

105TH CONGRESS }
2d Session }

SENATE

{ EXEC. REPT.
105-23 }

EXTRADITION TREATIES WITH ARGENTINA, AUSTRIA, BARBADOS, CYPRUS, FRANCE, INDIA, LUXEMBOURG, MEXICO, POLAND, SPAIN, TRINIDAD & TOBAGO, ZIMBABWE, ANTIGUA & BARBUDA, DOMINICA, GRENADA, ST. KITTS & NEVIS, ST. LUCIA, AND ST. VINCENT & THE GRENADINES

OCTOBER 14 (legislation day, OCTOBER 2), 1998.—Ordered to be printed

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

REPORT

[To accompany Treaty Docs. 105-10; 105-13; 105-14; 105-15; 105-16; 105-18; 105-19; 105-20; 105-21; 105-30; 105-33; 105-46; and 105-50.]

The Committee on Foreign Relations, to which was referred the Extradition Treaty Between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg, signed at Washington on October 1, 1996 (Treaty Doc. 105-10); the Extradition Treaty between the United States of America and France, which includes an Agreed Minute, signed at Paris on April 23, 1996 (Treaty Doc. 105-13); the Extradition Treaty Between the United States of America and the Republic of Poland, signed at Washington on July 10, 1996 (Treaty Doc. 105-14); the Third Supplementary Extradition Treaty Between the United States of America and the Kingdom of Spain, signed at Madrid on March 12, 1996 (Treaty Doc. 105-15); the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Cyprus, signed at Washington on June 17, 1996 (Treaty Doc. 105-16); the Extradition Treaty Between the United States of America and the Argentine Republic, signed at Buenos Aires on June 10, 1997 (Treaty Doc. 105-18); the Extradition Treaties Between the Government of the United States of America and the Governments of Six Countries Comprising the Organization of Eastern Caribbean States (Collectively, the “Treaties”). The Treaties are with: Antigua and Barbuda, signed at St. John’s on June 3, 1996; Dominica, signed at Roseau on October 10, 1996; Grenada, signed at St. George’s on May 30, 1996; St. Lucia, signed at Castries on April 18, 1996; St. Kitts and Nevis, signed

at Basseterre on September 18, 1996; and St. Vincent and the Grenadines, signed at Kingstown on August 15, 1996 (Treaty Doc. 105–19); Extradition Treaty Between the Government of the United States of America and the Government of Barbados, signed at Bridgetown on February 28, 1996 (Treaty Doc. 105–20); the Extradition Treaty Between the Government of the United States of America and the Government of Trinidad and Tobago, signed at Port of Spain on March 4, 1996 (Treaty Doc. 105–21); the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of India, signed at Washington on June 25, 1997 (Treaty Doc. 105–30); the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Zimbabwe, signed at Harare on July 25, 1997 (Treaty Doc. 105–33); the Protocol to the Extradition Treaty Between the United States of America and the United Mexican States of May 4, 1978, signed at Washington on November 13, 1997 (Treaty Doc. 105–46); and the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Austria, signed at Washington on January 8, 1998 (Treaty Doc. 105–50), having considered the same, reports favorably thereon, each with one understanding, one declaration and one proviso, (except two Protocols with one declaration and one proviso) and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolutions of ratification.

CONTENTS

	Page
I. Purpose	2
II. Background	2
III. Summary	3
IV. Entry Into Force and Termination	6
V. Committee Action	6
VI. Committee Comments	6
VII. Explanation of Proposed Treaties	9
VIII. Text of Resolutions of Ratification	200

I. PURPOSE

These Treaties obligate the Parties to extradite fugitives at the request of a Party subject to conditions set forth in the treaties.

II. BACKGROUND

The United States is a party to more than 100 bilateral extradition treaties. Of the 13 extradition treaties considered in this report, only the treaty with Zimbabwe represents a new treaty relationship. Ten of the treaties with the Caribbean countries, India, and Cyprus replace 1931 or 1972 Treaties between the United States and the United Kingdom, which continued to apply to these countries even after their independence. The other treaties modernize older treaties to ensure that all criminal acts punishable in both countries by more than one year in prison are covered by the treaties. Two of the treaties—those with Spain and Mexico—are Protocols to existing treaties.

Extradition relationships have long been a basis of bilateral relationships, and represent a recognition by the United States of the legitimacy of a country's judicial system. Respect for a treaty partner's judicial system is essential since the treaties permit the transfer of individuals to another country in order to stand trial for alleged crimes. The treaty with Zimbabwe, therefore, signals an important advancement in the U.S. relationship with that country.

III. SUMMARY

A. GENERAL

An extradition treaty is an international agreement in which the Requested State agrees, at the request of the Requesting State and under specified conditions, to turn over persons who are within its jurisdiction and who are charged with certain crimes against, or are fugitives from, the Requesting State.

In recent years the Departments of State and Justice have led an effort to modernize U.S. bilateral extradition treaties to better combat international criminal activity, such as drug trafficking, terrorism and money laundering. Modern extradition treaties: (1) identify the offenses for which extradition will be granted, (2) establish procedures to be followed in presenting extradition requests, (3) enumerate exceptions to the duty to extradite, (4) specify the evidence required to support a finding of a duty to extradite, and (5) set forth administrative provisions for bearing costs and legal representation.

The importance of extradition treaties as a tool for law enforcement is reflected in the increase in the number of extraditions of individuals under treaties. Since September 1997, 185 persons were extradited to the United States for prosecution for crimes committed in the United States, and the United States extradited 73 individuals to other countries for prosecution.

In the United States, the legal procedures for extradition are governed by both federal statute and self-executing treaties. Federal statute controls the judicial process for making a determination to the Secretary of State that she may extradite an individual under an existing treaty. Courts have held that the following elements must exist in order for a court to find that the Secretary of State may extradite: (1) the existence of a treaty enumerating crimes with which a defendant is charged; (2) charges for which extradition is sought are actually pending against the defendant in the requesting nation and are extraditable under the treaty; (3) the defendant is the same individual sought for trial in the requesting nation; (4) probable cause exists to believe that the defendant is guilty of charges pending against him in the requesting nation; and (5) the acts alleged to have been committed by the defendant are punishable as criminal conduct in the requesting nation and under the criminal law of the United States.

Once a court has made a determination that an individual may be extradited under U.S. law, and so certifies to the Secretary of State, she may still refrain from extraditing an individual on foreign policy grounds, as defined in the treaties themselves (or even absent express treaty provisions).

B. KEY PROVISIONS

1. Extraditable Offenses: The Dual Criminality Clause

Each of the extradition treaties contains a standard definition of what constitutes an extraditable offense: an offense is extraditable if it is punishable under the laws of both parties by a prison term of more than (or at least) one year. Attempts and conspiracies to commit such offenses, and participation in the commission of such offenses, are also extraditable. In many of the treaties, if the extradition request involves a fugitive, it shall be granted only if the remaining sentence to be served is more than six months.

With minor variations, this definition of an extraditable offense appears in each of the treaties under consideration. The dual criminality clause means, for example, that an offense is not extraditable if in the United States it constitutes a crime punishable by imprisonment of more than one year, but it is not a crime in the treaty partner or is a crime punishable by a prison term of less than one year. In earlier extradition treaties the definition of extraditable offenses consisted of a list of specific categories of crimes. This categorizing of crimes has resulted in problems when a specific crime, for example drug dealing, is not on the list, and is therefore not extraditable. The result has been that as additional offenses become punishable under the laws of both treaty partners the extradition treaties between them need to be renegotiated or supplemented. A dual criminality clause obviates the need to renegotiate or supplement a treaty when it becomes necessary to broaden the definition of extraditable offenses.

2. Extraterritorial Offenses

A separate question arises as to whether offenses committed outside the territory of the Requesting State are extraditable under the treaties. To be able to extradite individuals for extraterritorial crimes can be an important weapon in the fight against international drug traffickers and terrorists. Only three of the pending treaties (Austria, India, and Luxembourg) permit extradition regardless of where the offense is committed. However the rest permit extradition for extraterritorial crimes if extradition would be permitted in both the Requesting and Receiving State. Even if both States do not permit extradition in those instances, extradition for crimes committed outside both territories remains a matter of discretion in most of the treaties.

3. Political Offense Exception

In recent years the United States has been promoting a restrictive view of the political offense exception in furtherance of its campaign against terrorism, drug trafficking, and money laundering. Though some of the treaties under consideration take a narrower view than others of the political offense exception, all of them give it a more limited scope than earlier U.S. extradition treaties.

The exclusion of certain violent crimes, (i.e. murder, kidnapping, and others) from the political offense exception reflects the concern of the United States government and certain other governments with international terrorism.

The exclusion from the political offense exception for crimes covered by multilateral international agreements, and the obligation to extradite for such crimes or submit the case to prosecution by the Requested State, is now a standard exclusion and is contained in each of the treaties under consideration.

The multilateral international agreement exception clause serves to incorporate by reference certain multilateral agreements to which the United States is a party and which deal with international law enforcement in drug dealing, terrorism, airplane hijacking and smuggling of nuclear material. These agreements require that the offenses with which they deal shall be extraditable under any extradition treaty between countries that are parties to the multilateral agreements. The incorporation by reference of these multilateral agreements is intended to assure that the offenses with which they deal shall be extraditable under an extradition treaty. But, extradition for such offenses is not guaranteed. A Requested State has the option either to extradite or to submit the case to its competent authorities for prosecution.

It should perhaps be noted that the incorporation by reference of multilateral international agreements that deal with international law enforcement can have significance only if the parties to an extradition treaty are also parties to such multilateral agreements.

4. The Death Penalty Exception

The United States and other countries often have different views on capital punishment, though some countries do impose the death penalty for certain crimes, such as drug trafficking. Most of the treaties under consideration permit the countries to refuse extradition for an offense punishable by the death penalty in the Requesting State if the same offense is not punishable by the death penalty in the Requested State, unless the Requesting State gives assurances satisfactory to the Requested State that the death penalty will not be imposed or carried out.

5. The Extradition of Nationals

The U.S. does not object to extraditing its own nationals and has sought to negotiate treaties without nationality restrictions. Many countries, however, refuse to extradite their own nationals. The treaties under consideration take varying positions on the nationality issue.

6. Retroactivity

Each of the treaties states that it shall apply to offenses committed before as well as after it enters into force. These retroactivity provisions do not violate the Constitution's prohibition against the enactment of ex post facto laws, which applies only to enactments making criminal acts that were innocent when committed, not to the extradition of a defendant for acts that were criminal when committed but for which no extradition agreement existed at the time.

7. The Rule of Speciality

The rule of speciality (or speciality), which prohibits a Requesting State from trying an extradited individual for an offense other than

the one for which he was extradited, is a standard provision included in U.S. bilateral extradition treaties. The treaties include language reflecting the basic prohibition as well as clauses setting forth certain exceptions. With minor variations, the treaties express the basic prohibition and also include the following exceptions: an extradited individual may be tried by the Requesting State for an offense other than the one for which he was extradited if the Requested State (which may request the submission of additional supporting documents) waives the prohibition; the extradited individual leaves the territory of the Requesting State and voluntarily returns to it; the extradited individual does not leave the territory of the Requesting State within a limited period of time on which he or she is free to leave; or, the extradited individual voluntarily consents to being tried for an offense other than the one for which he was extradited. These exceptions to the speciality rule are designed to allow a Requesting State some latitude in prosecuting offenders for crimes other than those for which they had been specifically extradited.

8. Lapse of Time

Some of the treaties include rules that preclude extradition of offenses barred by an applicable statute of limitations.

IV. ENTRY INTO FORCE AND TERMINATION

A. ENTRY INTO FORCE

The Treaties generally provide for the entry into force of the treaty either on the date of, or a short time after, the exchange of instruments of ratification.

B. TERMINATION

The Treaties generally provide for the Parties to withdraw from the Treaty by means of written notice to the other Party. Termination would take place six months after the date of notification.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed Treaties on September 15, 1998. The Committee considered the proposed Treaties on October 14, 1998, and ordered the proposed Treaties favorably reported, with the recommendation that the Senate give its advice and consent to the ratification of each of the proposed Treaties subject to one understanding, one declaration, and two provisos (except two Protocols with one declaration and one proviso).

