

105TH CONGRESS }
2d Session }

SENATE

{ TREATY DOC.
105-33 }

EXTRADITION TREATY WITH ZIMBABWE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE
UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE
REPUBLIC OF ZIMBABWE, SIGNED AT HARARE ON JULY 25, 1997



JANUARY 28, 1998.—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

59-118

WASHINGTON : 1998

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 28, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty between the Government of the United States of America and the Government of the Republic of Zimbabwe, signed at Harare on July 25, 1997.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty. As the report explains, the Treaty will not require implementing legislation.

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

This Treaty will, upon entry into force, enhance cooperation between the law enforcement communities of both countries, and thereby make a significant contribution to international law enforcement efforts. It is the first extradition treaty between the two countries.

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

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 25, 1997.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Extradition Treaty between the Government of the Republic of Zimbabwe (the "Treaty"), signed at Harare on July 25, 1997. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

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

The Treaty marks a significant step in bilateral cooperation between the United States and Zimbabwe, as it is the first extradition treaty between the two countries. The Treaty can be implemented without new legislation.

Article 1 obligates the Contracting States to extradite to the other, pursuant to the provisions of the Treaty, any person charged with or convicted of an extraditable offense in the Requesting State.

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

Article 2(2) states that an offense consisting of an attempt or a conspiracy to commit, aiding or abetting, counselling, causing or procuring the commission of or being an accessory before or after the fact to, an extraditable offense as described in Article 2(1) will also be an extraditable offense.

Additional flexibility is provided by Article 2(3), which provides that an offense shall be considered an extraditable offense: (1) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology; (2) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation or use of the mails or of other facilities af-

fecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; or (3) if it relates to taxes, customs duties, currency control, and import and export of commodities, whether or not the laws of the Contracting States provide for the same kinds of taxes, or customs duties, or the same kinds of controls on currency or on the import or export of the same kinds of commodities.

With regard to offenses committed outside the territory of the Requesting State, Article 2(4) provides the States with discretion to grant or deny extradition if the offense for which extradition is sought would not be punishable under the laws of the Requested State in similar circumstances.

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

As is customary in extradition treaties, Article 4 incorporates a political offense exception to the obligation to extradite. Article 4(1) states generally that extradition shall not be granted if the offense for which extradition is requested is a political offense. Article 4(2) specifies three categories of offenses that shall not be considered to be political offenses.

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

(b) an offense for which both Contracting States are obligated pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and

(c) a conspiracy or attempt to commit any of the offenses described above, or aiding and abetting a person who commits or attempts to commit such offenses.

The Treaty's political offense exception is substantially identical to that contained in several other modern extradition treaties, including the treaty with Jordan, which recently received Senate advice and consent. Offenses covered by Article 4(2)(b) include:

—aircraft hijacking covered by The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague December 16, 1970, and entered into force October 14, 1971 (22 U.S.T. 1641; TIAS No. 7192); and,

—aircraft sabotage covered by the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal September 23, 1971, and entered into force January 26, 1973 (24 U.S.T. 564; TIAS No. 7570).

Article 4(3) provides that, notwithstanding Article 4, paragraph 2(b) and Article 4, paragraph 2(c) as it relates to paragraph 2(b), extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 4(4) permits the Requested State to deny extradition for military offenses that are not offenses under ordinary criminal law (for example, desertion).

Article 5 bars extradition when the person sought has been convicted or acquitted in the Requested State for the same offense, but

does not bar extradition if the competent authorities in the Requested State have declined to prosecute or have decided to discontinue criminal proceedings against the person sought.

Article 6 establishes the procedures and describes the documents that are required to support an extradition request. The Article requires that all requests be submitted through the diplomatic channel. Article 6(3)(c) provides that a request for the extradition of a person sought for prosecution be supported by evidence justifying the committal for trial of the person if the offense had been committed in the Requested State or such information as would justify the committal for extradition of the person in accordance with the laws of the Requested State.

Article 7 establishes the procedures under which documents submitted pursuant to the provisions of this Treaty shall be received and admitted into evidence.

Article 8 provides that all documents submitted by the Requesting State shall be in English.

Article 9 sets forth procedures for the provisional arrest and detention of a person sought pending presentation of the formal request for extradition. Article 9(4) provides that if the Requested State's executive authority has not received the request for extradition and supporting documentation required in Article 6 within sixty (60) days after the provisional arrest, the person may be discharged from custody. Article 9(5) provides explicitly that discharge from custody pursuant to Article 9(4) does not prejudice subsequent rearrest and extradition upon later delivery of the extradition request and supporting documents.

Article 10 specifies the procedures governing surrender and return of persons sought. It requires the Requested State to provide prompt notice to the Requesting State through the diplomatic channel regarding its extradition decision. If the request is denied in whole or in part, Article 10(2) requires the Requested State to provide information regarding the reasons therefor. If extradition is granted, the authorities of the Contracting States shall agree on time and place of surrender of the person sought.

Article 11 concerns temporary and deferred surrender. If a person whose extradition is sought is being prosecuted or is serving a sentence in the Requested State, that State may temporarily surrender the person to the Requesting State for the purpose of prosecution. Alternatively, the Requested State may postpone the extradition proceedings until its prosecution has been concluded or the sentence imposed has been served.

Article 12 sets forth a non-exclusive list of factors to be considered by the Requested State in determining to which State to surrender a person sought by more than one State.

Article 13 provides for the seizure and surrender to the Requesting State of all articles, documents, and evidence connected with the offense for which extradition is granted, to the extent permitted under the law of the Requested State. Such property may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought. Surrender of property may be deferred if it is needed as evidence in the Requested State and may be conditioned upon satisfactory assurances

that it will be returned. Article 13(3) imposes an obligation to respect the rights of third parties in affected property.

Article 14 sets forth the rule of speciality. It provides, subject to specific exemptions, that a person extradited under the Treaty may not be detained, tried, or punished in the Requesting State for an offense other than that for which extradition has been granted, unless a waiver of the rule is granted by the executive authority of the Requested State. Similarly, the Requesting State may not extradite such person to a third State for an offense committed prior to the original surrender unless the Requested State consents. These restrictions shall not prevent the detention, trial or punishment of an extradited person, or that person's extradition to a third State if the extradited person leaves the Requesting State after extradition and voluntarily returns to it or fails to leave the Requesting State within fifteen days of being free to do so.

Article 15 permits surrender to the Requesting State without further proceedings if the person sought consents to surrender.

Article 16 governs the transit through the territory of one Contracting State of a person being surrendered to the other State by a third State.

Article 17 contains provisions on representation and expenses that are similar to those found in other modern extradition treaties. Specifically, the Requested State is required to represent the interests of the Requesting State in any proceedings arising out of a request for extradition. The Requesting State is required to bear the expenses related to the translation of documents and the transportation of the person surrendered. Article 17(3) clarifies that neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under the Treaty.

Article 18 states that the United States Department of Justice and the Ministry of Home Affairs of the Republic of Zimbabwe may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving Treaty implementation procedures.

Article 19, like the parallel provision in almost all recent United States extradition treaties, states that the Treaty shall apply to offenses committed before as well as after the date the Treaty enters into force.

Ratification and entry into force are addressed in Article 20. That Article provides that the States shall exchange instruments of ratification to bring the treaty into force.

Under Article 21, either Contracting State may terminate the Treaty at any time upon written notice to the other Contracting State, with termination to become effective six months after the date of such notice.

A Technical Analysis explaining in detail the provisions of the Treaty is being prepared by the United States negotiating delegation and will be submitted separately to the Senate Committee on Foreign Relations.

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

Respectfully submitted.

MADELEINE ALBRIGHT.

**EXTRADITION TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE**

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**The Government of the United States of America and the Government of the
Republic of Zimbabwe:**

**Desiring to provide for more effective cooperation between the two States in the
suppression of crime, and, for that purpose, to conclude a new treaty for the extradition of
offenders;**

Have agreed as follows:

A handwritten signature in black ink, appearing to be 'T. M.', is located in the bottom left corner of the page.Handwritten initials 'jc' are located in the bottom right corner of the page.

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Article 1

Obligation to Extradite

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with or convicted of an extraditable offence.

Article 2

Extraditable Offences

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

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

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

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

(b) whether or not the offence is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; or

(c) If it relates to taxes, customs duties, currency control, and import and export of commodities, whether or not the laws of the Contracting States provide for the same kinds of taxes, or

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customs duties, or the same kinds of controls on currency or on the import or export of the same kinds of commodities.

