

Israel International Extradition treaty-Protocol with the United States

July 6, 2005, Date-Signed

January 10, 2007, Date-In-Force

LETTER OF TRANSMITTAL

THE WHITE HOUSE,

September 13, 2005.

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 Protocol between the Government of the United States and the Government of the State of Israel, signed at Jerusalem on July 6, 2005.

In addition, I transmit for the information of the Senate the report of the Department of State with respect to the Protocol. As the report explains, the Protocol will not require implementing legislation.

The Protocol amends the Convention Relating to Extradition (the "1962 Convention"), signed at Washington on December 10, 1962.

The Protocol updates the 1962 Convention in a manner consistent with our modern extradition treaties. The Protocol will, upon entry into force, enhance cooperation between the law enforcement communities of both nations and make a significant contribution to International law enforcement efforts.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

The PRESIDENT,

The White House

DEPARTMENT OF STATE,

Washington, August 15, 2005.

THE PRESIDENT: I have the honor to submit to you the Protocol between the Government of the United States and the Government of the State of Israel Amending the Convention on Extradition ("Protocol"), signed at Jerusalem on July 6, 2005. Upon its entry into force, the Protocol would amend the Convention Relating to Extradition signed at Washington on December 10, 1962 ("1962 Convention"). I recommend that the Protocol be transmitted to the Senate for its advice and consent to ratification.

The Protocol updates the existing Convention in a manner consistent with our modern extradition treaties. The Protocol will enhance cooperation between the law enforcement communities of both nations and make a significant contribution to international Law enforcement efforts.

The Protocol is designed to be self-executing and will not require implementing legislation.

Article 1 of the Protocol amends the 1962 Convention, by deleting the pre-existing Article II and replacing it with New Article II.

New Article II (1) replaces the current list of extraditable offenses.

In Article II of the 1962 Convention with a modern dual criminality Provision that requires that the offense for which a fugitive is requested be punishable under laws of both states for a period of one year or by a more severe penalty.

New Article II (2) defines an extraditable offense to include also any attempt or conspiracy to commit an offense, participation in an offense, aiding and abetting, counseling, causing or procuring the commission of an offense, or being an accessory before or after the fact, provided that such attempt, conspiracy, participation, aiding and abetting, counseling, causing or procuring, or being an accessory is

punishable under the laws of both Parties by deprivation of liberty for a period of one year or by a more severe penalty.

Additional flexibility is provided by New Article II (3), which provides that an offense shall be considered an extraditable offense:

(1) Whether or not the laws of the parties place the offense within the same category of offenses or describe the offense by the same Terminology;

(2) 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 merely for the purpose of establishing jurisdiction in a United States federal court.

New Article II(4) provides that if extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the other offenses are punishable by less than one year's deprivation of liberty, provided that all other requirements for extradition have been met.

Article 2 of the Protocol amends the 1962 Convention, by replacing the pre-existing Article IV with New Article IV. New Article IV(1), provides that, except as provided in the New Article IV, extradition shall not be refused on the ground that the person sought is a national of the Requested Party.

New Article IV(2) states that if domestic law so requires, a Party may condition the extradition of a national and resident upon an assurance that, if the person sought is sentenced to a term of imprisonment after extradition, the person shall be returned to the Requested Party to serve the sentence imposed in the Requesting Party. This would allow an Israeli citizen to be extradited to the United States with assurances that the fugitive may return to Israel to serve any sentence imposed in the United States.

New Article IV(3) sets out the procedures with respect to assurances made pursuant to New Article IV(2). New Article IV(3)(a) states that an assurance shall cease to have effect if the person agrees to serve any sentence imposed in the Requesting Party or refuses to consent or withdraws a prior

consent to serve the sentence in the Requested Party.

New Article IV(3)(b) requires that the Requesting Party shall promptly inform the Requested Party of the results of the trial or sentencing and of appeal or other judicial review of the judgment, if any.

New Article IV(3)(c) states that when a prison sentence imposed following an Article IV(2) extradition has become final, the Parties shall thereafter make best efforts to transfer the person as expeditiously as possible. New Article IV(3)(d) states that if a person extradited under an Article IV(2) assurance is given a prison sentence and is also ordered to pay a fine or restitution, the Requested Party shall take steps to collect the fine or restitution to the extent possible.

New Article IV(3)(e) provides that the return of a person following an Article IV(2) assurance, to the extent that it is not inconsistent with Article IV, shall be in accord with other treaties and agreement regarding the transfer of sentenced persons in force between the Parties, unless the Parties agree otherwise. Notably, both the United States and Israel are parties to the Council of Europe Convention on the Transfer of Sentenced Persons.

New Article IV(4) and (5) provide for imposition of the Requesting Party's sentence even if that sentence exceeds the maximum penalty for such offense in the Requested Party. Paragraph (4) covers situations where the fugitive is extradited, tried and sentenced, and returned to serve that sentence pursuant to an assurance under paragraph (2). Paragraph (5) covers situations where the fugitive has fled after having been sentenced and is not extradited because he or she is a national of the Requested State and the Requested State will not extradite its nationals in such circumstances.

New Article IV(6) provides that if extradition of a national and resident is refused because an assurance as set forth in New Article IV(2) has not been provided, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for a decision as to prosecution.

Article 3 of the Protocol replaces pre-existing Article VI with New Articles VI and VI bis. As is customary in extradition treaties, New Article VI incorporates a political offense exception to the obligation to extradite. New Article VI (1) states

generally that extradition shall not be granted for political offenses.

New Article VI(2) specifies six categories of offenses that shall not be considered to be political offenses: (a) a murder or other violent crime against the Head of State of a Contracting Party, or of a member of the Head of State's family; (b) an offense for which both Parties are obliged 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) an offense involving the making, use or possession of a bomb, grenade, rocket or any other explosive, incendiary or destructive device with the intention to endanger life or cause serious damage to property; and (f) a conspiracy to commit any of the foregoing offenses, or aiding and abetting, counseling or participating as an accomplice of a person who commits or attempts to commit such offenses.

New Article VI (3) provides that the executive authority of the Requested Party may refuse extradition for offenses under military law that are not offenses under ordinary criminal law (e.g. Desertion).

New Article VI(4) provides that extradition shall not be granted if the executive authority of the Requested Party (for the United States, the Secretary of State) determines that the request was primarily politically motivated or made for the primary purpose of prosecuting or punishing someone on account of his race or religion.

New Article VI bis (1) bars extradition when the person sought has been convicted or acquitted in the Requested Party or another country for the same offense. New Article VI bis (2) provides that extradition shall not be precluded by the fact that competent authorities in the Requested Party have declined to prosecute or have decided to discontinue criminal proceedings against the person sought.

Article 4 of the Protocol replaces pre-existing Article VIII with New Articles VIII and VIII bis. New Article VIII concerns temporary and deferred surrender. New Article VIII(1) states that if a person whose extradition is sought is

being investigated or prosecuted in the Requested Party, that State may postpone extradition proceedings until its prosecution has been concluded. According to New Article VIII(2), if extradition is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested Party, that State may still postpone surrender until the person has served any sentence imposed or may temporarily surrender the person sought.

New Article VIII bis introduces a more flexible statute of limitations provision. The 1962 Convention provides that if an offense is time-barred in the Requested Party, extradition shall not be granted. New Article VIII bis would limit this exception to only those situations where the Requested Party's laws required the denial of extradition.

Article 5 deletes Article IX of the 1962 Convention. The pre-existing Article IX provided that extradition determinations shall be made in accordance with the domestic law of the Requested Party and that the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by such law. This provision has been removed as unnecessary and confusing.

Article 6 of the Protocol replaces pre-existing Article X with New Articles X, X bis and X ter. New Article X establishes the procedures and describes the documents that are required to support a request for extradition. It requires that all requests be submitted through the diplomatic channel. New Article X bis establishes the procedures under which documents submitted pursuant to the Protocol shall be received and admitted into evidence. It streamlines the authentication provisions by eliminating the need for diplomatic or consular authentication of Israeli requests. Instead, Israeli requests would be authenticated by the official seal of the Israeli Ministry of Justice.

New Article X ter stipulates that the request for extradition and all other documents submitted by the Requesting Party shall be translated into the language of the Requested Party, unless otherwise agreed.

Article 7 of the Protocol replaces Article XI of the Convention. New Article XI sets forth procedures for the provisional arrest and detention, in case of urgency, of a person sought pending presentation of the formal request for

extradition. New Article XI(1) provides that a request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Israeli Ministry of Justice. New Article XI (2) lists the components required for a proper provisional arrest request.

New Article XI(3) requires that the Requesting Party shall be notified without delay of the disposition of its request for provisional arrest and the reasons for any inability to proceed with the request.

New Article XI(4) provides that if the Requested Party's executive authority has not received the request for extradition and supporting documentation required in Article X bis within 60 days after the provisional arrest, the person may be discharged from custody. New Article XI(5) states that discharge from custody pursuant to New Article XI(4) does not prejudice subsequent rearrest and extradition upon later delivery of the extradition request and supporting documents.

Article 8 of the Protocol replaces Article XIII of the Convention. New Article XIII (1) sets forth the rule of speciality. It provides, subject to specific exceptions, that a person extradited under the Treaty may not be detained, tried, or punished in the Requesting Party for an offense other than that for which extradition has been granted. This prohibition applies, unless (a) the offense is based on the same facts as the offense for which extradition was granted; (b) the offense was committed after the extradition of the person; or (c) the offense is one for which the executive authority of the Requested Party consents to the person's detention.

New Article XIII(2) prohibits the Requesting Party from extraditing such person to a third State or surrendering such person to an international tribunal for an offense committed prior to the original surrender unless the Requested Party consents.

New Article XIII(3) states that if a person leaves the territory of the Requesting Party after extradition and voluntarily returns to it or that person does not leave the territory of the Requesting Party within 30 days of when he is free to leave, then he may be detained, tried, punished, extradited to a third State or surrendered to an international tribunal.

Article 9 replaces pre-existing Article XVII on the waiver of consent to extradition proceedings. New Article XVII specifies that if a fugitive consents to be surrendered, he will be extradited without further proceedings.

Article 10 replaces pre-existing Article XVIII with New Articles XVIII, XVIII bis and XVIII ter. New Article XVIII provides that either Party may authorize transportation through its territory of a person surrendered to the other Party by a third State or from the other Party to a third State. Authorization is not required when air transportation is used by one Party and no landing is scheduled in the territory of the other Party. In the event of an unscheduled landing, New Article VIII(2) provides for a procedure by which the Party in which the landing occurs may require a request for Transit. New Article VIII(3) provides that the Party requesting transit shall reimburse the Party through whose territory such person is transported for any expense incurred by the latter in connection with such transportation, unless otherwise agreed.

New Article XVIII bis specifies that the Requested Party represents the Requesting Party in extradition proceedings and providing for the costs of such representation.

New Article XVIII ter provides that the U.S. Department of Justice and the Ministry of Justice of Israel may consult with each other in connection with the processing of individual cases and in furtherance of efficient implementation of the Convention.

Article 11 of the Protocol provides that the Protocol applies to offenses committed before as well as after the date it enters into force.

Article 12 of the Protocol provides that the Protocol, which is subject to ratification, shall enter into force on the date of the latter of the diplomatic notes by which the Parties notify each other that their internal legal requirements for the entering into force of the Protocol have been satisfied.

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

Respectfully Submitted,
CONDOLEEZZA RICE.