which is similar to the provisions dealing with the extradition of nationals in some of our recently signed extradition treaties, grants the executive the discretionary power to extradite its own nationals. If extradition is denied on the basis of nationality, the requested state undertakes to submit the matter to its own prosecuting authorities if they have appropriate jurisdiction. The article thus takes into account the law of the FRG prohibiting the extradition of its nationals but allowing for their prosecution in the FRG.

Article 8 contains a prior jeopardy provision, which excludes extradition in cases where the person requested has been tried and discharged or punished by competent authorities of the requested state for the same offense.

Article 12 permits refusal of extradition unless assurances are received that the death penalty will not be imposed for an offense not punishable by death in the country from which extradition is requested. A similar article has been included in several recent treaties.

Articles 14-30 outline the procedures by which extradition shall be accomplished. Article 30 provides that expenses arising from the transportation of the person sought will be borne by the requesting state. This article also provides that the requested state shall provide for representation of the interests of the requesting state before the competent authorities of the requested state. This requirement has been included in recent extradition treaties the United States has negotiated because the costs of presentation are a hinderance to the making of extradition requests. This article differs from 18 U.S.C. 3195, which otherwise requires that all costs or expenses incurred in extradition proceedings be paid by the requesting authority.

Article 31 provides that the treaty is retroactive in effect as to extraditable offenses committed before the date of entry into force and which were punishable by both parties when committed.

Article 33 contains a Berlin clause which indicates the manner in which the provisions of this treaty may be applied to Berlin.

Upon entry into force, this treaty will terminate the 1930 Extradition Treaty as between the United States and the Federal Republic of Germany.

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

Respectfully submitted,

WARREN CHRISTOPHER.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL
REPUBLIC OF GERMANY CONCERNING EXTRADITION

The United States of America and the Federal Republic of Germany, desiring to provide for more effective cooperation between the two States in the repression of crime and, specifically, newly to regulate and thereby to facilitate the relations between the two States in the area of extradition—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 or are wanted by the other Contracting Party for the enforcement of a judicially pronounced penalty or detention order 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 described in this Treaty if either

(a) its laws would provide for the punishment of such an offense committed in similar circumstances, or

(b) the person whose extradition is requested is a national of the Requesting State.

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;

(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 Federal Republic of Germany.

In this connection 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.

(2) Extradition shall be granted in respect of an extraditable offense:

(a) For prosecution, if the offense is punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period exceeding one year, or

(b) For the enforcement of a penalty or a detention order, if the duration of the penalty or detention order still to be served, or when, in the aggregate, several such penalties or detention orders still to be served, amount to at least six months.

(1)

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

(a) For attempts to commit, conspiracy to commit, or participation in, an extraditable offense;

(b) For any extraditable offense when, only for the purpose of granting jurisdiction to the United States Government, transportation, transmission of persons or property, the use of the mails or other means of communication or use of other means of carrying out interstate or foreign commerce is also an element of the specific offense.

(4) When extradition has been granted in respect of an extraditable offense, it shall also be granted in respect of any other extraditable offense which would otherwise not be extraditable only by reason of the operation of paragraph (2).

Article 3

TERRITORIAL APPLICATION

(1) A reference in this Treaty to the territory of a Contracting Party is a reference to all territory under its jurisdiction.

(2) A reference in this Treaty to the territory of a Contracting Party shall furthermore include its territorial waters and airspace and vessels and aircraft registered with the competent authority of this Contracting Party if any such vessel is on the high seas or if any such aircraft is in flight when the offense is committed. For the purpose of this Treaty an aircraft shall be considered to be in flight 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.

Article 4

POLITICAL OFFENSES

(1) Extradition shall not be granted if the offense in respect of which it is requested is regarded by the Requested State as a political offense, an offense of a political character or as an offense connected with such an offense.

(2) Extradition also shall not be granted if the Requested State has substantial grounds for believing that the request for extradition has, in fact, been made with a view to try or punish the person sought for an offense mentioned in paragraph (1).

(3) For the purpose of this Treaty the following offenses shall not be deemed to be offenses within the meaning of paragraph (1):

(a) A murder or other willful crime, punishable under the laws of both Contracting Parties by a penalty of at least one year, against the life or physical integrity of a Head of State or Head of Government of one of the Contracting Parties or of a member of his family, including attempts to commit such an offense, except in open combat;

(b) An offense which the Contracting Parties or the Requesting State have the obligation to prosecute by reason of a multilateral international agreement.

Article 5

MILITARY OFFENSES

Extradition shall not be granted if the offense in respect of which it is requested is purely a military offense.

Article 6

FISCAL OFFENSES

If the competent executive authority of the Requested State determines that an offense for which extradition has been requested represents an offense as described in Item No. 27 of the Appendix to this Treaty and that extradition for such an offense would be contrary to the public policy or other essential interests of that State, extradition may be refused even though the offense also falls into one of the other categories of extraditable offenses under this Treaty.

