INTERNATIONAL COOPERATION IN FIGHTING TRANSNATIONAL ORGANIZED CRIME: SPECIAL EMPHASIS ON MUTUAL LEGAL ASSISTANCE AND EXTRADITION

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I. INTRODUCTION

I should like to start my examination of the major features of international cooperation by sharing with you some information about my organization. The Office of International Affairs (OIA) in the Criminal Division of the United States Department of Justice was established twenty one years ago this week, and we specialize in processing requests to and from the United States for extradition and mutual legal assistance. We also participate with the State Department in the drafting of new extradition and mutual legal assistance treaties, the negotiation of international conventions, and engaging in general efforts to improve international law enforcement cooperation. The staff of OIA consists of nearly eighty men and women in our Washington, D.C. headquarters as well as attorneys and associated staff in six foreign countries. On any given day, we are in the process of handling about 6,000 requests to and from the U.S., for extradition and mutual assistance, and the number of cases grows every year, due in large part to the growth of transnational organized crime.

For purposes of our discussion today, I will use the phrase "transnational organized crime" to include offenses committed by organized bands or groups of criminal in which national borders are crossed in connection with the crime. Thus, it covers the most familiar operations of the traditional organized crime gang, or Mafias, including terrorist attacks, drug trafficking, money laundering, counterfeiting, financial fraud, alien smuggling, and trafficking in women and children. Offenses falling within this definition would include many of these crime are carried out daily by organized crime groups Russia, Asia, the Middle East, Mexico, Colombia, and Nigeria — and the United States. In addition, transnational organized crime includes crimes committed wholly within one country by an organized criminal group and the defendant flees to a foreign country to avoid prosecution or punishment. For example, in a recent case in Florida, the assassin for a drug trafficking ring, who committed several cold-blooded murders of several members of a rival drug ring. Although the killer committed all of his murders within the state of Florida, where his drug ring operated, he fled to England as soon as he was identified. After lengthy efforts, the man was finally extradited back to the U.S., pleaded guilty, and is serving a life sentence. This is an example of a local organized crime matter that acquired international connections and complications through the flight of the criminal.

We all know that the world is becoming smaller and more inter-related every day. Advances in telecommunications, transportation, and technology make it possible for people in every nation to feel more interconnected than at any time in history. The same breakthroughs in telecommunications (including the growth of the Internet and the development of

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advanced new systems of wireless and satellite-based communications) allow virtually every person on the planet to have access to anyone else. These advances that have so greatly facilitated trade, travel, and telecommunications have also benefited international criminal activity. In addition, the breakdown of the former Soviet Union has created a number of new nations that are still striving to develop truly effective law enforcement systems.

With this in mind, how significant is the problem of transnational organized crime? Let me offer some facts that illustrate the matter for you.

— All $48 billion worth of cocaine and heroin in the United States each year originates abroad, and is brought here by transnational organized crime groups.

— Two thirds of all counterfeit currency detected in the U.S. is actually created outside of the United States.

— About 200,000 of the automobiles stolen in the U.S. each year, worth over a billion dollars, are taken outside our borders for sale abroad.

— Theft of trade secrets from U.S. companies by their foreign business competitors resulted in losses to the U.S. economy estimated at $18 billion in 1997.

— The production and sale of counterfeit products and other forms of copyright, trademark, and patent infringement cost U.S. companies over $23 billion annually.

— Organized terrorist groups continue to maim and kill the innocent and unsuspecting. Americans seem to be a favorite target, and the recent, tragic bombing of our Embassies in Kenya and Tanzania, in which hundreds of innocent people lost their lives, show clearly that the work of these organized terrorist groups can be deadly.

In response to this growing threat from transnational organized crime, many nations have stepped up their efforts to confront and contain transnational organized crime. You have already heard from Mr. Nilsson about the response by the European Union and the Council of Europe to this problem, and Dr. Plachta will tell you more about the efforts of the United Nations to develop a global treaty in this area. The United States has supported all of these efforts.

I would like to take just a moment to mention the scope of the United States' internal response to the problem. President Clinton announced at the United Nations in 1995 that international organized crime groups pose not just a law enforcement problem, but a threat to our national security. He also issued Presidential Decision Directive 42, which directs government agencies to use all available legal means to attack international crime. The Directive also commands U.S. law enforcement, diplomatic, intelligence, and defense agencies to work together with other governments to identify and punish transnational criminnal, to eliminate sanctuaries for international criminals.

There have been a number of important changes within the U.S. Government, and even within my own agency, the Department of Justice, in recent years due to this heightened emphasis on strengthening our cooperative relationships with foreign law enforcement.

— Attorney General Janet Reno meets

foreign officials virtually every week to discuss ways to improve efforts to combat international crime. In just the last ten days, for instance, Attorney General Reno met with the Minister of Justice of Argentina and agreed to identify high-priority mutual legal assistance matters for expedited handling. She held similar meetings with the Minister of Justice of Indonesia and the Minister of Justice of Latvia, and, at her direction, other Justice Department officials met with high level officials from Mexico, Colombia, and other countries. She is deeply committed to this issue, and has made it a high priority within the Justice Department. Developing relationships with other countries traditionally was the job of the State Department, but in recent years the growth of transnational organized crime has made it essential that we in law enforcement work directly and cooperatively with foreign governments to build these relationships ourselves.

— The U.S. law enforcement agencies all have expanded their operations overseas. The FBI now has 32 overseas offices, and Justice Department law enforcement agencies have nearly 7,000 active investigations at their overseas offices.

— The Justice Department has increased the number of senior attorneys to U.S. embassies in order to provide advice on specific organized crime investigations and to assist in negotiating and implementing mutual legal assistance and extradition treaties and other international instruments. These attorneys, who report to me, work closely with both the U.S, law enforcement agency representatives at the embassy and with the lawyers in the Ministry of Justice or Attorney General's Office of the host country.

— The Justice Department's Criminal Division, which traditionally focused on crimes occurring inside the U.S., now spends a very significant portion of its time working on international criminal cases, such as international terrorism, drug trafficking, money laundering, export control, and computer crimes. OIA has rapidly become one of the largest components of the Criminal Division, and the negotiation and implementation of extradition and mutual legal assistance agreements has become our largest activity.

We know, however, that no single nation can successfully combat international organized crime alone. Therefore, in addition to negotiating bilateral treaties and agreements, Justice Department lawyers have been actively working with multilateral organizations to agree on procedures and instruments to combat transnational organized crime.

— We have been very active in the G8 (Canada, the United Kingdom, Italy, Japan, France, Germany, the United States, and Russia) which is chaired this year by Japan. The G8's Senior Expert Group on Transnational Organized Crime, also known as the Lyons Group, has developed 40 anti-crime recommendations, and is working to implement them globally. This group will meet in Tokyo next week, to continue its efforts.

— We have also been active in the Organization of American States (where we helped develop OAS

conventions against corruption and firearms trafficking), at the Organization for Economic Cooperation and Development (where we helped in negotiation of an OECD convention requiring states to punish the payment of bribes to foreign government officials in international business transactions), at the Council of Europe (where we are working on COE conventions on computer crime and on public corruption) and at the United Nations, where the UN Organized Crime Convention is being developed.

These negotiation initiatives are very important, and show us what the future may hold for transnational law enforcement. Let me mention, however, two or three recent cases that illustrate how the Justice Department's efforts involve practical measures in actual criminal investigations as well as global negotiations.

II. BOMBINGS IN AFRICA

In 1998, truck bombs destroyed the U.S. Embassies in Nairobi, Kenya, Dar Es Salaam, Tanzania, and in the process dozens of Americans and hundreds of Kenyan and Tanzanian citizens were killed or injured. Within hours of the bombings, the first of nearly 300 FBI agents flew to Africa to begin intensive investigation, alongside their Kenyan and Tanzanian counterparts. Forensic examinations and interviews of suspects were conducted almost around the clock. Federal prosecutors from New York and Washington were on the ground within days to help direct the U.S. investigators in Nairobi and Dar Es Salaam. Today, hundreds of FBI agents continue to work on the investigation, both in the U.S. and abroad, and their efforts have been helped tremendously by leads from the intelligence community. Recently, formal criminal charges were filed in the U.S. courts against several members of the Usama bin Laden criminal organization responsible for the bombings, and one suspect is now in custody in the United Kingdom awaiting extradition to the U.S. Many of you know that investigators recently discovered links between the organization and efforts to commit additional acts of terror, this time on U.S. soil. In December, 1999, the FBI arrested a member of this organization who had smuggled explosives into the U.S. from Canada. U.S. and Canadian investigators, working closely together under our mutual legal assistance treaty with that country, uncovered additional information about the organization, and at our request Canada has arrested another suspect, who is being held for extradition.

III. DRUG TRAFFICKING

In late 1999, U.S. Drug Enforcement Administration agents, working closely with police in Colombia and Mexico, completed an extensive investigation of cocaine and heroin trafficking cartels. As a result, the three Governments simultaneously arrested dozens of suspects in the U.S., Mexico, and Colombia, and seized drug proceeds and properties worth millions of dollars. As a result of this operation, about thirty of Colombia's most powerful drug traffickers are currently in jail awaiting extradition to the U.S. Using the applicable mutual legal assistance treaties and agreements, the three countries will share with each other the evidence needed to convict the offenders and to prove in court that the assets seized are subject to confiscation.

In these two cases, you can see both the current nature of the threat posed by international crime, and the corresponding globalization of the law enforcement

response. None of these investigations could have been successful had not the police and investigators in the affected countries worked together.

IV. MECHANISM FOR INTERNATIONAL COOPERATION

I would now like to describe the key features of modern mechanisms for international law enforcement cooperation.

A. Police to Police Assistance

Most international cooperation is conducted by direct liaison between police in the requesting and requested state. This is sometimes referred to as "cop to cop" cooperation, and is usually predicated not on a specific treaty or international agreement, but rather on the basis of good will, mutual respect, and shared interest in combating crime. A good example of successful "cop to cop" cooperation is the investigation of the Kenyan and Tanzanian embassy bombings that I mentioned earlier.

It is largely to facilitate this kind of cooperation that the United States has stationed law enforcement agents at its embassies in other countries, positioned to conduct ongoing and close liaison with their counterparts in those countries. The FBI has agents, called "legal attaches" or "legats," in 32 countries. The Drug Enforcement Administration and the Customs Service have their agents in an even larger number of countries. Similarly, a number of foreign countries have stationed their law enforcement agents in the United States for the same purpose. For example, the National Police Agency of Japan has agents posted in Washington who have been quite effective in advancing the interests of Japanese police in criminal investigations.

A major vehicle for advancing "cop to cop" cooperation is the International Criminal Police Organization, or INTERPOL. This organization is comprised of "National Central Bureaus" in each of its members state's police apparatus, and it serves as a conduit for the rapid and secure transmission of international criminal investigative information.

When it works, "cop to cop" cooperation can be fast, efficient, and refreshingly free of formalities. However, there are many instances in which a request for assistance that relies solely on the generosity and good will of the requested state's police simply goes unanswered.

B. Letters Rogatory

While police to police liaison can be extremely useful, there are many instances in which the police of the requested state can do little without obtaining a court order or other compulsory process. In these instances, the police will need the assistance of a judge.

A letter rogatory is a request from a judge in one country to a judge in another in which the former asks the latter to use the requested state's judicial power to assist the requesting judge. While the letter rogatory process was developed to enable judges to aid judges, a judge in the requesting state may issue letters rogatory on behalf of the police or prosecutors in that country. Virtually every country has legislation for execution of letters rogatory, or permits its judges to execute them as a matter of comity. In the United States, the applicable legislation is Title 28, United States Code, Section 1782, a copy of which is attached to this paper.

Once the requesting state's judge signs the letter rogatory, it is transmitted via diplomatic channels, a process that can take many weeks or months. Upon arrival,

it first is reviewed by the requested state's Ministry of Foreign Affairs. This process which can add a degree of uncertainty to the process, because the diplomatic corps is generally considered free to refuse to act on a letter rogatory if it feels that the assistance sought would be inconsistent with the requested state's public policy. If the request is accepted by the Ministry of Foreign Affairs, it usually is then forwarded to the Ministry of Justice or Attorney General's chambers in the requested state, which transmits the request to a judge for execution. The judge generally is under no obligation to execute the request, and if he or she does execute the request it will be done in strict compliance with the law of the requested state. This can add another level of uncertainty to the process, because the law of the requested state may be very different from the law of the requesting state with respect to such matters as the authentication of evidence, the manner in which evidence is taken or preserved, the privileges that witnesses may raise to block execution of the request. In some instances, the law of the requested state may contain restrictions on cooperation that seriously impede efforts to execute the request. For example, some countries do not execute letters rogatory prior to the filing of formal criminal charges in the requesting state — a serious limitation, since sometimes the requesting state needs the evidence sought to determine whether charges should be filed. Another example: in some countries, the bank secrecy laws do not empower a judge to obtain bank records sought in a letter rogatory. Once the request has been executed (or the judge has decided not to execute it), the results are usually sent back to the requesting judge via diplomatic channels.

The letter rogatory process has occasionally produced spectacularly successful results for us. In some cases in which letters rogatory were issued, the requested judge successfully executed it immediately, and bank records or other evidence sought in the request were available in as little as one week. One successful example is the case many years ago of Roger FRY and Sicilia FALCONE, two men who operated a marijuana and cocaine smuggling ring so huge that it garnered $60 million in two years. Close cooperation between narcotics investigators in the U.S. and Mexico resulted in FALCONE'S arrest in Mexico and FRY's simultaneous arrest in Detroit, Michigan. Records seized during Falcone's arrest showed that he and FRY had several bank accounts in Switzerland, so U.S. sent a letter rogatory to Switzerland for records of the accounts. The Swiss provided the records, which proved the movement of hundreds of thousands of dollars in drug money and the Swiss to seize the money. FRY learned, on the morning that his trial was to start, that U.S. prosecutors had obtained copies of his Swiss bank records, and he immediately agreed to plead guilty to all charges.

More often, however, the letter process is not very successful, and the prosecutor or police officer who generates a letter rogatory may wait many frustrating months, or years, only to find that the requested evidence is not produced. We have many cases in which evidence sought by letters rogatory was not supplied until long after the trial has been completed.

There have been some recent efforts to make the letters rogatory system work more efficiently and effectively. The Council of Europe has negotiated a treaty that updates its 1957 convention on the mutual execution of letters rogatory. The European Union has begun discussions on establishing a "judicial network" which, it is hoped, will expedite execution of letters rogatory between European nations

covered by the network. We are monitoring these efforts closely, but it does not appear that these efforts have yet borne fruit.

C. Mutual Legal Assistance Treaties

An alternative to letters rogatory is provided by the development of mutual legal assistance treaties (MLATs). The United States has thirty-one (31) MLATs in force, with the following countries: Switzerland, Turkey, Italy, the Netherlands, Canada, Mexico, the Bahamas, the United Kingdom (regarding the Cayman Islands and other Caribbean dependent territories), Thailand, Morocco, Spain, Argentina, Jamaica, Uruguay, Panama, the Philippines, the United Kingdom, Hungary, Korea, Austria, Israel, Antigua, Lithuania, St. Vincent and the Grenadines, Grenada, Latvia, Poland, Australia, Trinidad, Belgium, and most recently, the Hong Kong Special Administrative Region. We have signed MLATs with another twenty-three (23) countries, and these treaties will enter into force in the next few months. These fifty-four treaties cover most European countries and many of the world's the major "bank secrecy" jurisdictions. Of course, many other countries have begun active campaigns to negotiate MLATs, too, notably the Philippines, Korea, Canada, Australia, and the United Kingdom. The rapidly expanding network of bilateral MLATs will soon rival the network of extradition treaties.

The United States has made the negotiation of MLATs in Asia a particular high priority, in part to maximize our ability to address transnational organized crime problems, such as the Chinese Triads. For that reason, we have MLATs in force with Thailand, the Philippines, the Republic of Korea, Australia, and the Hong Kong Special Administration Region. The United States is currently in the process of negotiating an MLAT with Japan — negotiations that were initiated in large part through the wisdom and hard work of UNAFEI Director Kitada.

Each MLAT places an unambiguous obligation on each party to provide assistance in criminal investigations in the other party. MLATs entitle the requesting state to assistance in:

(1) acquiring bank records and other financial information;
(2) questioning witnesses and taking statements or testimony;
(3) obtaining copies of government records, including police reports;
(4) serving documents; transferring persons in custody for purposes of cooperation;
(5) conducting searches and seizures; and
(6) freezing and repatriating stolen property or proceeds of crime.

Each MLAT also permits any other form of assistance not prohibited under the law of the requested state, and we successfully used the MLATs to handle more sophisticated and difficult requests. For example, we have made or received requests under MLATs to take the testimony of witnesses via real-time satellite videolink; to search for and seize information from computer hard drives, or Internet Service Providers; to conduct undercover operations, or conduct wiretaps, where permitted by law; to seize and repatriate stolen artwork or archeological treasures worth millions of dollars; or to place threatened persons in our witness protection programmes.

While some MLATs differ a bit from others, most of them have five key components that make the processing of MLAT requests easier and more predictable than other mechanisms for cooperation:

1. Scope - Each MLAT specifies the scope of the obligation to provide assistance. All require that cooperation must be provided at the earliest stage of the investigation, prior to the filing of formal charges, thus eliminating one problem with some letters rogatory.

2. Bases for Denial - Each MLAT specifies the grounds on which assistance can be denied. MLATs typically allow denial of requests that appear to involve a political offenses or a military offense not recognized under the ordinary criminal law, or if the request would violate the constitution of the requested state. All MLATs permit denial of requests that would violate the "essential interests" of the requested state interests such as national security or basic public policy. By specifying the grounds on which requests can be denied, the MLATs bring predictability to the international cooperation process.

It should be noted that some of our earliest MLATs (with Switzerland and the Netherlands) contained a list of the crimes for which assistance could be granted, and permitted denial of the request if the case involved a crime not on the list. We quickly learned that this list approach was not helpful, and impeded cooperation in major cases in which the laws of the two countries were different but there was no "essential interest" served by refusal to grant the aid. Therefore, subsequent MLATs permitted assistance to be granted for any crime for which there is "dual criminality," i.e., that it is an offense in both requesting and requested state. We soon concluded that even that is too restrictive a rule for mutual legal assistance, particular because in the early stages of an investigation it is difficult to predict what crime ultimately will be charged. Accordingly, the majority of our MLATs do not require dual criminality unless the request is for a search and seizure or for the confiscation of assets.

3. Use limitations - All of the MLATs contain a very clear obligation not to use information or evidence supplied under the MLAT for any case or investigation other than that for which the information or evidence was requested. This kind of provision is similar to the rule of specialty in extradition matters, and helps assure the requested state that the information provided will be used only for proper purposes.

4. Central Authority - One key innovation of the MLATs is that they oblige each party to name a "Central Authority" i.e., an agency or person designated to see to the prompt execution requests from the other party. In virtually every MLAT, the Central Authority is the Ministry of Justice or the Attorney General of each state.

A good Central Authority cannot be merely a "mailbox" through which requests are transmitted. On the contrary, the Central Authority is expected to take an active role in insuring the each request is executed. Our practical experience has been that a good Central Authority is a key part of to the success or failure of an MLAT.

5. Asset Forfeiture - The most successful MLATs all make provision for cooperation in cases in which unlawfully obtained assets are located

in the requested state. Many of these MLATs also provide for sharing the confiscated assets between the parties to the treaty. The United States has used the MLATs to recover well over $300 million in drug proceeds and other illegally acquired funds. I should point out that we do not keep all of this money. Instead, our practice is to share confiscated funds with our MLAT partners who assisted us in obtaining the evidence needed to prosecute the case.

All of our most recent MLATs contain these five ingredients, and these elements, among other, help make the MLAT process an especially effective mechanism for transnational cooperation. In the twenty years since our first MLAT, with Switzerland, entered into force, the United States had made and received several thousand requests under MLATs from various countries. We in OIA have made and executed these requests at the same time that we processed hundreds of requests for evidence by letters rogatory and other processes, so we have had a good opportunity to see and compare the operation of the various processes. There is no doubt in my mind that MLATs provide a more efficient and more reliable basis for international cooperation in evidence-gathering than many of the other mechanisms available. It is of course possible that the United Nations Transnational Organized Crime Convention currently being negotiated in Vienna will provide an even more efficient vehicle for managing international cooperation. Only time will tell us whether that is true or not.

V. INTERNATIONAL EXTRADITION

I would like to say a word or two about the role of international extradition in the battle against transnational organized crime.

The applicable United States legislation on international extradition is found at Title 18, United States Code, Section 3181-3196. These statutes are attached to this article.

Our laws require that there be an extradition treaty in force before extradition can take place. We have extradition treaties with about one hundred and eleven (111) countries. In the past few years, we have signed new treaties with about forty (40) countries in Asia and elsewhere, including Australia, the Hong Kong Special Administrative Region, India, Korea, Malaysia, the Philippines, and Sri Lanka. We also have treaties in force with Japan, Thailand, and other important Asian nations.

There are three issues that typically arise regarding these extradition treaties:

1. Extraditable offenses: Our older extradition treaties each contain a list of the crimes for which extradition can be sought or granted. Newer treaties define extraditable offenses as any crime that is punishable in both states by more than one year's imprisonment. During treaty negotiation, we sought and received assurances that the new treaty will permit extradition for organized crime related crimes.

2. Evidence Needed: Common law countries, like the United Kingdom and Canada, traditionally refused to extradite unless the request was accompanied by "such evidence as would justify committal for trial in the requested state." The requesting state must show sufficient evidence to establish a "prima facie case" against the offender, i.e., enough evidence to persuade a judge in the requested state that the offender could have been convicted in that state. Civil law countries, such as France and Germany, usually did not deem

it necessary or proper to review the weight of the evidence against the offender, and are satisfied that a properly certified warrant for arrest is outstanding. Civil law states often had difficulty meeting the "prima facie case" standard, and criticized the common law states for this rule. Recently, some common law countries such as the U.K. have amended their law to eliminate the prima facie case rule and adopt the civil law approach, at least in dealings with European Union countries. The U.S., however, is one common law country that never followed the "prima facie case rule" in the first place. Our extradition jurisprudence requires only "probable cause," or just enough evidence to issue an arrest warrant. This is a very low standard, equivalent to what is needed to issue a search warrant. Most of our newest extradition treaties use this probable cause standard.

3. Extradition of nationals: One of the most troubling issues in modern extradition practice is the question of the extent to which states extradite their own citizens. Common law countries traditionally draw no distinction between their nationals and others for purposes of extradition. Many civil law countries, however, either bar themselves from extraditing their citizens altogether, or permit such extradition only in exceptional cases. Nations that refuse to extradite their citizens become safe havens for their citizens who commit crimes in other countries. Sometimes, nations that refuse to extradite their citizens offer to prosecute these offenders in lieu of extradition, but such prosecutions have proven to be extremely difficult as a practical matter, extremely expensive. These prosecutions also tend to impose heavy, unfair burdens on the victims of the crime, who are compelled to travel great distances at considerable expense and inconvenience in order to see justice done. The U.S. feels strongly that criminals should never escape punishment solely because of nationality, and that generally offenders should be tried in the community most affected by the crime.

We are gratified to see many civil law countries coming to the same conclusion. In 1996, Mexico extradited one its citizens to the U.S. for the first time in history, and in 1999, Colombia resumed extraditing its nationals to us after a hiatus of nearly a decade. Bolivia, Argentina, Uruguay all signed extradition treaties with the U.S. that require extradition of nationals to a greater or lesser degree. Mandatory extradition of nationals is provided for in most new U.S. extradition treaties, and we are currently negotiating several treaties with European countries that will contain such provisions.

VI. CONCLUSION

In conclusion, please allow me to point out that the global battle to confront and destroy transnational organized crime is a contest that demands the best of all of us, as participants in the criminal justice system. The stakes are enormous. President Clinton has said that "[International criminals] jeopardize the global trend toward peace and freedom, undermine the fragile new democracies, sap the strength from developing countries, [and] threaten our efforts to build a safer, more prosperous world." For these reasons, it is important that we make the most of opportunities like this conference, to learn all we can about the tools available for international cooperation, and take these lessons with us to our homes for use in building the brighter future we and our families deserve.

§1782. Assistance to foreign and international tribunals and to litigants before such tribunals

(a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding in a foreign or international tribunal before any person and in any manner acceptable to him.

(June 25, 1948, c. 646, 62 Stat. 949; May 24, 1949, c. 139, § 93, 68 Stat. 103; Oct. 3, 1964, Pub.L. 88-619, § 9(a), 78 Stat. 997; Feb. 10, 1996, Pub.L. 104-106, Div. A, Title XIII, § 1342(b), 110 Stat. 486.)

§ 3181. Scope and limitation of chapter

(a) The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.

(b) The provisions of this chapter shall be construed to permit, in the exercise of comity, the surrender of persons, other than citizens, nationals, or permanent residents of the United States, who have committed crimes of violence against nationals of the United States in foreign countries without regard to the existence of any treaty of extradition with such foreign government if the Attorney General certifies, in writing, that —

(1) evidence has been presented by the foreign government that indicates that had the offenses been committed in the United States, they would constitute crimes of violence as defined under section 16 of this title; and

(2) the offenses charged are not of a political nature.

(c) As used in this section, the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(June 25, 1948, c. 645, 62 Stat. 822; Apr. 24, 1996, Pub.L. 104-132, Title IV, §443(a), 110 Stat. 1280.)

§ 3182. Fugitives from State or Territory to State, District, or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District, or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District, or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

(June 25, 1948, c. 645, 62 Stat. 822; Oct. 11, 1996, Pub.L. 104-294, Title VI, §601(f)(9), 110 Stat. 3500.)

§ 3183. Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States

Whenever the executive authority of any State, Territory, District, or possession of the United States or the Panama Canal Zone, demands any American citizen or national as a fugitive from justice who has fled to a country in which the United Stated exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

(June 25, 1948, c. 645, 62 Stat. 822.)

§ 3184. Fugitives from foreign country to United States

Whenever there is a treaty or convention for extradition between the United States and any foreign government, or in cases arising under section 3181(b), any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, or provided for under section 3181(b), issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such warrant may be issued by a judge or magistrate of the United States District Court for the District of Columbia if the whereabouts within the

United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, or under section 3181(b), he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

(June 25, 1948, c. 645, 62 Stat. 822; Oct. 17, 1968, Pub.L. 90-578, Title III, §301(a)(3), 82 Stat. 1115; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7087, 102 Stat. 4409; Nov. 29, 1990, Pub.L. 101-647, Title XVI, § 1605, 104 Stat. 4843; Apr. 24, 1996, Pub.L. 104-132, Title IV, § 443(b), 110 Stat. 1281.)

§ 3185. Fugitives from country under control of United States into the United States

Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detection by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

(1) Murder d assault with intent to commit murder;

(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money;

(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same;

(4) Forgery or altering and uttering what is forged or altered;

(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries;

(6) Larceny or embezzlement of an amount not less than $100 in value;

(7) Robbery;

(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein;

(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein;

(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein;

(11) Perjury or the subornation of perjury;

(12) A felony under chapter 109A of this title;

(13) Arson;

(14) Piracy by the law of nations;

(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government;

(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

This chapter, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

No return or surrender shall be made of any person charge with the commission of any offense of a political nature.

If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.

(June 25, 1948, c. 645, 62 Stat. 823; May 24, 1949, C. 139, § 49, 63 Stat. 96; Nov. 10, 1986, Pub.L. 99-646, § 87(c)(6), 100 Stat. 3623; Nov. 14, 1986, Pub.L. 99-654, § 3(a)(6), 100 Stat. 3663.)

§ 3186. Secretary of State to surrender fugitive

The Secretary of state may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized agent of such foreign government, to be tried for the offense of which charged.

Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

A person so accused who escapes may be retaken in the same manner as any person accused of any offense.

(June 25, 1948, c. 645, 62 Stat. 824.)

§ 3187. Provisional arrest and detention within extraterritorial jurisdiction

The Provisional arrest and detention of a fugitive, under sections 3042 and 3183 of this title, in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

No person shall be held in custody under telegraphic request by virtue of this section for more than ninety days.

(June 25, 1948, c.645, 62 Stat. 824.)

§ 3188. Time of commitment pending extradition

Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out, of the United States, any judge of the United States, or of any State, upon application made to him

by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

(June 25, 1948, C. 645, 62 Stat. 824)

§ 3189. Place and character of hearing

Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public

(June 25, 1948, c. 645, 62 Stat. 824.)

§ 3190. Evidence on hearing

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

(June 25, 1948, c. 645, 62 Stat. 824.)

§ 3191. Witnesses for indigent fugitives

On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate hearing the matter may order that such witnesses be subpenaed; and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.

(June 25, 1948, c. 645, 62 Stat. 825; Oct. 17, 1968,Pub.L. 90-578, Title III, § 301(a)(3), 82 Stat. 1115.)

§ 3192. Protection of accused

Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia there of, as may be necessary for the safe-keeping and protection of the accused.

(June 25, 1948, c. 645, 62 Stat. 825.)

§ 3193. Receiving agent's authority over offenders

A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

(June 25, 1948, c. 645, 62 Stat. 825.)

§ 3194. Transportation of fugitive by receiving agent

Any agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State or Territory from which he has fled.

(June 25, 1948, c. 645, 62 Stat 825.)

§ 3195. Payment of fees and costs

All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate, shall be certified by the judge or magistrate before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.

(June 25, 1948, c. 645, 62 Stat. 825; Oct. 17, 1968, Pub.L. 90-578, Title III, § 301(a)(3), 82 Stat. 1115.)

§ 3196. Extradition of United States citizens

If the applicable treaty or convention does not obligate the Unites States to extradite its citizens to a foreign country, the Secretary of State may, nevertheless, order the surrender to that country of a United States citizen whose extradition has been requested by that country if the other requirements of that treaty or convention are met.

(Added Pub.L. 101-623, §11(a), Nov. 21, 1990, 104 Stat. 3356.)