

BILATERAL EXTRADITION TREATIES

ITALY

EXTRADITION TREATY WITH ITALY

TREATY DOC. 98-20

1983 U.S.T. LEXIS 421

October 13, 1983, Date-Signed

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

TRANSMITTING THE EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY, SIGNED AT ROME ON OCTOBER 13, 1983

TEXT:

98TH CONGRESS

2d Session

SENATE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, April 18, 1984.

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 Italy, signed at Rome on October 13, 1983.

I transmit also, for the information of the Senate, the Report of the Department of State with respect to the Treaty.

The treaty will facilitate United States efforts to prosecute narcotics conspiracies by expressly providing that conspiracies and attempts to commit extraditable offenses constitute

extraditable offenses. The Treaty also provides a legal basis for temporarily surrendering prisoners to stand trial for crimes which [*2] occurred in the requesting State.

The Treaty follows generally the form and content of extradition treaties recently concluded by this Government. Upon entry into force, it will terminate and supersede the existing extradition treaty between the United States and Italy.

This Treaty will make a significant contribution to international cooperation in law enforcement. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,

Washington, April 10, 1984.

The PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty on Extradition between the United States of America and Italy, signed at Rome on October 13, 1983. I recommend that the Treaty be transmitted to the Senate for advice and consent to ratification.

The Treaty follows generally the form and content of extradition treaties recently concluded by this Government.

Article 1 obligates each State to extradite to the other, in accordance with the terms of the Treaty, any persons charged with or convicted of an extraditable offense by the requesting State. (Extradition [*3] shall also be granted, Article 2 explains, for attempts to commit, participation in the commission of, and conspiracy to commit extraditable offenses.)

Article 2 permits extradition for any offense punishable under the laws of both States by imprisonment for more than one year. Instead of listing each offense for which extradition may be granted, as was United States practice until recently, this Treaty adopts the modern practice of permitting extradition for any crime punishable under the laws of both contracting Parties for a minimum period. This obviates the need to renegotiate or supplement the Treaty should both States pass laws covering new types of criminal activity, such as computer-related crimes.

Article 2 also follows the practice of recent United States extradition treaties in indicating that the dual criminality standard should be interpreted liberally in order to effectuate the intent of the Parties that fugitives be brought to justice. Article 2 further provides that, if

extradition is granted for an extraditable offense, it may also be granted for offenses which are punishable by less than a year's imprisonment.

Article 3 provides that extradition may be granted for [*4] an offense committed outside the territory of the requesting State, provided that such an offense is punishable under the laws of the requested State or that the person sought is a national of the requesting State.

Article 4 provides that extradition shall not be denied on the ground that the person sought is a national of the requested State.

Articles 5, 6, 8 and 9 state mandatory grounds for refusal of extradition. Article 5 provides that extradition shall be denied when the offense for which extradition is requested is a political or military offense. Article 6 provides that extradition shall be denied when the person sought has been in jeopardy in the requested State for the same offense. Article 8 provides that extradition shall be denied where the requesting State's statute of limitation bars prosecution or enforcement of the penalty. Article 9 provides that extradition shall be denied when the offense is punishable by death in the requesting, but not the requested, State, unless satisfactory assurances are received that the death penalty, if imposed, will not be carried out.

Article 7 states a discretionary ground for refusal of extradition. It provides that extradition may [*5] be refused when the person sought is being proceeded against by the requested State for the same act.

Articles 10-13 set out procedures which are similar to those found in other modern United States extradition treaties. In particular, Article 10 clarifies the form and content of the documentation required to demonstrate to a United States court probable cause to believe that the crime for which extradition is sought was committed and that the person sought committed it.

Article 14 provides that if the person sought is being proceeded against or is serving a sentence in the requested State for a different offense, that State may either (a) defer surrender until the proceedings are concluded or the sentence has been served, or (b) temporarily surrender the person solely for the purpose of prosecution. Temporary surrender is an innovative feature found in recent United States extradition treaties (Costa Rica, The Netherlands and Sweden).

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

Article 16 expressly incorporates into the Treaty the rule of specialty. [*6] This article provides, subject to specified exceptions, that a person extradited under the Treaty may not be tried, punished or detained for an offense other than that for which extradition has been granted.

Article 17 permits surrender without formal proceedings where the person sought agrees in writing to surrender after having been advised by a competent judicial authority of his or her

right to a formal proceeding and to the protections afforded by the Treaty.

Article 18 provides for the seizure and surrender to the requesting State of all property related to the offense for which extradition is requested. This obligation is subject to the rights of third parties.

Article 19 governs transit through the territory of one of the contracting Parties of a person being surrendered to the other Party by a third country.

Article 20 provides that the requested State shall represent the requesting State in an proceedings in the requested State arising out of a request for extradition.

Article 21 governs expenses in a manner similar to other recent United States extradition treaties.

Article 22, like the parallel provision of almost all recent United States extradition treaties, stipulates [*7] that the Treaty is retroactive, in the sense that it applies to offenses committed before as well as after its entry into force.

Article 23 provides for termination of the Treaty by either Party upon six months written notice to the other.

Article 24 provides that the Treaty will enter into force immediately upon the exchange of the instruments of ratification. Upon entry into force, this Treaty will terminate and supersede the Treaty on Extradition between the United States and Italy signed on January 18, 1973. The prior Treaty shall govern pending extradition proceedings except that Article 2 of this Treaty shall apply to those proceedings, and Article 14 shall also apply to those found extraditable under the prior Treaty.

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

Respectfully submitted,

GEORGE P. SHULTZ.

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY

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

Recognizing their close cooperation in the repression of crimes;

Desiring to make such [*8] cooperation even more effective;

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

Have agreed as follows:

ARTICLE I

Obligation to Extradite

The Contracting Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities of the Requesting Party have charged with or found guilty of an extraditable offense.

ARTICLE II

Extraditable Offenses 1. An offense, however denominated, shall be an extraditable offense only if it is punishable under the laws of both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty. When the request for extradition relates to a person who has been sentenced, extradition shall be granted only if the duration of the penalty still to be served amounts to at least six months.

2. An offense shall also be an extraditable offense if it consists of an attempt to commit, or participation in the commission of, an offense described in paragraph 1 of this Article. Any type of association to commit offenses described in paragraph 1 of this Article, as provided by the laws of Italy, and conspiracy to commit an offense described in paragraph [*9] 1 of this Article, as provided by the laws of the United States, shall also be extraditable offenses.

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

4. The provisions of this Article apply whether or not the offense is one for which United States federal law requires proof of an element, such as interstate transportation, the use of the facilities of interstate commerce, or the effects upon such commerce, since such an element is required for the sole purpose of establishing the jurisdiction of United States federal courts.

ARTICLE III

Jurisdiction

When an offense has been committed outside the territory of the Requesting Party, the Requested Party shall have the power to grant extradition if its laws provide for the punishment of such an offense or if the person sought is a national of the Requesting Party.

ARTICLE IV

Extradition of Nationals

A Requested Party shall not decline to extradite a person because such a person is a national [*10] of the Requested Party.

ARTICLE V

Political and Military Offenses

1. Extradition shall not be granted when the offense for which extradition is requested is a political offense, or if the person whose surrender is sought proves that the request for surrender has been made in order to try or punish him or her for a political offense.
2. For the purpose of the application of paragraph 1 of this Article, an offense with respect to which both Contracting Parties have the obligation to submit for prosecution or to grant extradition pursuant to a multilateral international agreement, or an offense against the life, physical integrity or liberty of a Head of State or Government or a member of their respective families, or any attempt to commit such an offense, will be presumed to have the predominant character of a common crime when its consequences were or could have been grave. In determining the gravity of the offense and its consequences, the fact that the offense endangered public safety, harmed persons unrelated to the political purpose of the offender, or was committed with ruthlessness shall, in particular, be taken into account.
3. Extradition shall not be granted for offenses [*11] under military law which are not offenses under ordinary criminal law.

ARTICLE VI

Non Bis in Idem

Extradition shall not be granted when the person sought has been convicted, acquitted or pardoned, or has served the sentence imposed, by the Requested Party for the same acts for which extradition is requested.

ARTICLE VII

Pending Proceedings for the Same Acts

Extradition may be refused if the person sought is being proceeded against by the Requested Party for the same acts for which extradition is requested.

ARTICLE VIII

Lapse of Time

Extradition shall not be granted when the prosecution, or the enforcement of the penalty, for the offense for which extradition has been requested has become barred by lapse of time under the laws of the Requesting Party.

ARTICLE IX

Capital Punishment

When the offense for which extradition is requested is punishable by death under the laws of the requesting Party and the laws of the requested Party do not provide for such punishment for that offense, extradition shall be refused unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty shall not be imposed, or, if imposed, shall [*12] not be executed.

ARTICLE X

Extradition Requests and Supporting Documents

1. Requests for extradition shall be made through the diplomatic channel.
2. All requests for extradition shall be accompanied by:
 - (a) documents, statements or other information which set forth the identity and probable location of the person sought, with, if available, physical description, photographs and fingerprints;
 - (b) a brief statement of the facts of the case, including the time and location of the offense;
 - (c) the texts of the laws describing the essential elements and the designation of the offense for which extradition is requested;
 - (d) the texts of the laws describing the punishment for the offense; and
 - (e) the texts of the laws describing the time limit on the prosecution or the execution of the punishment for the offense.
3. A request for extradition which relates to a person who has not yet been convicted shall also be accompanied by:
 - (a) a certified copy of the arrest warrant or any order having similar effect;
 - (b) a summary of the facts of the case, of the relevant evidence and of the conclusions reached, providing a reasonable basis to believe that the person sought committed the offense [*13] for which extradition is requested; in the case of requests from Italy such a summary shall be written by a magistrate, and in the case of requests from the United States it shall be

written by the prosecutor and shall include a copy of the charge; and

(c) documents establishing that the person sought is the person to whom the arrest warrant or equivalent order refers.