Article 7

EXTRADITION OF NATIONALS

(1) Neither of the Contracting Parties shall be bound to extradite its own nationals. The competent executive authority of the Requested State, however, shall have the power to grant the extradition of its own nationals if, in its discretion, this is deemed proper to do and provided the law of the Requested State does not so preclude.

(2) The Requested State shall undertake all available legal measures to suspend naturalization proceedings in respect of the person sought until a decision on the request for his extradition and, if that request is granted, until his surrender.

(3) If the Requested State does not extradite its own national, it shall, at the request of the Requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of the result of its request.

Article 8

PRIOR JEOPARDY FOR SAME OFFENSE

Extradition shall not be granted when the person whose extradition is requested has been tried and discharged or punished with final and binding effect by the competent authorities of the Requested State for the offense for which his extradition is requested.

Article 9

LAPSE OF TIME

Extradition shall not be granted if at the time the Requested State receives the request for extradition the prosecution, or the enforcement of the penalty or of the detention order, has become barred by lapse of time under the law of the Requesting State.

Article 10

JURISDICTION OF THE REQUESTED STATE

(1) Extradition may be refused if the person sought is proceeded against in 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 offense for which extradition is requested or decided to discontinue any criminal proceedings which have been initiated shall not preclude extradition.

Article 11

COMPLAINT AND AUTHORIZATION

The obligation to extradite shall not be affected by the absence of any complaint or any authorization as a result of an offense if such complaint or such authorization is required under the law of the Requested State.

Article 12

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 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 13

EXTRAORDINARY COURTS

(1) An extradited person shall not be tried by an extraordinary court in the territory of the Requesting State.

(2) Extradition shall not be granted for the enforcement of a penalty imposed, or detention ordered, by an extraordinary court.

Article 14

CHANNEL OF COMMUNICATION; EXTRADITION DOCUMENTS

(1) The request for extradition, any subsequent documents and all other communications shall be transmitted through the diplomatic channel unless otherwise provided by this Treaty.

(2) The request shall be accompanied by:

(a) All available information concerning the identity and nationality of the person sought;

(b) The text of all applicable provisions of law of the Requesting State concerning the definition of the offense, its punishment and the limitation of legal proceedings or the enforcement of penalties; and

- (c) A statement by a competent authority describing the measure taken, if any, that have interrupted the period of limitation under the law of the Requesting State.
- (3) A request for the extradition of a person sought for the purpose of prosecution shall be accompanied, in addition to the documents provided for in paragraph (2), by:
- (a) A warrant of arrest issued by a judge of the Requesting State and such evidence as, according to the law of the Requested State, would justify his arrest and committal for trial if the offense had been committed there, including evidence proving that the person requested is the person to whom the warrant of arrest refers; and
 - (b) A summary statement of the facts of the case unless they appear from the warrant of arrest.
- (4) A request for the extradition of a person sought by reason of a judgment of guilt for the imposition or enforcement of a penalty or detention order shall be accompanied, in addition to the documents provided for in paragraph (2), by:
- (a) If the judgment handed down in the territory of the Requesting State contains only a determination of guilt, this judgment, confirmation that the judgment has final and binding effect and a warrant of arrest issued by a competent authority of the Requesting State;
 - (b) If the judgment handed down in the territory of the Requesting State contains the determination of guilt and the sentence imposed, a copy of this judgment of conviction as well as the confirmation that this judgment has final and binding effect and is enforceable and a statement of the portion of the sentence that has not been served.
- (5) A witness' statement taken down in writing or other evidence, not under oath, shall be admitted in evidence as a statement made or evidence given under oath if it is certified that the person making the statement or giving the evidence was warned by a competent authority that any false, misleading or incomplete declaration would render him liable to punishment.

Article 15

ADDITIONAL EVIDENCE

- (1) If 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; it may fix a time limit for the submission of such evidence and, upon the Requesting State's application, for which reasons shall be given, may grant a reasonable extension of the time limit.
- (2) If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient, or if such evidence or information is not received within the period specified by the Requested State, he shall be discharged from custody. However,

such discharge shall not bar a subsequent request in respect of the same offense. In this connection it shall be sufficient if reference is made in the subsequent request to the supporting documents already submitted provided these documents will be available at the extradition proceedings on this subsequent request.

Article 16

PROVISIONAL ARREST

(1) In case of urgency either Contracting Party may apply for the provisional arrest of the person sought before the request for extradition has been submitted to the Requested State through the diplomatic channel. The request for provisional arrest may be made either through the diplomatic channel or directly between the United States Department of Justice and the Minister of Justice of the Federal Republic of Germany.

(2) The application for provisional arrest shall state that a warrant of arrest as mentioned in paragraph (3) (a) of Article 14, or a judgment as mentioned in paragraph (4) (a) or (b) of Article 14, exists and that it is intended to make a request for extradition. It shall also state the offense for which extradition will be requested and when and where such offense was committed and shall give all available information concerning the description of the person sought and his nationality. The application shall also contain such further information, if any, as would be necessary to justify the issuance of a warrant of arrest in the Requested State had the offense been committed, or the person sought been convicted, in that State.

(3) On receipt of an application for provisional arrest the Requested State shall take the necessary steps to secure the arrest of the person sought.

(4) Provisional arrest shall be terminated if, within a period of 40 days after the apprehension of the person sought, the Requested State has not received the request for extradition and the documents mentioned in Article 14. This period may be extended, upon the Requesting State's application, for up to an additional 20 days after the apprehension of the person sought.

(5) The termination of provisional arrest pursuant to paragraph (4) shall not prejudice the extradition of the person sought if the extradition request and the supporting documents mentioned in Article 14, insofar as they were not submitted in a timely manner, are later delivered. In this connection, reference may be made to the extradition request and the supporting documents which have already been transmitted to the Requested State.

Article 17

REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

(1) A Contracting Party which has received concurrently requests for the extradition of the same person either for the same offense, or for different offenses, from the other Contracting Party and from a

third State shall make its decision having regard to all the circumstances and especially the possibility of a subsequent re-extradition to another Requesting State, the relative seriousness and place of commission of the offenses, the nationality of the person sought and the provisions of any extradition agreements between the Requested State and the Requesting States.

(2) If the Requested State reaches a decision at the same time upon extradition to one of the Requesting States and on re-extradition to another Requesting State, it shall communicate that decision on re-extradition to each of the Requesting States.

Article 18

SIMPLIFIED EXTRADITION

If the extradition of a person sought to the Requesting State is not obviously precluded by the laws of the Requested State and provided the person sought irrevocably agrees in writing to his extradition after personally being advised by a judge or competent magistrate of his rights to formal extradition proceedings and the protection afforded by them that he would lose, the Requested State may grant his extradition without a formal extradition proceeding having taken place. In this case Article 22(1) shall not be applicable.

Article 19

DECISION

(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 any complete or partial rejection of the request for extradition.

Article 20

DELAYED DECISION AND SURRENDER

The Requested State may, after a decision on the request has been rendered by a competent court, defer the surrender of the person whose extradition is requested, when that person is being proceeded against or is serving a sentence in the territory of the Requested State for a different offense, until the conclusion of the proceedings and the full execution of any punishment he may be or may have been awarded. In this case the Requested State shall advise the Requesting State.

Article 21

SURRENDER OF THE PERSON SOUGHT

(1) 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. If no time period for surrender is prescribed by the laws of the Requested State, surrender shall take place within 30 days from the date on which the Requesting State has been notified that the extradition has been granted. The competent authorities of the Contracting Parties shall agree on the time and place of the surrender of the person sought.

(2) If the person sought is not removed from the territory of the Requested State within the time required under paragraph (1), he may be set at liberty. The Requested State may subsequently refuse to extradite the person sought for the same offense.

(3) If circumstances beyond its control prevent a Contracting Party from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting Party before the expiration of the time limit. In such a case the competent authorities of the Contracting Parties may agree upon a new date for the surrender.

Article 22

RULE OF SPECIALITY

(1) A person who has been extradited under this Treaty shall not be proceeded against, sentenced or detained with a view to carrying out a sentence or detention order for any offense committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

(a) When the State which extradited him consents thereto. A request for consent shall be submitted, accompanied by the documents mentioned in Article 14 and a record established by a judge or competent officer of the statement made by the extradited person in respect of the request for consent. If under the law of the Requesting State the issuance of a warrant of arrest for the offense for which extradition is sought is not possible, the request may instead be accompanied by a statement issued by a judge or competent officer establishing that the person sought is strongly suspected of having committed the offense.

(b) When such person, having had the opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge or has returned to that territory after leaving it. A discharge under parole or probation without an order restricting the freedom of movement of the extradited person shall be deemed equivalent to a final discharge.

(2) The State to which the person has been extradited may, however, take any legal measures necessary under its law, in order to proceed *in absentia*, to interrupt any lapse of time or to record a statement under paragraph (1) (a).

(3) If the offense for which the person sought was extradited is legally altered in the course of proceedings, he shall be prosecuted or sentenced provided the offense under its new legal description is:

(a) Based on the same set of facts contained in the extradition request and its supporting documents; and

(b) Punishable by the same maximum penalty as, or a lesser maximum penalty than, the offense for which he was extradited.

Article 23

RE-EXTRADITION TO A THIRD STATE

(1) Except as provided for in Article 22(1)(b), the Requesting State shall not, without the consent of the Requested State, re-extradite to a third State a person extradited to the Requesting State and sought by the said third State in respect of an offense committed prior to his surrender.

(2) A request for consent to re-extradition to a third State shall be accompanied by the documents supporting the request for extradition made by the third State, if the Requested State needs these documents for its decision. These documents shall conform to the documents mentioned in Article 14 of this Treaty.

Article 24

INFORMATION ON THE RESULT OF THE CRIMINAL PROCEEDINGS

The Requesting State shall upon demand inform the Requested State of the result of the criminal proceedings against the extradited person and send a copy of the final and binding decision to that State.

Article 25

SURRENDER OF PROPERTY

(1) To the extent permitted under the laws of the Requested State and subject to the rights of that State or of third parties, which shall be duly respected, all articles which may serve as evidence, or which have been acquired as a result of an offense, or have been obtained as consideration for such articles, and which at the time of the arrest are found in the possession of the person sought or are discovered subsequently, shall be surrendered if extradition of the person sought is granted. Surrender of such articles shall be possible even without any special request and, if possible, at the same time that the person sought is surrendered.

(2) Subject to the conditions provided in paragraph (1), the articles mentioned therein shall be surrendered even if the person sought cannot be surrendered owing to his death or escape.

(3) The Requested State may condition the surrender of articles upon a satisfactory assurance from the Requesting State that the articles will be returned to the Requested State as soon as possible.

Article 26

TRANSIT

(1) Transit of a person who is the subject of extradition from a third State through the territory of a Contracting Party to the territory of the other Contracting Party shall be granted on submission of a request, provided that the offense concerned is an extraditable offense under Article 2 and that the Contracting Party requested to grant transit does not consider the offense to be one covered by Articles 4 or 5.

(2) Transit of a national of the Requested State may be refused if, in the opinion of that State, it is inadmissible under its law.

(3) Subject to the provisions of paragraph (4), the request for transit must be accompanied by a warrant of arrest issued by a judge or competent officer of the Requesting State and by a statement as mentioned in Article 14(3)(b).

(4) If air transport is used, the following provisions shall apply:

(a) When no intermediate stop is foreseen, the Contracting Party requesting transit shall notify the other Contracting Party, certify that one of the documents mentioned in Article 14, paragraph (3)(a) or paragraph (4)(a) or (b) exists, and state whether the person whose transit is being notified is a national of the Contracting Party over the territory of which the flight is to be made. In the case of an unscheduled landing such notification shall have the effect of a request for provisional arrest as provided for in Article 16; thereafter a formal request for transit shall be made.

(b) When an intermediate stop is planned, the Contracting Party requesting transit shall submit a formal request for transit.

Article 27

APPLICABLE LAW

Except where this Treaty otherwise provides, the law of the Requested State shall be applicable with respect to provisional arrest, extradition and transit.

Article 28

LANGUAGE TO BE USED

The documents transmitted in the application of this Treaty shall be in the language of the Requesting State accompanied by a certified translation into the language of the Requested State. The expense of translation shall be borne by the Requesting State.

Article 29

CERTIFICATION

A warrant of arrest and depositions or other evidence, given on oath or in a manner described in Article 14(5), and the judgment of conviction and of the sentence, if it has been passed, or certified copies

of these documents, shall be admitted in evidence in the examination of the request for extradition when:

(a) In the case of a request emanating from the Federal Republic of Germany, they are signed by a judge or competent officer, are authenticated by the official seal of the Federal Minister of Justice and are certified by the competent diplomatic or consular officer of the United States in the Federal Republic of Germany, or

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

Article 30

EXPENSES

Expenses arising from the transportation of a person sought to the Requesting State shall be borne by that State. No other pecuniary claim arising from an extradition or a transit request shall be made by the Requested State against 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 competent judges and officers.

Article 31

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 32

DEFINITIONS

For the purpose of this Treaty, the term

(a) "Penalty" means deprivation of liberty as a result of a sentence upon conviction for an offense;

(b) "Detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a penalty.

Article 33

BERLIN CLAUSE

(1) This Treaty shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Treaty.

(2) Upon the application of this Treaty to Land Berlin, references in the Treaty to the Federal Republic of Germany or to the territory thereof shall be deemed also to be references to Land Berlin.

Article 34

RATIFICATION; COMING INTO FORCE; DENUNCIATION

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

(2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification.

(3) Between the Contracting Parties this Treaty shall terminate and replace the Extradition Treaty between the United States of America and Germany signed at Berlin July 12, 1930.

(4) This Treaty shall continue in force until the expiration of one year from the date on which written notice of termination is given by one Contracting Party to the other.

DONE at Bonn this 20th day of June, 1978, in duplicate, in the English and German languages, both texts being equally authentic.