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

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

Article 3
Nationality

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

Article 4
Political and Military Offences

1. Extradition shall not be granted if the offence for which extradition is requested is a political offence.

2. For the purposes of this Treaty, the following offences shall not be considered to be political offences:

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



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

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

3. Notwithstanding paragraph 2(b) of this Article and paragraph 2(c) to the extent that it relates to an offence under paragraph 2(b) of this Article, extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

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

Article 5

Prior Prosecution

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

2. Extradition shall not be precluded by the fact that the authorities in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

Article 6

Extradition Procedures and Required Documents

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



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2. All requests for extradition shall be supported by:

- (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
- (b) a statement of the facts of the offence and the procedural history of the case;
- (c) a statement of the provisions of the law describing the essential elements of the offence for which extradition is requested;
- (d) a statement of the provisions of the law describing the punishment for the offence; and
- (e) the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:

- (a) a copy of the warrant or order of arrest issued by a judge or other competent authority;
- (b) a copy of the charging document; and
- (c) such information as would justify the committal for trial of the person if the offence had been committed in the Requested State or such information as would justify the committal for extradition of the person in accordance with the laws of the Requested State.

4. A request for extradition relating to a person who has been convicted of the offence for which extradition is sought shall also be supported by:

- (a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been convicted;
- (b) information establishing that the person sought is the person to whom the conviction refers; and
- (c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.



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Article 7

Admissibility of Documents

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

- (a) in the case of a request from the United States, they are certified by a judge, magistrate, or other competent official in the United States and stamped by the official seal of an authority comparable to a Minister of Justice or other competent authority;
- (b) in the case of a request from the Government of the Republic of Zimbabwe, they are certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of Zimbabwe, as provided by the extradition laws of the United States; or
- (c) they are certified or authenticated in any other manner accepted by the laws in the Requested State.

Article 8

Translation

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

Article 9

Provisional Arrest

1. In the case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Home Affairs of the

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

2. The application for provisional arrest shall contain:

- (a) a description of the person sought;
- (b) the location of the person sought, if known;
- (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
- (d) a description of the laws violated;
- (e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that a request for extradition for the person sought will follow.

3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 6.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 10

Decision and Surrender

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



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

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

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

Article 11

Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with the conditions to be determined by agreement in writing between the Contracting States.

2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

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Article 12

Requests for Extradition Made by More Than One State

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

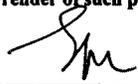
- (a) whether the requests were made pursuant to treaty;
- (b) the place where each offence was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offences;
- (e) the nationality of the victim;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the Requesting States.

Article 13

Seizure and Surrender of Property

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State all articles, documents, and evidence connected with the offence in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as is practicably possible. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.



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3. The rights of the third parties in such property shall be duly respected.

Article 14

Rule of Speciality

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

- (a) the offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided such offence is extraditable or is a lesser included offence;
- (b) an offence committed after the extradition of the person; or
- (c) an offence for which the executive authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:

- (i) the Requested State may require the submission of the documents called for in Article 6; and
- (ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.

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

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

- (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
- (b) that person does not leave the territory of the Requesting State within 15 days of the day on which that person is free to leave.

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Article 15

Waiver of Extradition

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

Article 16

Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Home Affairs of the Government of the Republic of Zimbabwe. The facilities of Interpol may be used to transmit such a request. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. No authorization is required where air transportation is used by one Contracting State and no landing is scheduled on the territory of the other Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, that Contracting State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.



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Article 17

Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, in any proceeding arising out of a request for extradition.
2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.
3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

Article 18

Consultation

The United States Department of Justice and the Ministry of Home Affairs of the Government of the Republic of Zimbabwe may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 19

Application

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



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Article 20

Ratification and Entry into Force

1. This Treaty shall be ratified subject to the Constitutional requirements of the Contracting States.
2. This Treaty shall enter into force upon the exchange of the instruments of ratification through diplomatic channels.

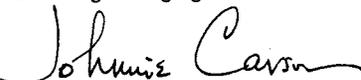
Article 21

Termination

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

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

DONE at Harare this 25th day of July, 1997, in two originals in the English language.



FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Ambassador of the United States of America



FOR THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE: