

Estonia International Extradition Treaty with the United States

February 8, 2006, Date-Signed

April 7, 2009, Date-In-Force

Message from the President of the United States

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA, SIGNED ON FEBRUARY 8, 2006, AT TALLINN

September 29, 2006.--Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

LETTER OF TRANSMITTAL

The White House, September 29, 2006.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Extradition Treaty between the United States of America and the Government of the Republic of Estonia, signed on February 8, 2006, at Tallinn. I also transmit, for the information of the Senate, the report of the Department of State with respect to the treaty.

The new extradition treaty with Estonia would replace the outdated extradition treaty between the United States and Estonia, signed on November 8, 1923, at Tallinn, and the Supplementary Extradition Treaty, signed on October 10, 1934, at Washington. The treaty also fulfills the requirement for a bilateral instrument between the United States and each European Union (EU) Member State in order to implement the Extradition Agreement between the United States and the EU. Two other comprehensive new extradition treaties with EU Member States--Latvia and Malta--likewise also serve as the requisite bilateral instruments pursuant to the U.S.-EU Agreement, and therefore also are being submitted separately and individually. The treaty follows generally the form and content of other extradition treaties recently concluded by the United States. It would replace an outmoded list of extraditable offenses with a modern "dual criminality" approach, which would enable extradition for such offenses as money laundering and other newer offenses not appearing on the list. The treaty also

contains a modernized "political offense" clause. It further provides that extradition shall not be refused based on the nationality of the person sought; in the past, Estonia has declined to extradite its nationals to the United States. Finally, the new treaty incorporates a series of procedural improvements to streamline and speed the extradition process. I recommend that the Senate give early and favorable consideration to the treaty.

George W. Bush.

LETTER OF SUBMITTAL

Department of State,
Washington, August 3, 2006.
The President,
The White House.

The President: I have the honor to submit to you the Extradition Treaty between the United States and Estonia, signed on February 8, 2006. Upon its entry into force, the Treaty would replace the outdated Extradition Treaty between the United States and Estonia, signed on November 8, 1923, and the Supplementary Extradition Treaty, signed on October 10, 1934. It also fulfills the requirement for a bilateral instrument between the United States and each member state of the European Union implementing the Extradition Agreement between the United States and the European Union signed on June 25, 2003, which is being separately submitted. A detailed, article-by-article analysis is enclosed with this report. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification. The Treaty is self-executing and will not require implementing legislation. Respectfully submitted.
Condoleezza Rice.
Enclosures: As stated.

U.S.-Estonia Extradition Treaty

OVERVIEW

The U.S.-Estonia Extradition Treaty replaces an outdated 1923 Treaty and 1934 Supplementary Treaty. It also serves to implement between the United States and Estonia the provisions of the U.S.-EU Extradition Agreement. The following is an Article-by-Article description of the provisions of the Treaty.

Article 1 obligates each Party to extradite to the other, pursuant to the provisions of the Treaty, persons whom the authorities in the Requesting State have charged with or convicted of an extraditable offense.

Article 2 concerns extraditable offenses and is taken from Article 4 of the U.S.-EU Extradition Agreement. Article 2(1) defines an offense as extraditable if the conduct on which the offense is based is punishable under the laws in both States by deprivation of liberty for a period of more than one year or by a more severe penalty. Use of a pure "dual criminality" clause, rather than categories of offenses listed in the 1923 Treaty, obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws in both States.

Article 2(2) further defines an extraditable offense as an attempt or a conspiracy to commit, or participation in the commission of an extraditable offense. The Parties intended to include the offenses of aiding, abetting, counseling or procuring the commission of an offense, as well as being an accessory to an offense, under the broad description of participation.

Additional flexibility is provided by Article 2(3), which provides that an offense shall be an extraditable offense: a) whether or not the laws in the Requesting and Requested States place the offense within the same category of offenses or describe the offense by the same terminology; b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being jurisdictional only; or c) in criminal cases relating to taxes, customs duties, currency control or commodities.

With regard to offenses committed outside the territory of the Requesting State, Article 2(4) provides that extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

Article 2(5) provides that if extradition is granted for an extraditable offense, it shall also be granted for any other offense specified in the request if the latter offense is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article 3 provides that extradition shall not be refused based on the nationality of the person sought.

Article 4 sets forth bases for the denial of extradition. As is customary in extradition treaties, paragraph I provides that extradition shall not be granted if the offense for which extradition is requested constitutes a political offense.

Article 4(2) specifies six categories of offenses that shall not be considered to be political offenses: (a) a murder or other violent crime against a Head of State of one of the Parties, or of a member of the Head of State's family; (b) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; (c) murder, manslaughter, malicious wounding, or inflicting grievous bodily harm; (d) an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage; (e) placing or using an explosive, incendiary, or destructive device capable of endangering life, of causing substantial bodily harm, or of causing grievous property damage; and (f) a conspiracy or attempt to commit any of the foregoing offenses, or participation in the commission of such offenses.

Article 4(3) provides that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 4(4) provides that offenses under military law that are not offenses under ordinary criminal law (e.g., desertion) are excluded from the scope of the Treaty.

Article 5(1) provides that extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.

Article 5(2) provides that extradition shall not be precluded by the fact that the competent authorities of the Requested State: (a) have decided not to prosecute the person sought for the acts for which extradition is requested; (b) have decided to discontinue any criminal proceedings which have been instituted against the person sought for those acts; or (c) have decided to investigate the person sought for the same

acts.

Article 6 provides that extradition shall not be granted when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the law of the Requesting State.

Article 7 concerns capital punishment, and is taken from Article 13 of the U.S.-EU Extradition Agreement. When an offense for which extradition is sought is punishable by death under the laws in the Requesting State but not under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty if imposed shall not be carried out. If the Requesting State accepts extradition subject to conditions pursuant to this Article, it shall comply with the conditions. If the Requesting State does not accept the conditions, the request for extradition may be denied.

Article 8 establishes the procedures and describes the documents that are required to support a request for extradition. Paragraph 1, which is taken from Article 5(1) of the U.S.-EU Extradition Agreement, provides that all requests for extradition must be submitted through the diplomatic channel, which shall include transmission under Article 11(4). Among other requirements, Article 8(3) provides that a request for the extradition of a person sought for prosecution must be supported by: (a) a copy of the warrant or order of arrest issued by a judge, court, or other competent authority; (b) a copy of the charging document; and (c) such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought.

Pursuant to Article 8(4), a request for extradition of a person who has been convicted in absentia must be supported by the documents required in a request for a person who is sought for prosecution.

Article 8(5), which is taken from Article 8 of the U.S.-EU Extradition Agreement, authorizes the furnishing of additional information, if the Requested State deems it necessary to support an extradition request, and specifies that such information may be requested and supplied directly between the United States Department of Justice and the Ministry of Justice

of the Republic of Estonia.

Article 8(6), which is taken from Article 14 of the U.S.-EU Extradition Agreement, addresses the submission of sensitive information in extradition requests.

Article 9, which is taken from Article 5 of the U.S.-EU Extradition Agreement, concerns admissibility of documents. It provides that documents bearing the certificate or seal of either the Ministry of Justice or foreign affairs Ministry or Department of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification.

Article 10 provides that all documents submitted under the Treaty by the Requesting State shall be translated into the language of the Requested State.

Article 11 sets forth procedures and describes the information that is required for the provisional arrest and detention of the person sought, in an urgent situation, pending presentation of the formal request for extradition. Paragraph 1, which sets forth procedures for transmission of a request for provisional arrest, is taken from Article 7 of the U.S.-EU Extradition Agreement.

Article 11(4) provides that if the Requested State's executive authority has not received the request for extradition and supporting documents within sixty days from the date of provisional arrest, the person may be discharged from custody. Paragraph 4 also provides an alternative channel for receipt of extradition requests with respect to persons who have been provisionally arrested, taken from Article 6 of the U.S.-EU Extradition Agreement. Article

11(5) explicitly provides that the discharge of a person from custody pursuant to Article 11(4) does not prejudice the person's subsequent rearrest and extradition if the extradition request and supporting documents are delivered at a later date.

Article 12 specifies the procedures governing a decision on the extradition request and the surrender of the person sought. It requires the Requested State to promptly notify the Requesting State of its decision regarding a request. If the request is denied in whole or in part, the Requested State must provide an explanation for the denial and, upon request, copies of pertinent judicial decisions. If extradition is granted, the

States shall agree on the time and place for the surrender of the person sought. If the person sought is not removed from the territory of the Requested State within the time period prescribed by the law of that State, the person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense(s).

Article 13 addresses temporary and deferred surrender.

Paragraph 1, on temporary surrender, is taken from Article 9 of the U.S.-EU Extradition Agreement. It provides that if a person whose extradition is sought is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person to the Requesting State for the purpose of prosecution. The Requesting State shall keep the person so surrendered in custody and shall return that person to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the States.

Paragraph 2, on deferred surrender, provides that the Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that state.

Article 14, which is taken from Article 10 of the U.S.-EU Extradition Agreement, provides a non-exclusive list of factors to be considered by the executive authority of the Requested State in determining to which State to surrender a person whose extradition is sought by more than one State. It includes, in paragraph 2, language establishing the applicability of this analysis to competing requests from the United States and from a member state of the European Union made to Estonia under the European Arrest Warrant.

Article 15 provides that the Requested State may, to the extent permitted under its law, seize and surrender to the Requesting State all items, including articles, documents, and evidence, that are connected with the offense in respect of which extradition is granted. Such items may be surrendered even if the extradition cannot be effected due to the death, disappearance, or escape of the person sought, and prior to the extradition, if requested pursuant to the mutual legal assistance treaty between the parties. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The

Requested State may also defer the surrender of such items if they are needed as evidence in the Requested State. The rights of third parties in such items are to be respected in accordance with the laws of the Requested State.

Article 16 sets forth the rule of speciality under international law. Paragraph 1 provides, subject to specific exceptions set forth in paragraph 3, that a person extradited under the Treaty may not be detained, tried, or punished in the Requesting State except for: (a) any offense for which extradition was granted, or a differently denominated offense based on the same facts as the offense for which extradition was granted, provided such offense is extraditable, or is a lesser included offense; (b) any offense committed after the extradition of the person; or (c) any offense for which the executive authority of the Requested State waives the rule of speciality and thereby consents to the person's detention, trial, or punishment.

Article 16(2) provides that a person extradited under the Treaty may not be the subject of onward extradition to a third State or an international tribunal for any offense committed prior to the extradition to the Requesting State unless the Requested State consents.

Under Article 16(3), these restrictions shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of a person to a third State, if the extradited person leaves the territory of the Requesting State after extradition and voluntarily returns to it or fails to leave the territory of the Requesting State within ten days of being free to do so.

Article 17 permits surrender as expeditiously as possible if the person sought consents to be surrendered to the Requesting State.

Article 18, which is taken from Article 12 of the U.S.-EU Extradition Agreement, governs the transit through the territory of one State of a person surrendered to the other State by a third country.

Article 19 contains provisions on representation and expenses. Specifically, the Requested State is required to advise, assist, appear in court on behalf of, and represent the interests of the Requesting State in any proceedings arising

out of a request for extradition. The Requested State also bears all expenses incurred in that State in connection with the extradition proceedings, except that the Requesting State pays expenses related to translation of extradition documents and the transportation of the person surrendered.

Article 19(3) specifies that neither State shall make any pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of persons under the Treaty.

Article 20 provides that the United States Department of Justice and the Ministry of Justice of the Republic of Estonia may consult in connection with the processing of individual cases and in furtherance of efficient implementation of the Treaty.

Article 21 makes the Treaty applicable to offenses committed before as well as on or after the date it enters into force.

Article 22 contains final clauses dealing with the Treaty's entry into force and termination. It provides that the Treaty is subject to ratification and that the Treaty shall enter into force upon the exchange of the instruments of ratification.

Article 22(3) provides that, upon entry into force of the Treaty, the Treaty of Extradition between the United States of America and the Republic of Estonia, signed at Tallinn on November 8, 1923, and the Supplementary Extradition Treaty signed at Washington on October 10, 1934, shall cease to have any effect. Either State may terminate the Treaty with six months written notice to the other State through the diplomatic channel.

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