4. A request for extradition which relates to a person who has been convicted shall, in addition to those items set forth in paragraph 2 of this Article, be accompanied by:

(a) a copy of the judgment of conviction, or, in the case of the United States, if the person has been found guilty but not yet sentenced, a statement by a judicial officer to that effect;

(b) if the penalty has been pronounced, a copy of the sentence and a statement as to the duration of the penalty still to be served; and

(c) documents establishing that the person sought is the person convicted.

5. If the person sought has been convicted in absentia or in contumacy, all issues relating to this aspect of the request shall be decided by the Executive Authority of the United States or the competent authorities of Italy. In such cases, the Requesting [*14] Party shall submit such documents as are described in paragraphs 2, 3 and 4 of this Article and a statement regarding the procedures, if any, that would be available to the person sought if he or she were extradited.

6. The documents which accompany an extradition request shall be made available in English and Italian by the Requesting Party.

7. The documents which accompany an extradition request shall be admissible into evidence when:

(a) in the case of a request from the United States, they are certified by a judge, magistrate or other United States official and are sealed by the Secretary of State;

(b) in the case of a request from Italy, they are signed by a judge or other Italian judicial authority and are certified by the principal diplomatic or consular officer of the United States in Italy.

ARTICLE XI

Additional Documentation

1. If the Requested Party considers that the documentation furnished in support of a request for extradition is incomplete or otherwise does not conform to the requirements of this Treaty, that Party shall request the submission of necessary additional documentation. The Requested Party shall set a reasonable time limit for the submission of [*15] such documentation, and shall grant a reasonable extension of that time limit upon an application by the Requesting Party setting forth the reasons requiring the extension.

2. If the person sought is in custody and the additional documentation submitted is incomplete or otherwise does not conform to the requirements of this Treaty, or if such documentation is not received within the period specified by the Requested Party, that person may be discharged from custody. Such discharge shall not prejudice the re-arrest and the extradition of the person sought if a new request and the additional documentation are delivered at a later date.

ARTICLE XII

Provisional Arrest

1. In case of urgency, either Contracting Party may apply for the provisional arrests of any person charged or convicted of an extraditable offense. The application for provisional arrest shall be made either through the diplomatic channel or directly between the United States Department of Justice and the Italian Ministry of Grace and Justice, in which case the communication facilities of the International Criminal Police Organization (Interpol) may be used.

2. The application shall contain: a description of the person [*16] sought including, if available, the person's nationality; the probable location of that person; a brief statement of the facts of the case including, if possible, the time and location of the offense and the available evidence; a statement of the existence of a warrant of arrest, with the date it was issued and the name of the issuing court; a description of the type of offenses, a citation to the sections of law violated and the maximum penalty possible upon conviction, or a statement of the existence of a judgment of conviction against that person, with the date of conviction, the name of the sentencing court and the sentence imposed, if any; and a statement that a formal request for extradition of the person sought will follow.

3. On receipt of the application, the Requested Party shall take the appropriate steps to secure the arrest of the person sought. The Requesting Party shall be promptly notified of the result of its application.

4. Provisional arrest shall be terminated if, within a period of 45 days after the apprehension of the person sought, the Executive Authority of the Requested Party has not received a formal request for extradition and the supporting documents required [*17] by Article X.

5. The termination of provisional arrest pursuant to paragraph 4 of this Article shall not prejudice the re-arrest and extradition of the person sought if the extradition request and the supporting documents are delivered at a later date.

ARTICLE XIII

Decision and Surrender

1. The Requested Party shall promptly communicate to the Requesting Party through the

diplomatic channel its decision on the request for extradition.

2. The Requested Party shall provide reasons for any partial or complete rejection of the request for extradition and a copy of the court's decision, if any.

3. When an extradition request has been granted, the competent authorities of the Contracting Parties shall agree on the time and place of the surrender of the person sought. If, however, that person is not removed from the territory of the Requested Party within the agreed time, that person may be set at liberty, unless a new date for surrender has been agreed upon.

ARTICLE XIV

Deferred Surrender and Temporary Surrender

After a decision on a request for extradition has been rendered in the case of a person who is being proceeded against or is serving a sentence in the Requested Party for [*18] a different offense, the Requested Party shall have the authority to:

(a) defer the surrender of the person sought until the conclusion of the proceedings against that person or the full execution of any punishment that may be or may have been imposed; or

(b) temporarily surrender the person sought to the Requesting Party solely for the purpose of prosecution. A person so surrendered shall be kept in custody while in the Requesting Party and shall be returned to the Requested Party at the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Contracting Parties.

ARTICLE XV

Requests for Extradition Made by Several States

The Executive Authority of the Requested Party, upon receiving requests from the other Contracting Party and from one or more other States for the extradition of the same person, either for the same offense or for different offenses, shall determine to which State it will extradite that person. In making its decision, the Executive Authority shall consider all relevant factors, including:

(a) the place in which the offense was committed;

(b) the gravity of the respective offenses, where [*19] the requesting States are requesting extradition for different offenses;

(c) the possibility of re-extradition between the requesting States; and

(d) the order in which the requests were received.

ARTICLE XVI

Rule of Specialty and Re-Extradition

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

(a) the offense for which extradition has been granted or when the same facts for which extradition was granted constitute a differently denominated offense which is extraditable;

(b) an offense committed after the surrender of a person; or

(c) an offense for which the Executive Authority of the United States or the competent authorities of Italy consent to the person's detention, trial or punishment. For the purpose of this subparagraph, the Requested Party may require the submission of the documents called for in Article X.

2. A person extradited under this Treaty may not be extradited to a third State unless the surrendering Party consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial or punishment of an extradited person in accordance with the laws of the Requesting Party, or the [*20] extradition of that person to a third State, if:

(a) that person leaves the territory of the Requesting Party after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting Party within 30 days of the day on which that person is free to leave.

ARTICLE XVII

Simplified Extradition

If the person sought irrevocably agrees in writing to surrender to the Requesting Party after having been advised by a judge or competent magistrate of the right to formal proceedings and the protections afforded under this Treaty, the Requested Party may surrender the person without formal proceedings.

ARTICLE XVIII

Surrender of Articles, Instruments, Objects and Documents

1. All articles, instruments, objects of value, documents and other evidence relating to the offense may be seized and surrendered to the Requesting Party. Such property may be

surrendered even when extradition cannot be effected. The rights of third parties in such property shall be duly respected.

2. The Requested Party may condition the surrender of the property upon satisfactory assurance from the Requesting Party that the property will be returned to the Requested Party [*21] as soon as practicable, and may defer its surrender if it is needed as evidence in the Requested Party.

ARTICLE XIX

Transit

1. Either Contracting Party may authorize transit through its territory of a person surrendered to the other by a third State. The Contracting Party requesting transit shall provide the transit State, through the diplomatic channel, a request for transit which shall contain a description of the person and a brief statement of the facts of the case.

2. No authorization for transit shall be required when air transportation is used and no landing is scheduled in the territory of the other Contracting Party. If an unscheduled landing occurs in the territory of that Contracting Party, it shall detain the person being transited not less than 96 hours while awaiting a request for transit pursuant to paragraph 1 of this Article.

ARTICLE XX

Assistance and Representation

The United States Department of Justice shall advise, assist and represent the Republic of Italy in any proceedings in the United States arising out of a request for extradition made by the Republic of Italy.

The Italian Ministry of Grace and Justice, through all means permitted by its legal system, [*22] shall advise, assist and provide for the representation of the United States of America in any proceedings in Italy arising out of a request for extradition made by the United States of America.

ARTICLE XXI

Expenses

The Requesting Party shall pay the expenses related to the translation of documents and the transportation of the person sought from the city where confined to the Requesting Party. The Requested Party shall pay all other expenses related to the provisional arrest, extradition request and proceedings. Any expenses related to transit under Article XIX shall be borne by the Requesting Party.

The Requested Party shall make no pecuniary claim against the Requesting Party arising out

of the arrest, detention or surrender of persons sought under the terms of this Treaty.

ARTICLE XXII

Scope of Application

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

ARTICLE XXIII

Denunciation

Either Contracting Party may terminate this Treaty at any time by giving written notice to the other Contracting Party. Termination shall be effective six months after the date of receipt of such notice.

ARTICLE XXIV

Ratification [*23] and Entry into Force

1. This Treaty shall be subject to ratification. The instruments of ratification shall be exchanged at Washington as soon as possible.
2. This Treaty shall enter into force immediately upon the exchange of the instruments of ratification.
3. Upon the entry into force of this Treaty, the Treaty on Extradition between the United States of America and the Republic of Italy, signed at Rome on January 18, 1973, and the Supplementary Protocol, signed at Rome on November 9, 1982, shall cease to have effect; however, extradition proceedings pending in a Requested Party at the time this Treaty enters into force shall be subject to the prior Treaty, except that Article II of this Treaty should also be applicable to such proceedings. Article XIV of this Treaty shall also apply to persons found extraditable under the prior Treaty.

DONE at Rome, this thirteenth day of October, 1983 in duplicate in the English and Italian languages, both equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY

