

Malta International Extradition Treaty with the United States

May 18, 2006, Date-Signed

July 1, 2009, Date-In-Force

Message from the President of the United States

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF MALTA, SIGNED ON MAY 18,
2006, AT VALLETTA, WITH AN EXCHANGE OF LETTERS
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 Malta, signed on May 18, 2006, at Valletta, that includes an exchange of letters that is an integral part of the treaty. 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The new extradition treaty with Malta would replace the outdated extradition treaty between the United States and Great Britain, signed on December 22, 1931, at London, and made applicable to Malta on June 24, 1935. 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—Estonia and Latvia—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 a person sought for any of a comprehensive list of serious offenses; in the past, Malta 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.

I have the honor to submit to you the Extradition Treaty between the United States and Malta, and related exchange of letters, signed on May 18, 2006. Upon its entry into force, the Treaty would replace the Extradition Treaty between the United States and Great Britain, signed on December 22, 1931, and made applicable to Malta on June 24, 1935. 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 enclosed with this report. I recommend that the Treaty, and related exchange of letters, 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: Overview and analysis of the provisions of the Agreement.

U.S.-MALTA EXTRADITION TREATY

OVERVIEW

The U.S.-Malta Extradition Treaty replaces an outdated 1931 Treaty with Great Britain, which was made applicable between the United States and Malta in 1935. It also serves to implement between the United States and Malta 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 sought by the authorities in the Requesting State for trial or punishment for extraditable offenses.

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 for offenses listed in the 1931 Treaty, obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws in

both States. Article 2(1) further defines an extraditable offense as including 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.

Article 2(2) provides that if extradition is granted for an extraditable offense, it may 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. 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 in accordance with the provisions of the Treaty if the laws in the Requested State provide for the punishment of such conduct committed outside its territory in similar circumstances. If the laws in the Requested State do not provide for the punishment of such conduct committed outside of its territory in similar circumstances, the executive authority of the Requested State, in its discretion, may grant extradition provided that all other requirements of the Treaty are met.

Article 3(1) provides that extradition shall not be refused based on the nationality of the person sought, for any offense falling within a comprehensive enumerated list of thirty offenses. The list mirrors those offenses for which surrender of nationals by one member state of the European Union to another is mandatory under the European Arrest Warrant procedure. In addition, the Requested State may choose to extradite a national for an offense not enumerated in paragraph 1. In the event that the Requested State denies extradition with respect to an offense not so enumerated, it shall, at the request of the Requesting State, submit the case to its competent authorities for prosecution. Under Article 3(4), the Parties also may agree to expand the list at a future time.

Article 4 sets forth bases for the denial of extradition. As is customary in extradition treaties, paragraph 1 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 the 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 on genocide, terrorism, drugs, or other crimes 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 willfully 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 or firearm capable of endangering life, of causing substantial bodily harm or substantial property damage; and (f) an attempt or a conspiracy to commit, or aiding or abetting a person who commits or attempts to commit, any of the foregoing offenses.

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

Article 6(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, or where the person sought is otherwise immune from prosecution for that offense by reason of that State's law relating to prior prosecution.

Article 6(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 that have been instituted against the person sought for those acts; or (c) are still investigating the person sought for the same acts for which extradition is sought.

Letters exchanged at the time of signature of the Treaty and forming an integral part of it clarify the application of this Article in relation to the possible granting of clemency or amnesty to a person sought for extradition. The letters state that clemency and amnesty are decided under a Party's domestic law, and that in the event such a grant may have a bearing on a request for extradition, the Parties shall consult.

Article 7 provides that the Requested State, if so required by its law, may take into account its or the Requesting State's laws concerning lapse of time.

Article 8 concerns capital punishment, and is taken from Article 13 of the U.S.-EU Extradition Agreement. Pursuant to paragraph 1, 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 executive authority in the Requested State may refuse extradition unless the Requesting State provides an assurance that the death penalty will not be imposed or, if imposed, will not be carried out. Paragraph 2 provides that where such an assurance is given, the death penalty shall not be carried out.

Article 9 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 sub-agreement, provides that all requests for extradition must be submitted through the diplomatic channel, which shall include transmission under Article 13(4). Among other requirements, Article 9(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 or other competent authority; (b) a copy of the charging document, if any; 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 9(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 9(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 Malta.

Article 9(6), addressing the submission of sensitive information in extradition requests, is taken from Article 14 of the U.S.-EU Extradition Agreement.

Article 10 concerns admissibility of documents, and is taken from Article 5 of the U.S.-EU Extradition Agreement. 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 11 provides that the Requested State may refuse extradition of a person found guilty in absentia in the Requesting State, unless the Requesting State provides sufficient assurances that the person was afforded an adequate opportunity to present a defense or that there are adequate remedies available to him after surrender.

Article 12 provides that all documents submitted under the Treaty by the Requesting State shall be in English or accompanied by a translation into English.

Article 13 sets forth procedures and describes the information that is required for the provisional arrest and detention of the person sought, pending presentation of the formal request for extradition.

The Parties intend for provisional arrest requests to be made generally in cases of urgency, as determined by the executive authority of the Requested State. 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 13(4) provides that if the Requested State's executive authority has not received the request for extradition and supporting documents within forty (extendable to 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 13(5) explicitly provides that the discharge of a person from custody pursuant to Article 13(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 14 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. Such notification should be transmitted through the diplomatic channel and directly to the Requesting State's Justice authorities. If the request is denied in whole or in part, the Requested State must provide reasons 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 15 addresses deferred surrender. It 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 16, on temporary surrender, is taken from Article 9 of the U.S.-EU Extradition Agreement. Paragraph 1 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. According to paragraph 2, 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. Time spent in custody in the Requesting State pending prosecution there may be deducted from the time to be served in the Requested State.

Article 17 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, and is taken from Article 10 of the U.S.- EU Extradition Agreement. 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 Malta under the European Arrest Warrant.

Article 18 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 carried out due to the death, disappearance, or escape of the person sought. The Requested State may condition the surrender of the items upon satisfactory assurances 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 19 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 lesser included offense shown by its constituent elements to be an extraditable offense and based on the same facts as the offense for which extradition was granted; (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.

The treaty currently in place does not contain such a provision for waiver of the rule of speciality, and the preferred practice of States is not to waive the rule of speciality unless there is a treaty provision authorizing them to do so.

Article 19(2) addresses the situation of an altered description of the offense charged occurring during a proceeding, and permits prosecution or sentencing only insofar as the offense as newly described is shown by its constituent elements to be an extraditable offense, is based on the same facts, and is punishable by the same or a lesser maximum penalty.

Article 19(3) 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 19(4), 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 thirty (30) days of being in a position to leave.

Article 20 permits surrender without further proceedings if the person sought waives extradition.

Article 21 permits the person sought to consent to surrender in accordance with simplified extradition procedures, including by agreeing to waiver of protection of the rule of speciality.

Article 22 governs the transit through the territory of one State of a person surrendered to the other State by a third country, and is taken from Article 12 of the U.S.-EU Extradition Agreement.

Article 23 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 23(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 24 provides that the United States Department of Justice and the Ministry of Justice of Malta may consult in connection with the processing of individual cases and in furtherance of efficient application of the Treaty.

Article 25 makes the Treaty applicable to offenses committed before as well as on or after the date it enters into force.

Article 26 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 on the first day following the third month after the date on which the Parties have exchanged notification that the respective internal procedures have been completed. Article 26(2) provides that, upon entry into force of the Treaty, the Extradition Treaty with the United Kingdom, signed at London, December 22, 1931 and previously applicable to Malta, shall cease to have any effect.

Article 27 stipulates that 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.