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EXTRADITION TREATY WITH MALTA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

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

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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The new extradition treaty with Malta would replace the outdated extradition treaty between the United States and Great Britain, signed on December 22, 1931, at London, and made applicable to Malta on June 24, 1935.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.

THE PRESIDENT: 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 pen-

of 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 Par-

ties 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.

EXTRADITION TREATY

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF MALTA

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The Government of the United States of America and the Government of Malta, Recalling the Treaty for the Mutual Extradition of Criminals Between the United States of America and Great Britain, signed at London December 22, 1931, and made applicable to Malta on June 24, 1935,

Noting that both the Government of the United States of America and the Government of Malta currently apply the terms of that Treaty,

Noting the Agreement on Extradition between the United States of America and the European Union signed at Washington, D.C. on June 25, 2003,

Having due regard for the rights of individuals, the fundamental constitutional principles of the Parties, and the rule of law, and

Desiring to provide for more effective cooperation between the two States in the suppression of crime, and, for that purpose, to conclude a new treaty for the extradition of offenders,

Have agreed as follows:

Article 1

Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons sought by the authorities in the Requesting State for trial or punishment for an extraditable offense.

Article 2

Extraditable Offenses

1. An offense shall be an extraditable offense if it is punishable under the laws of the Requesting and Requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. An offense shall also be an extraditable offense if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offense. Where the request is for enforcement of the sentence of a person convicted of an extraditable offense, the deprivation of liberty remaining to be served must be at least four months.

2. 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.

3. For purposes of this Article, an offense shall be considered an extraditable offense:

(a) regardless of whether 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) regardless of whether 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; and

(c) in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, regardless of whether the laws of the Requesting and Requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities.

4. If the offense has been committed outside the territory of the Requesting State, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the Requested State provide for the punishment of an offense committed outside its territory in similar circumstances. If the laws of the Requested State do not provide for the punishment of an offense committed outside its territory in similar circumstances, the executive authority of the Requested State, at its discretion, may grant extradition provided that all other applicable requirements for extradition are met.

Article 3

Nationality

1. A Party shall not refuse extradition based solely on the nationality of the person sought with respect to offenses falling within the following descriptions:

(1) participation in a criminal organization;
(2) terrorism;
(3) trafficking in persons;
(4) sexual exploitation of children and child pornography;
(5) illicit trafficking in narcotic drugs and psychotropic substances;
(6) illicit trafficking in weapons, munitions and explosives;
(7) corruption;
(8) fraud;
(9) laundering of proceeds of crime;
(10) counterfeiting currency;
(11) computer-related crime;

(12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
(13) facilitation of unauthorized immigration, entry, and residence;
(14) murder, grievous bodily injury;
(15) illicit trade in human organs and tissue;
(16) kidnapping, illegal restraint and hostage-taking;
(17) organized or armed robbery;
(18) illicit trafficking in cultural goods, including antiques and works of art;
(19) racketeering and extortion;
(20) counterfeiting and piracy of products including intellectual property;
(21) forgery of administrative documents and trafficking therein;
(22) forgery of means of payment;
(23) illicit trafficking in hormonal substances and other growth promoters;
(24) illicit trafficking in nuclear or radioactive materials;
(25) trafficking in stolen vehicles;
(26) rape;
(27) arson;
(28) unlawful seizure of aircrafts or ships;
(29) sabotage; and
(30) conspiracy or attempt to commit any of the offenses listed in this Article.

2. In addition, with respect to offenses not described in paragraph 1 of this Article, the executive authority of the Requested State shall have the power to extradite its nationals if it decides to do so.

3. If extradition is denied solely on the basis of the nationality of the person sought pursuant to paragraph 2 of this Article, the Requested State shall, at the request of the Requesting State, submit the case to its competent authorities for prosecution.

4. The Parties may expand the offenses designated in this Article by mutual agreement and notification made through the diplomatic channel.

Article 4

Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

(a) a murder or other violent crime against a Head of State of the Requesting or Requested State, or of a member of the Head of State's family;

(b) an offense for which both the Requesting and Requested States have the obligation pursuant to a multilateral international agreement on genocide, acts of terrorism, illicit traffic in narcotic drugs and psychotropic substances, 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, 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 capable of endangering life, of causing substantial bodily harm, or of causing substantial property damage; and

(f) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

3. Offenses under military law that are not offenses under ordinary criminal law are excluded from the scope of application of this Treaty.

Article 5

Political Motivation

Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

Article 6

Prior Prosecution

1. Extradition shall not be granted when:

(a) the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested; or

(b) the person sought is otherwise immune from prosecution for the offense for which extradition is requested by reason of the law in the Requested State relating to prior prosecution.

2. 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) are still investigating the person sought for the same acts for which extradition is sought.

Article 7

Lapse of Time

If so required by its law, the Requested State may, in deciding whether to grant the request for extradition, take into account the law of the Requesting State or the Requested State concerning lapse of time.

Article 8

Capital Punishment

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless the Requesting State gives the assurance that the death penalty will not be imposed or, if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty, if imposed, will not be carried out.

2. In instances in which a Requesting State gives assurances in accordance with paragraph 1, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 9

Extradition Procedures and Required Documents

1. Requests for extradition and supporting documents shall be transmitted through the diplomatic channel, which shall include transmission as provided for in Article 13(4).

2. All requests shall be supported by:

(a) documents, statements, or other types of information which describe the identity, nationality, and probable location of the person sought;

(b) information describing the facts of the offense and the procedural history of the case;

(c) a statement of the relevant text of the provisions of the laws describing the essential elements of the offense for which extradition is requested;

(d) a statement of the relevant text of the provisions of law prescribing punishment for the offense; and

(e) the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also 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; and

(c) such information as would enable the Requested State to determine that a reasonable basis exists to believe that the person sought committed the offense for which extradition is requested.

4. A request for extradition relating to a person who has been convicted of the offense for which extradition is sought shall also be supported by:

(a) a copy of the judgment of conviction, or, if a copy is not available, a statement by a judicial authority that the person has been convicted;

(b) information establishing that the person sought is the person to whom the finding of guilt refers;

(c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

(d) in the case of a person who has been convicted in absentia, the documents required by paragraph 3.

5. The Requested State may require the Requesting State to furnish additional information within such reasonable length of time as it specifies, if it considers that the information furnished in support of the request for extradition is not sufficient to fulfill the requirements of this Treaty. Such supplementary information may be requested and furnished directly between the United States Department of Justice and the Ministry of Justice of Malta.

6. Where the Requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted.

Article 10

Admissibility of Documents

Documents that bear the certificate or seal of the Ministry of Justice, or Ministry or Department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization. Ministry of Justice shall, for the United States of America, mean the United States Department of Justice; and, for Malta, the Ministry of Justice of Malta.

Article 11

Convictions in Absentia

If the person sought has been found guilty in absentia, the executive authority of the Requested State may refuse extradition unless the Requesting State provides it with assurances considered by it to be sufficient that the person was afforded an adequate opportunity to present a defense or that there are adequate remedies or additional proceedings available to the person after surrender.

Article 12

Translation

All documents submitted by the Requesting State shall be in, or translated into, English.

Article 13

Provisional Arrest

1. The Requesting State may request provisional arrest of, and the Requested State may issue an arrest warrant for, the person sought, pending presentation of the documents in support of the extradition request before the competent court. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Malta. The facilities of the International Criminal Police Organization (Interpol) also may be used to transmit such a request.

2. The application for provisional arrest shall contain:

(a) a description of the person sought;

(b) the location of the person sought, if known;

(c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;

(d) a description of the law(s) violated;

(e) a statement of the existence of a warrant or order of arrest, if any, or a finding of guilt or judgment of conviction against the person sought; and

(f) a statement that the documents supporting the extradition request for the person sought will follow within the time specified in this Treaty.

3. The Requesting State 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.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of forty (40) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the documents supporting the extradition request required in Article 9. This period may be extended for up to an additional twenty (20) days. For this purpose, receipt of the supporting documents by the Embassy of the Requested State in the Requesting State by the date specified in this paragraph shall constitute receipt by the executive authority of the Requested State.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 14

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition. Such notification should be transmitted directly to the Requesting State's Department or Ministry of Justice and through the diplomatic channel.

2. If the request is denied in whole or in part, the Requested State shall notify the Requesting State of the basis for the denial. The Requested State shall provide copies of pertinent judicial decisions upon request.

3. If the request for extradition is granted, the authorities of the Requesting and Requested States shall agree on the time and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State by the Requesting State within the time period prescribed by the law of the Requested State, that person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense.

Article 15

Deferred Surrender

The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

Article 16

Temporary Surrender

1. If a request for extradition is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution.

2. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State at the conclusion of the proceedings against that person, in accordance with the conditions to be determined by mutual agreement of the Requesting and Requested States. The time spent in custody in the territory of the Requesting State pending prosecution in that State may be deducted from the time remaining to be served in the Requested State.

Article 17

Requests for Extradition or Surrender Made by Several States

1. If the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, and such requests are not governed by paragraph 2, the executive authority of the Requested State shall determine to which State, if any, it will surrender the person.

2. If Malta receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offense or for different offenses, its executive authority shall determine to which State, if any, it will surrender the person.

3. In making its decision under paragraphs 1 and 2, the Requested State shall consider all relevant factors, including but not limited to:

(a) whether the requests were made pursuant to a treaty;

(b) the places where each of the offenses was committed;

(c) the respective interests of the requesting States;

(d) the gravity of the offenses;

(e) the nationality of the victim;

(f) the possibility of any subsequent extradition between the requesting States; and

(g) the chronological order in which the requests were received from the requesting States.

Article 18

Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may 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. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. 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.

3. The rights of third parties in such items shall be duly respected in accordance with the laws of the Requested State.

Article 19

Rule of Speciality

1. A person extradited under this 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 consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:

(i) the Requested State may require the submission of the documentation called for in Article 9; and

(ii) the person extradited may be detained by the Requesting State for 60 days, or for such longer period of time as the Requested State may authorize, while the request is being processed.

2. When the description of the offense charged is altered in the course of proceedings, the extradited person shall only be prosecuted or sentenced insofar as the offense, under its new description, is shown by its constituent elements to be an extraditable offense and is based on the same facts contained in the extradition request, and is punishable by the same maximum penalty as, or a lesser maximum penalty than, the offense for which extradition was granted. In applying this provision, the Parties shall consult pursuant to Article 24.

3. A person extradited under this Treaty may not be extradited to a third State or to an international tribunal for any offense committed prior to extradition unless the Requested State consents.

4. Paragraphs 2 and 3 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

(a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting State within 30 days of the day on which that person is in a position to leave.

Article 20

Waiver of Extradition Procedures

If the person sought waives extradition to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

Article 21

Simplified Extradition Procedures

If the person sought consents to be surrendered to the Requesting State, the Requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of speciality.

Article 22

Transit

1. The United States of America may authorize transportation through its territory of a person surrendered to Malta by a third State, or by Malta to a third State. Malta may authorize transportation through its territory of a person surrendered to the United States of America by a third State, or by the United States of America to a third State.

2. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Malta. The facilities of Interpol may also be used to transmit such a request. The request shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

3. Authorization is not required when air transportation is used and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 2. All measures necessary to prevent the person from absconding shall be taken until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing.

Article 23

Representation and Expenses

1. The Requested State shall 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.

2. The Requesting State shall pay all the expenses related to the translation of extradition documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons under this Treaty.

Article 24

Consultation

The United States Department of Justice and the Ministry of Justice of Malta may consult with each other directly or through the facilities of Interpol in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

Article 25

Application

1. This Treaty shall apply to offenses committed before as well as after the date it enters into force.

2. This Treaty shall apply to requests for extradition made after its entry into force. Nevertheless, Articles 2 and 16 shall apply to requests pending in a Requested State at the time this Treaty enters into force.

Article 26

Ratification and Entry into Force

1. This Treaty shall enter into force on the first day following the third month after the date on which the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose.

2. Upon the entry into force of this Treaty, the Extradition Treaty signed at London on December 22, 1931, shall cease to have any effect.

Article 27

Termination

Either Party may terminate this Treaty at any time by giving written notice to the other State, and the termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Valletta, in duplicate, this 18th day of May, 2006, in the English and Maltese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF MALTA:

Embassy of the United States of America

May 18, 2006

Mr. Charles Deguara
Permanent Secretary
Ministry for Justice and Home Affairs
House of Catalunya
Marsamxetto Road
Valletta - CMR 02

Dear Mr. Deguara:

I have the honor to refer to the Extradition Treaty between the Government of the United States of America and the Government of Malta (the Treaty) signed today, and to confirm the understanding of the Parties with respect to Article 6. I have the honor to propose that the Treaty be applied in accordance with the provisions set out in this Letter.

With respect to Article 6 of the Treaty, the Parties note that their constitutional systems permit the granting of clemency or amnesty, with the potential effect of removing criminal responsibility for the offenses. The granting of clemency or amnesty occurs on occasion, and is a matter to be decided by a Party's domestic law. Where the grant of such clemency or amnesty may have a bearing on a pending request for extradition, the Parties shall consult pursuant to Article 24 to determine the effect, if any, that the grant of clemency or amnesty may have on a decision whether to extradite.

If the above proposal is acceptable to the Government of Malta, I have the honor to propose that this Letter and your reply to that effect will place on record the understanding of our two Governments on the matter, which will come into operation on the date of entry into force of the Treaty.

Sincerely,

Molly H. Bordonaro
Ambassador of the United States to Malta

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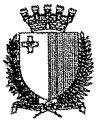

MALTA

MINISTRY FOR JUSTICE AND HOME AFFAIRS

Uffiċċju tas-Segretarju Permanenti

Office of the Permanent Secretary

18 May 2006

H.E. Ms Molly H. Bordonaro
Ambassador
Embassy of the United States of America

Dear Madame Ambassador,

I have the honor to acknowledge the receipt of your Letter dated 18 May 2006, which reads as follows:

"I have the honor to refer to the Extradition Treaty between the Government of the United States of America and the Government of Malta (the Treaty) signed today, and to confirm the understanding of the Parties with respect to Article 6. I have the honor to propose that the Treaty be applied in accordance with the provisions set out in this Letter.

With respect to Article 6 of the Treaty, the Parties note that their constitutional systems permit the granting of clemency or amnesty, with the potential effect of removing criminal responsibility for the offenses. The granting of clemency or amnesty occurs on occasion, and is a matter to be decided by a Party's domestic law. Where the grant of such clemency or amnesty may have a bearing on a pending request for extradition, the Parties shall consult pursuant to Article 24 to determine the effect, if any, that the grant of clemency or amnesty may have on a decision whether to extradite.

If the above proposal is acceptable to the Government of Malta, I have the honor to propose that this Letter and your reply to that effect will place on record the understanding of our two Governments on the matter, which will come into operation on the date of entry into force of the Treaty."

I have the honor to confirm, on behalf of the Government of Malta, the foregoing understanding and to agree that your Letter and this Letter in reply shall be regarded as constituting an agreement between the two Governments, which shall enter into force on the same day when the Treaty enters into force.

Yours,

Charles Deguara
Permanent Secretary

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