
PROTOCOL BETWEEN THE GOVERNMENT OF THE
UNITED STATES AND THE GOVERNMENT OF THE
STATE OF ISRAEL AMENDING THE CONVENTION ON
EXTRADITION OF 1962 (TREATY DOC. 109-3)

AUGUST 3, 2006.—Ordered to be printed

Mr. LUGAR, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 109-3]

The Committee on Foreign Relations, to which was referred the Protocol between the Government of the United States and the Government of the State of Israel Amending the Convention on Extradition of 1962 (Treaty Doc. 109-3) (hereafter the “Protocol”), signed at Jerusalem on July 6, 2005, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and accompanying resolution of advice and consent.

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I. PURPOSE

The Protocol amends the U.S.-Israel Convention on Extradition of December 10, 1962 (the “1962 Convention”), updating its provisions in a manner consistent with modern U.S. extradition practice, and would thereby enhance law enforcement cooperation between the two countries.

II. BACKGROUND AND SUMMARY

The United States is currently a party to over 100 bilateral extradition treaties, including a treaty with Israel. That treaty was signed in 1962 and entered into force in 1963. The Protocol replaces several articles of the 1962 Convention, including provisions addressing: the definition of extraditable offenses, the extradition of nationals, political offenses, temporary surrender, lapse of time, and provisional arrest. With the exception of the provision on extradition of nationals, which reflects Israeli law, the new provisions are consistent with those of several other bilateral extradition treaties approved by the Senate in recent years.

A detailed article-by-article discussion of the Protocol may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 109-3. A summary of the key provisions of the Protocol is set forth below.

Article 1 of the Protocol replaces a list of extraditable offenses contained in Article II of the 1962 Convention with a modern “dual criminality” article defining extraditable offenses as those punishable in both parties by a deprivation of liberty of one year or by a more severe penalty. This provision ensures that new criminal offenses will be covered as they are criminalized by both parties, without a need to constantly amend the treaty.

Article 2 of the Protocol replaces Article IV of the 1962 Convention, concerning extradition of nationals, with a new article that reflects recent changes in Israeli law. Article IV of the 1962 Convention declares that a requested party shall not decline to extradite a person sought because such person is a national of the requested party. Several years after it entered into force, however, Israel enacted legislation superseding the provision and prohibiting extradition of its nationals. More recently, Israel amended its law to permit extradition of its nationals as long as resident nationals of Israel were returned to Israel to serve their sentences. Consistent with Israeli law, the new article bars refusal of extradition based solely on nationality, while providing that, where required by its law, the requested party may condition extradition of a resident national of the requested party upon assurances that he will be returned to the requested party to serve any term of imprisonment imposed following extradition. In such cases, the requested party must enforce the sentence imposed by the requesting party, even if the sentence imposed exceeds the maximum term permissible for the offense under the laws of the requested party.

Article 3 of the Protocol replaces Article VI of the 1962 Convention. That provision contains an exception to extradition for offenses of a political character, a long-standing exception in U.S. extradition practice. Consistent with U.S. policy and practice in recent years, however, the Protocol narrows this exception by precluding certain crimes of violence from being considered political offenses.

Article 4 of the Protocol modernizes Article VIII of the 1962 Convention, which allowed a requested party to defer extradition when the person sought is either being tried or serving a sentence for another crime in that country. The new article permits deferral of extradition of a person being investigated or prosecuted in the re-

requested party until such investigation or prosecution is concluded. It also permits the requested party to temporarily surrender for proceedings in the requesting party a person who is being proceeded against or is serving a sentence in the requested party. The person is to be kept in custody in the requesting party and returned upon completion of the proceedings there. This type of temporary surrender provision is common in modern extradition treaties. It allows for prosecution closer in time to commission of the offense, thereby advancing the goal of securing justice. Long delays in commencing trial raise the danger that witnesses will no longer be available or that their memories will fade.

Article 4 of the Protocol also creates a new Article VIII *bis* addressing lapse of time. This provision allows the requested party, if required under its law, to deny extradition where prosecution of the offense or execution of the penalty would be time-barred under its laws if the offense had been committed in its territory. Currently, Israeli extradition law requires application of Israeli lapse of time laws in extradition proceedings in that country. U.S. law contains no such requirement.

Article 7 of the Protocol replaces Article XI of the 1962 Convention, which authorizes provisional arrests in certain urgent circumstances. The new provision streamlines the process by permitting provisional arrest requests to be made directly between the U.S. Department of Justice and the Israeli Ministry of Justice. The description of the information to be provided in such requests follows the example of recent contemporary treaties approved by the Senate. It should be emphasized that these changes are not intended to effect a substantive change to the standard that applies for securing the provisional arrest of an alleged fugitive pending extradition. The committee agrees with the Department of Justice that the Fourth Amendment of the U.S. Constitution applies to provisional arrests under the current treaty, and under the treaty as revised by the Protocol. Further, the Department indicated to the committee that it “does not anticipate any substantive change in the type or quantum of evidence that [it] submit[s] to our courts in support of a request for issuance of a provisional arrest warrant” under the new article.

III. IMPLEMENTING LEGISLATION

No new implementing legislation is required for the Protocol. An existing body of federal law, including the provisions of Chapter 209 of Title 18, United States Code, will suffice to implement the obligations of the Protocol.

IV. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Protocol on November 15, 2005, at which it heard testimony from representatives of the Departments of State and Justice. (A hearing print of this session will be forthcoming.) On June 29, 2006, the committee considered the Protocol and ordered it favorably reported by voice vote with no objections, with the recommendation that the Senate give its advice and consent to its ratification.

V. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that the proposed Protocol is in the interest of the United States and urges the Senate to act promptly to give advice and consent to its ratification.

VI. RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol between the Government of the United States of America and the Government of the State of Israel Amending the Convention on Extradition of 1962, signed at Jerusalem on July 6, 2005 (Treaty Doc. 109-3).