

DEPARTMENT OF STATE
WASHINGTON

August 10, 1974

The President:

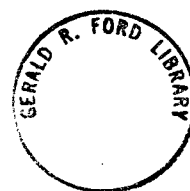
I have the honor to submit to you the Treaty on Extradition between the United States of America and Australia signed at Washington on May 14, 1974. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty follows generally the form and content of extradition treaties recently concluded by this government. It provides for the extradition of fugitives who have been charged with, or convicted of, any of the twenty-nine offenses specified in Article II. In addition, Article II(2) provides that extradition shall also be granted for any other offenses which are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States. This provision adds flexibility to the Treaty and was included in the Treaty to make it compatible with Australian domestic legislation. The Treaty also contains a provision in Article II which enables extradition to be granted in the case of a conspiracy to commit any of the specified or incorporated offenses.

Article III defines the territorial application of the Treaty. In addition to the normal content of that concept, territorial jurisdiction includes registered aircraft in flight. Flight is defined in accordance with the Convention on Offenses and Certain Other Acts

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The White House.



Committed on Board Aircraft, done at Tokyo on September 14, 1963 (Tokyo Convention). The major purpose of this provision is to extend jurisdiction to acts of air piracy whether or not they occur over United States territory.

Article IV provides for extradition for offenses committed outside the territory of either party if the offense so committed would be punishable under the laws of both parties. It is anticipated that this provision would be most useful in the area of narcotic and counterfeiting violations. A similar provision is contained in the Treaty on Extradition between the United States and Denmark.

Article V deals with the extradition of one's own nationals. This article provides that neither party is bound to deliver up its own nationals but that discretion to do so resides in the executive authority of each party. It is also provided in this Article that, for the purposes of this Article, Australian protected persons shall be deemed to be nationals of Australia.

Article VII specifies the conditions under which extradition shall not be granted and Article VIII provides that if extradition is requested for an offense which, under the law of the requesting State, is subject to a penalty of death, the law of the requested State not providing for such a penalty in a similar case, the requested State may recommend to the requesting State that any punishment imposed for such an offense be a less severe punishment.

Article XIV adds to the flexibility of this Treaty by providing that a person extradited under this Treaty



may be detained, tried or punished in the territory of the requesting State for any offense mentioned in Article II for which the person could be convicted upon proof of the facts upon which the request for extradition was based. Thus, in certain circumstances, it would be possible to obtain a manslaughter conviction against a person who was extradited as the result of a warrant specifying murder as the extraditable offense while without this provision it would not be possible to obtain conviction on such lesser included offenses.

Article XVIII provides that each party shall assist the other in the presentation of extradition cases before the respective judges and magistrates. This requirement has been included in the more recent extradition treaties which the United States has negotiated. It is normally included now because the costs of presentation are a hindrance to the making of extradition requests. This Article differs from 18 U.S.C. 3195 which requires that costs or expenses incurred in extradition proceedings be paid by the requesting authority.

Upon entry into force, the present Treaty will terminate and replace, as between the United States and Australia, the Treaty on Extradition between the United States and Great Britain of December 22, 1931, as made applicable to Australia.

The Department of Justice favors ratification of this new Treaty. It is hoped that the Senate will consider and approve the Treaty at an early date.

Respectfully submitted,



Enclosure:

Treaty on Extradition.

