EXTRADITION TREATY BETWEEN INDIA AND SWITZERLAND

G.S.R. 462 (E), dated 9th October, 1996.—Whereas the Extradition Treaty between the United Kingdom of Great Britain and Ireland, and the Swiss Federal Council was concluded and signed at Berne on the 26th November, 1880, as amended by the Convention dated the 29th June, 1904, are considered to be in force between India and Switzerland:

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of Sec. 3 of the Extradition Act, 1962 (34 of 1962), had directed by an order number G.S.R. 56, dated the 5th January, 1963 that the provisions of the said Act, other than Chapter III shall apply to Switzerland;

Now, therefore, in exercise of the powers conferred by sub-section (3) of Sec. 3 of the said Act, the Central Government hereby sets out the aforesaid Treaty as under:

"ARTICLE I

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and the Swiss Federal Council engages to deliver up, under the like circumstances and conditions, all persons, excepting Swiss citizens, who, having being charged with, or convicted by the Tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Art. II, committed in the territory of the one party, shall be found within the territory of the other.

In the event of the Federal Council being unable, by reason of his Swiss nationality, to grant the extradition of an individual, who, after having committed in the United Kingdom one of the crimes or offences enumerated in Art. II, should have taken refuge in Switzerland, the Federal Council engages to give legal effect to and prosecute the charge against him according to the laws of the Canton of his origin; and the Government of the United Kingdom engages to communicate to the Federal Council all documents, depositions, and proofs relating to the case, and to cause the commissions of examination directed by the Swiss Judge, and transmitted through the proper Diplomatic channel, to be executed gratuitously.

ARTICLE II

The crimes for which the extradition is to be granted are the following:—

1. Murder (including infanticide) and attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered; comprehending the crimes designated in the Penal Codes of both States as counterfeiting or falsification of paper money, bank notes, or other securities, forgery, or falsification.
5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes against bankruptcy law.
8. Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member of public officer of any Company made criminal.
9. Rape.
10. Abduction of minors.
11. Child stealing or kidnapping.
12. Burglary, or house breaking, with criminal intent.
13. Arson.
15. Threats by letter or otherwise with intent to extort.
16. Perjury or subornation or perjury.
17. Malicious injury to property, if the offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

"ARTICLE III

A fugitive criminal may be apprehended in either country under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction; provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London.

Requisitions for provisional arrest may be addressed by post or by telegraph, provided they purport to be sent by some judicial or other competent authority. Such requisitions must contain a description in general terms of the crime or offence, and a statement that a warrant has been granted for the arrest of the criminal, and that his extradition will be demanded.

He shall in accordance with this Article be discharged, as well in the United Kingdom as in Switzerland, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of the country claiming his surrender in accordance with the stipulations of this Treaty.

"ARTICLE IV

The requisition for extradition must always be made by the way of diplomacy, and to wit, in Switzerland by the British Minister to the President of Confederation, and in the United Kingdom fo the Secretary of State for Foreign Affairs by the Swiss Counsel-General in London, who, for the
purposes of this Treaty, is hereby recognised by Her Majesty as a Diplomatic Representative of Switzerland.

ARTICLE V

In Switzerland the manner of proceeding shall be as follows —

The requisition for the extradition of an accused person must be accompanied by an authentic copy of the warrant of arrest, issued by a competent official or Magistrate, clearly setting forth the crime or offence of which he is accused, together with a properly legalized information setting forth the facts and evidence upon which the warrant was granted.

If the requisition relates to a person already convicted, it must be accompanied by an authentic copy of the sentence/conviction, setting forth the crime or offence of which he has been convicted.

The requisition must be accompanied by a description of the person claimed, and, if it be possible, by other information and particulars which may serve to identify him.

After having examined these documents, the Swiss Federal Council shall communicate them to the Cantonal Government in whose territory the person charged is found, in order that he may be examined by a judicial or police officer on the subject of their contents.

The Cantonal Government will transmit the process-verbal of the examination, together with all the documents, accompanied, if there be one, by a more detailed report to the Federal Council, who, after having examined them, and there be no opposition on either side, will grant the extradition, and will communicate its decision both to the British Legation and to the Cantonal Government in question, to the latter in order that it may send the person to be surrendered to such place on the frontier, and deliver him to such foreign police authority as the British Legation may name in each special case.

Should the documents furnished with a view of proving the facts, or a establishing the identity of the accused, or the particulars collected by the Swiss authorities appear insufficient, notice shall be immediately given to the Diplomatic Representative of Great Britain, in order that he may furnish further evidence if such further evidence be not furnished within fifteen days the person arrested shall be set at liberty.

In the event of the application of this Treaty being contested, the Swiss Federal Council will transmit the documents ("dossier") to the Swiss Federal Tribunal, whose duty it is to decide definitely the question whether extradition should be granted or refused.

The Federal Council will communicate the judgment of the Federal Tribunal to the British Legation. If this judgment grants the extradition the Federal Council will order its execution, as in the case when the Federal Council itself grants the extradition. If, on the other hand, the Federal Tribunal refuses the extradition, the Federal Council will immediately order the person accused to be set at liberty.

ARTICLE VI

In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows:

(a) In the case of a person accused.—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary for Foreign Affairs by the Diplomatic Representative of the

Switzerland in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant, if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issue the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal of the prisoner, if the crime of which he is accused has been him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be sent to such seaport-town as shall, in each, special case, be selected for his delivery to the Swiss Government.

(b) In the case of a person convicted.—The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Diplomatic Representative of Switzerland in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced shall consist of the penal sentence passed against the convicted person by the competent Court of the State claiming his extradition.

(c) Person convicted by judgment in default or arrest de contumace shall be, in the matter of extradition, considered as persons accused, and may, as such, be surrendered.

(d) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person, shall have the right to apply for a writ of habeas corpus; if he should so apply, his surrender must be deferred...
ARTICLE VII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the depositions or statements of witnesses, either sworn or solemnly declared to be true, taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, provided such documents purport to be signed or copies thereof, provided such documents purport to be signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the official seal of a British Secretary of State, or of the Chancellor of the Swiss Confederation being affixed thereto.

The personal attendance of witnesses can be required only to establish the identity of the person who is being proceeded against with that of the person arrested.

ARTICLE VIII

If proof sufficient to warrant the extradition be not furnished within two months from the day of the apprehension, the person arrested shall be discharged from custody.

ARTICLE IX

In cases where it may be necessary, the Swiss Government shall be represented at the English Courts by the Law Officer of the Crown, and the English Government in the Swiss Courts by the competent Swiss authorities.

The respective Government will give the necessary assistance within their territories to the Representatives of the other State who claim their intervention for the custody and security of the persons subject to extradition.

No claim for the repayment of expenses for the assistance mentioned in this Article shall be made by either of the Contracting parties.

ARTICLE X

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted.

ARTICLE XI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proved that the requisition for his surrender has, in fact, been made with a view to try and punish him for an offence of political character.

ARTICLE XII

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired according to the laws of the State applied to.
through the recognized Consular Agent of another State charged with the Swiss interests in the Colony or possession in question.

The Governor or supreme authority above-mentioned shall decide with regard to such requisitions as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of such individuals as shall have committed in Switzerland any of the crimes hereinbefore mentioned, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

ARTICLE XIX

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall have come into force, the Treaty concluded between the High Contracting Parties on the 31st of March, 1874, shall be considered as cancelled, except as to any proceedings that may have been already taken or commenced in virtue thereof.

It may be terminated by either of the High Contracting Parties, on giving to the other party six months' notice of its intention to terminate the same, but no such notice shall exceed the period of one year.

The Treaty shall be ratified, and the ratifications shall be exchanged at Berne, as soon as possible.

In witness whereof the Undersigned have signed the present Convention, and have affixed their seals thereto.

Done at Berne, in duplicate, the 29th day of June, 1904.

NOTIFICATIONS

G.S.R. 433 (E).—In exercise of the powers conferred by Cl. (b) of sub-section (1) of Sec. 19 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Papua New Guinea with effect from 1st day of September, 1978.

G.S.R. 434 (E).—In exercise of the powers conferred by sub-section (1) of Sec. 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Sri Lanka with effect from 1st day of September, 1978.

G.S.R. 39 (E).—In exercise of the powers conferred by Cl. (b) of sub-section (1) of Sec. 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to Fiji with effect from 1st day of February, 1979.

G.S.R. 415 (E), dated the 22nd April, 1987.—In exercise of the powers conferred by item 16 of the Sch. II to the Extradition Act, 1962 (34 of 1962), the Central Government hereby specifies the offences relating to—

(a) public servant voluntarily allowing prisoners of State or war to escape; or
(b) intentional omission to apprehend on the part of public servant bound to apprehend;

(c) intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed;

(d) escape from confinement or custody negligently suffered by public servant;

(e) resistance or obstruction by a person to his lawful apprehension;

(f) resistance or obstruction to lawful apprehension or constraint to an illegal act;

(g) voluntarily causing hurt to extort property, or to constrain to an illegal act; or

(h) causing injury by means of poison etc., with intent to commit an offence.

which if committed in India would be punishable under Sec. 128 or Secs. 221 to 225 or Sec. 327 of Code to be extradition offences within the meaning of the Extradition Act, 1962 (34 of 1962) in relation to all foreign States other than Treaty States and in relation to all Commonwealth countries.

(2) This notification shall come into force on 22nd April, 1987.