For the United States of America:

For the Federal Republic of Germany:

Houston Stewart

for the public

for the public

APPENDIX

1. Murder.
2. Manslaughter.
3. Aggravated wounding, injury, or assault, even when loss of life results; wounding or injuring with intent to cause grievous bodily harm.
4. Illegal abortion.
5. Kidnapping; abduction; false imprisonment; child-stealing.
6. Rape, indecent assault; incest; bigamy.
7. Unlawful sexual acts with or upon children under the age specified by the laws both of the Requesting and Requested States.
8. Procuration.
9. Libel.
10. Willful non-support or willful abandonment of a minor or other dependent person when by reason of such non-support or abandonment the life of that minor or other dependant person is or is likely to be endangered.
11. Robbery; larceny; burglary; embezzlement; extortion.
12. Malicious damage to property.
13. Fraud, including offenses against the laws relating to the unlawful obtaining of money, property or securities, to fiduciary relationships or to exploitation of minors.
14. Offenses against the laws relating to forgery, including the making of forged documents or records, whether official or private, or the uttering or fraudulent use of such documents or records.
15. Receiving, possessing, or transporting for personal benefit any money, valuable securities, or other property, knowing the same to have been unlawfully obtained.
16. Offenses relating to counterfeiting.
17. Perjury, including subornation of perjury; false statements, either written or oral, whether or not under oath, made to a judicial authority or to a government agency or office.
18. Arson.
19. Unlawful obstruction of juridical proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute, by influencing, bribing, impeding, threatening, or injuring by any means any officer of the court, juror, witness, or duly authorized criminal investigator.
20. (a) Unlawful abuse of official authority which results in bodily injury or deprivation of life, liberty or property of any person.
(b) Unlawful injury or intimidation in connection with, or interference with, voting or candidacy for public office, jury service, government employment, or the receipt or enjoyment of benefits provided by government agencies.
21. Facilitating or permitting the escape of a person from custody; prison mutiny.

22. Offenses against the laws relating to bribery.
23. Offenses against the laws relating to civil disorders.
24. Offenses against the laws relating to illegal gambling enterprises.
25. Any act willfully jeopardizing the safety of any person traveling upon a railway or in any aircraft or vessel or other means of transportation.
26. Piracy, by statute or by the law of nations; mutiny or revolt aboard an aircraft or vessel against the authority of the captain or commander of such aircraft or vessel; any seizure or exercise of control, by force or violence or threat of force or violence, of an aircraft or vessel.
27. (a) Offenses against the laws relating to importation, exportation or transit of goods, articles, or merchandise.
(b) Offenses relating to willful evasion of taxes and duties.
(c) Offenses against the laws relating to international transfers of funds.
28. Offenses against the bankruptcy laws.
29. Offenses against the laws relating to narcotic drugs, Cannabis sativa L., Hallucinogenic drugs, cocaine and its derivatives, and other dangerous drugs and chemicals.
30. Offenses against the laws relating to the illicit manufacture of or traffic in poisonous chemicals or substances injurious to health.
31. Offenses against the laws relating to firearms, ammunition, explosives, incendiary devices or nuclear materials.
32. Offenses against the laws relating to the sale or transportation or purchase of securities or commodities.
33. Any other act for which extradition may be granted in accordance with the laws of both Contracting Parties.

PROTOCOL

At the time of signing this day of the Extradition Treaty between the United States of America and the Federal Republic of Germany the undersigned plenipotentiaries have agreed that Article 4(3)(b) of the Treaty and Item No. 20(b) of the Appendix thereto are to be interpreted as follows:

(1) With respect to the interpretation of Article 4(3)(b) the Contracting Parties mutually agree that at the time of the conclusion of the Treaty, this provision has reference, for example, to the Convention for the Suppression of Unlawful Seizure of Aircraft of December 16, 1970, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of September 23, 1971, and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents of December 14, 1973.

(2) The Contracting Parties mutually agree to interpret Item No. 20(b) of the Appendix to the Treaty as meaning that the terms "jury service" and "ehrenamtlicher Richter" apply to persons who in the legal practice of both Contracting Parties have corresponding functions (in the United States of America: members of a jury; in the Federal Republic of Germany: members of a court who are not judges by profession).

DONE at Bonn this 20th day of June, 1978, in duplicate in the English and German languages, both texts being equally authentic.

For the United States of
America:

William Stansfeld

For the Federal Republic of
Germany:

for the FRG

for the FRG

(15)

○

Second Supplementary Treaty

to

the Treaty between the United States of America

and

the Federal Republic of Germany

Concerning Extradition

The Government of the United States of America
and
the Government of the Federal Republic of Germany,

As contemplated by Article 3, paragraph (2) of the Agreement on Extradition between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S.-EU Extradition Agreement"),

Acknowledging that in accordance with the provisions of this Second Supplementary Treaty, the bilateral Treaty between the United States of America and the Federal Republic of Germany Concerning Extradition signed 20 June 1978 as amended by the Supplementary Treaty to the Treaty between the United States of America and the Federal Republic of Germany Concerning Extradition signed 21 October 1986 (hereafter referred to as "the bilateral extradition treaty") is applied in the manner set forth in Article 3 of the U.S.-EU Extradition Agreement,

Have agreed as follows:

Article 1

Pursuant to Article 13 of the U.S.- EU Extradition Agreement, Article 12 of the bilateral extradition treaty is amended to read as follows:

"Article 12
Capital Punishment

Where the offense for which extradition is sought is punishable by death under the laws in the Requesting State and not punishable by death under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty if imposed shall not be carried out. If the Requesting State accepts extradition subject to conditions pursuant to this Article, it shall comply with the conditions. If the Requesting State does not accept the conditions, the request for extradition may be denied."

Article 2

Pursuant to Article 14 of the U.S.- EU Extradition Agreement, the following text is inserted into the bilateral extradition treaty as Article 15 bis:

"Article 15 bis
Sensitive information in a request

Where the Requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted."

Article 3

Pursuant to Article 6 of the U.S.-EU Extradition Agreement, the following text is added to the bilateral extradition treaty as the final sentence of Article 16, paragraph (1):

"The facilities of the International Criminal Police Organization (Interpol) may be used to transmit such a request."

Article 4

Pursuant to Article 7 of the U.S.- EU Extradition Agreement, the following text is inserted into the bilateral extradition treaty as Article 16, paragraph (5):

"(5) The Requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel pursuant to Article 14, paragraph (1), by submitting the request and documents to the Embassy of the Requested State located in the Requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the Requested State for purposes of applying the time limit that must be met under paragraph (4) of the present Article to enable the person's continued detention. "

The current paragraph (5) is renumbered to become paragraph (6).

Article 5

Pursuant to Article 10 of the U.S.- EU Extradition Agreement, Article 17 of the bilateral extradition treaty is amended to read as follows:

"Article 17

Requests for Extradition or Surrender Made by Several States

(1) If the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person either for the same offense or for different offenses, or if the Federal Republic of Germany receives an extradition

request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offense or for different offenses, the competent authority of the executive branch of the Requested State shall determine to which State, if any, it will surrender the person.

(2) In making its decision under paragraph (1) of this Article, the Requested State shall consider all of the relevant factors, including, but not limited to, the following:

- a) whether the requests were made pursuant to a treaty;
- b) the places where each of the offenses was committed;
- c) the respective interests of the Requesting States;
- d) the seriousness of the offenses;
- e) the nationality of the victim;
- f) the nationality of the person sought;
- g) the possibility of any subsequent re-extradition between the Requesting States;
- and
- h) the chronological order in which the requests were received from the requesting States.

(3) If the Requested State reaches a decision at the same time upon extradition to one of the Requesting States and on re-extradition to another Requesting State, it shall communicate that decision on re-extradition to each of the Requesting States."

Article 6

Pursuant to Article 5, paragraph (2) of the U.S.- EU Extradition Agreement, Article 29 of the bilateral extradition treaty is amended to read as follows:

"Article 29
Certification

Documents that bear the certificate or seal of the Ministry of Justice, or Ministry or Department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization. "Ministry of Justice" shall, for the United States of America, mean the United States Department of Justice; and, for the Federal Republic of Germany, the Federal Ministry of Justice."

Article 7

- (1) In accordance with Article 16 of the U.S.-EU Extradition Agreement, this Supplementary Treaty shall apply to offenses committed before as well as after it enters into force.
- (2) This Supplementary Treaty shall not apply to requests for extradition made prior to its entry into force.

Article 8

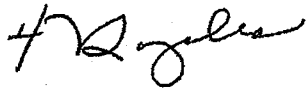
- (1) This Supplementary Treaty shall form an integral part of the bilateral extradition treaty.
- (2) This Supplementary Treaty shall be subject to the completion by the United States of America and the Federal Republic of Germany of their respective applicable internal procedures for entry into force. The Contracting Parties shall thereupon notify each other that such internal procedures have been completed.

(3) This Supplementary Treaty shall enter into force on the date of entry into force of the U.S.-EU Extradition Agreement.

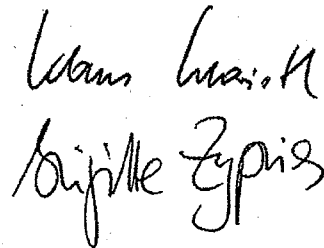
(4) In the event of termination of the U.S.-EU Extradition Agreement, this Supplementary Treaty shall be terminated.

DONE at Washington, this ^{18th} day of April 2006, in duplicate, in the English and German languages, both texts being equally authentic.

For the Government of the
United States of America:



For the Government of the
Federal Republic of Germany:



100TH CONGRESS
1st Session

SENATE

TREATY DOC.
100-6

SUPPLEMENTARY EXTRADITION TREATY WITH
THE FEDERAL REPUBLIC OF GERMANY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SUPPLEMENTARY TREATY TO THE TREATY BETWEEN THE
UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF
GERMANY CONCERNING EXTRADITION SIGNED AT WASHING-
TON ON OCTOBER 21, 1986

Entered into Force on March 11, 1993



ENGLISH TEXT ONLY

JUNE 25, 1987.—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

WASHINGTON : 1987

91-111F

LETTER OF TRANSMITTAL

THE WHITE HOUSE, June 25, 1987.

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 Supplementary Treaty to the Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition signed at Washington on October 21, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Supplementary Treaty.

The Supplementary Treaty adds to and amends the Treaty Between the United States and the Federal Republic of Germany Concerning Extradition, signed at Bonn on June 20, 1978. It represents an important step in improving law enforcement cooperation and combatting terrorism by excluding from the scope of the political offense exception serious offenses typically committed by terrorists, e.g., murder, manslaughter, kidnapping, use of a destructive device capable of endangering life or causing grievous bodily harm, and attempt or conspiracy to commit the foregoing offenses.

The Supplementary Treaty also will help to improve implementation of the current Extradition Treaty in several other respects.

I recommend that the Senate give early and favorable consideration to the Supplementary Treaty and give its advice and consent to ratification.

RONALD REAGAN.

(iii)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 4, 1987.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Supplementary Treaty to the Treaty Between the United States of America and the Federal Republic of Germany Concerning Extradition signed at Washington on October 21, 1986. I recommend that the Supplementary Treaty be transmitted to the Senate for advice and consent to ratification.

The Supplementary Treaty supplements and amends the Treaty between the United States and the Federal Republic of Germany Concerning Extradition, signed at Bonn on June 20, 1978 (32 UST 1485; TIAS 9785). The Supplementary Treaty Concerning Extradition would exclude specified crimes of violence, typically committed by terrorists, from the scope of the political offense exception to extradition. It therefore represents an important step toward improving law enforcement cooperation and countering the threat of international terrorism and other crimes of violence. In addition, the Supplementary Treaty will help improve implementation of the current Treaty in several other respects.

Article 1(a) of the Supplementary Treaty amends Article 2, paragraph (1) of the current Treaty—the “extraditable offenses” provision—by defining extraditable offenses as offenses which are punishable under the laws of both States, whether dual criminality follows from Federal or State laws. In addition, Article 1(a) of the Supplementary Treaty specifies that dual criminality may include offenses based upon participation in an association whose aims and activities include the commission of extraditable offenses, such as an association involved in racketeering or criminal enterprise under the laws of the United States. Article 1(c) deletes the Appendix to the current Treaty, which lists extraditable offenses.

This amendment furthers the modern practice of permitting extradition for prosecution for any crime punishable under the laws of both contracting Parties for a minimum period of more than one year rather than listing offenses for which extradition may be granted. This obviates the need to renegotiate or supplement the Treaty as new types of criminal activity, such as computer-related crimes or money laundering, become punishable under the laws of both States.

Article 1(b) of the Supplementary Treaty amends Article 6 of the current treaty to specifically enumerate fiscal offenses—offenses in connection with taxes, duties, customs and exchange—for which ex-

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tradition may be refused if the competent executive authority determines that extradition for any such offense would be contrary to the public policy or other essential interests of the Requested State. The current treaty contains a similar provision but describes the fiscal offenses by reference to the Appendix to the Treaty.

Article 2 of the Supplementary Treaty effectively limits the scope of Article 4 of the current Treaty—the political offense exception. It amends article 4, paragraph (3) of the current Treaty by specifying additional crimes which shall not be regarded as political offenses: namely, murder; manslaughter; malicious assault; kidnapping; specified explosives offenses; and conspiracy or attempt to commit any of the foregoing offenses.

In addition, the Supplementary Treaty continues a provision, existing in the current Treaty, that excludes from the reach of the political offense exception any offense for which both the United States and the Federal Republic of Germany have an international obligation to extradite the person or submit his case for prosecution; i.e., aircraft hijacking pursuant to the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on December 16, 1970; aircraft sabotage pursuant to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on September 23, 1973; crimes against internationally protected persons, including diplomats, under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on December 14, 1973; and hostage taking pursuant to the International Convention against the Taking of Hostages, opened for signature at New York on December 18, 1979. This exclusion will also extend to crimes similarly defined in future multilateral treaties.

Article 3 of the Supplementary Treaty makes an addition to Article 20 of the current Treaty. Article 20 of the current Treaty provides that after a decision on an extradition request has been rendered by a competent court, the Requested State may defer surrender of a person being proceeded against or serving a sentence in the Requested State for a different offense until the proceedings are concluded or the sentence is fully executed. Article 3 of the Supplementary Treaty provides that, alternatively, the Requested State may temporarily surrender the person sought to the Requesting State for prosecution. Therefore, this provision will allow a person serving a long sentence in the Requested State to be tried promptly in the Requesting State and then be returned to complete his sentence. This alternative of temporary surrender is routinely included in our modern extradition treaties.

Article 4 of the Supplementary Treaty provides that the Supplementary Treaty's provisions shall apply to any offense committed, any request made or any person found extraditable before or after the entry into force of the Supplementary Treaty, but shall not apply to an offense committed before the Supplementary Treaty enters into force if the offense in question was not an offense under the laws of both Contracting Parties at the time of its commission.

Article 5 of the Supplementary Treaty provides that the Supplementary Treaty shall also apply to Land Berlin, if the Government of the Federal Republic of Germany does not make a contrary dec-

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laration within three months of the date of entry into force of the Supplementary Treaty. Article 33 of the current Treaty is substantively identical.

Article 6(1) of the Supplementary Treaty provides that the Supplementary Treaty shall form an integral part of the current Treaty. Article 6(2) of the Supplementary Treaty provides that it shall enter into force upon the exchange of instruments of ratification and shall be subject to termination in the same manner as the current Treaty.

The Department of Justice joins the Department of State in favoring transmission of this Supplementary Treaty to the State at the earliest possible date.

Respectfully submitted,

GEORGE P. SHULTZ.

SUPPLEMENTARY TREATY TO THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING EXTRADITION

The United States of America and the Federal Republic of Germany,

Desiring to make more effective the Treaty of June 20, 1978 between the United States of America and the Federal Republic of Germany concerning Extradition (hereinafter referred to as "the Extradition Treaty"),

Have agreed as follows:

ARTICLE 1

(a) Article 2, paragraph (1) of the Extradition Treaty is amended to read as follows:

"(1) Extraditable offenses under the Treaty are offenses which are punishable under the laws of both Contracting Parties. In determining what is an extraditable offense it shall not matter whether or not the laws of the Contracting Parties place the offense within the same category of offense or denominate an offense by the same terminology, or whether dual criminality follows from Federal, State or Laender laws. In particular, dual criminality may include offenses based upon participation in an association whose aims and activities include the commission of extraditable offenses, such as a criminal society under the laws of the Federal Republic of Germany or an association involved in racketeering or criminal enterprise under the laws of the United States."

(b) Article 6 of the Extradition Treaty is amended to read as follows:

"Extradition may be refused for offenses in connection with taxes, duties, customs and exchange if the competent executive authority of the Requested State determines that extradition for any such offense would be contrary to the public policy or other essential interests of the Requested State."

(c) The Appendix to the Extradition Treaty is hereby deleted.

ARTICLE 2

Article 4, paragraph (3) of the Extradition Treaty is amended to read as follows:

"For the purpose of this Treaty the following offenses shall not be deemed to be offenses within the meaning of paragraph (1):

(a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;

(b) murder, manslaughter, maliciously wounding, or inflicting grievous bodily harm;

- (c) kidnapping, abduction, or any form of unlawful detention, including taking a hostage;
- (d) placing or using an explosive, incendiary or destructive device capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage;
- (e) an attempt or conspiracy to commit, or participation in, any of the foregoing offenses."

ARTICLE 3

The title of Article 20 of the Extradition Treaty is amended to read as follows: "Temporary or Deferred Surrender." The text of Article 20 is renumbered to become Article 20, paragraph (1), and the following text is inserted as Article 20, paragraph (2):

"(2) Alternatively, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Contracting Parties."

ARTICLE 4

This Supplementary Treaty shall apply to any offense committed, and to any request made, or to any person found extraditable, before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

ARTICLE 5

(1) This Supplementary Treaty shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the United States of America within three months of the date of entry into force of this Supplementary Treaty.

(2) Upon the application of this Supplementary Treaty to Land Berlin, references in the Supplementary Treaty to the Federal Republic of Germany or to the territory thereof shall be deemed also to be references to Land Berlin.

ARTICLE 6

(1) This Supplementary Treaty shall form an integral part of the Extradition Treaty.

(2) This Supplementary Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Bonn as soon as possible. It shall enter into force upon the exchange of instruments of ratification. It shall be subject to termination in the same manner as the Extradition Treaty.

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

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Done at Washington this twenty-first day of October 1986, in duplicate, in the English and German languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

George A. Shultz

FOR THE FEDERAL REPUBLIC
OF GERMANY:

Hans-Martin Genscher

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