VI. COMMITTEE COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Treaties. On balance, the Committee believes that the proposed Treaties are in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification. Several issues did arise in the course of the Committee's consideration of the Treaties, and the Committee believes that

the following comments may be useful to the Senate in its consideration of the proposed Treaties and to the State Department.

A. RESTRICTION ON TRANSFER OF EXTRADITEES TO INTERNATIONAL CRIMINAL COURT

On July 17, 1998 a majority of nations at the U.N. Diplomatic Conference in Rome, Italy, on the Establishment of an International Criminal Court voted 120–7, with 21 abstentions, in favor of a treaty that would establish an international criminal court. The court is empowered to investigate and prosecute war crimes, crimes against humanity, genocide and aggression. The United States voted against the treaty.

Each of the Resolutions of Ratification accompanying the Extradition Treaties contains an understanding relative to the international court. Specifically, regarding the “Rule of Specialty” the United States shall restate in its instrument of ratification its understanding of the provision, which requires that the United States consent to any retransfer of persons extradited to the Treaty Partner to a third jurisdiction. The understanding further states that future United States policy shall be to refuse such consent to the transfer of individuals to the International Criminal Court. This restriction is binding on the President, and would be vitiated only in the event that the United States ratifies the treaty establishing the court, pursuant to the Constitutional procedures as contained in Article II, section 2 of the United States Constitution.

This provision makes clear that both Parties understand that individuals extradited to the other Party may not be transferred to the international court. Members of the Committee are concerned that these treaties could become conduits for transferring suspects located in the United States to the international criminal court, even though the United States has rejected the court.

B. USE OF TREATIES TO AGGRESSIVELY PURSUE INTERNATIONAL PARENTAL KIDNAPING

On October 1, 1998, the Committee on Foreign Relations convened a hearing to consider U.S. Responses to International Parental Kidnaping. The Attorney General, Janet Reno, testified before the Committee, as did four parents whose children were abducted or wrongfully detained in international jurisdictions. The parents recounted their frustration with the current level of U.S. Government assistance in seeking the return of their children.

Although the Attorney General pointed to limitations in the ability of the U.S. Government to resolve many cases of international parental abduction, she also recognized that the United States could do better in assisting in the return of abducted children and pledged to take steps to improve coordination between the Departments of State and Justice. She also indicated that an interagency working group, which has been studying this issue during the past year, will produce a report in January with recommendations for improvements in U.S. policy regarding international parental kidnapping.

As this working group completes its work, the Committee expects that one area related to these treaties that the working group

should comment upon is the current practice of extradition of parental kidnappers. Under current practice the United States does not seek extradition if they do not think that a country will extradite—whether because a country does not have an extradition treaty with the United States, does not extradite its nationals, or would simply be unlikely to extradite under the circumstances. The Committee believes that failure to even request extradition may create the misperception that the United States is not interested in pursuing such individuals.

The State and Justice Departments have testified that these treaties are essential in order to ensure that no individual is able to evade the justice system by travel to a foreign country. This same principle should be true of parents who take their children from the United States in violation of the 1993 International Parental Kidnaping Act. The Committee expects, therefore, that State and Justice Department officials will seek extradition unless it will hinder U.S. law enforcement efforts. The Committee also expects that State and Justice Department officials will raise this issue in the course of negotiation of all bilateral law enforcement treaties and in other bilateral diplomatic exchanges. The Committee anticipates, also, that this issue will be given great scrutiny in the issuance of passports, with a special eye towards passport or visa fraud.

C. EXTRADITION OF NATIONALS

The treaties with Antigua and Barbuda, Argentina, Barbados, Dominica, Grenada, India, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Zimbabwe require the extradition of their nationals. Such provisions reflect an important trend in extradition relationships, particularly with countries in the Western Hemisphere. The Committee applauds this progress by State and Justice Department negotiators.

Unfortunately, such progress has been much more difficult for the United States to achieve in agreements with European allies. Although the treaties with Austria, Cyprus, Luxembourg, and Poland give each party the discretion to extradite its nationals, each of these countries is prohibited by statute or constitution from doing so. The treaty with France prohibits extradition of nationals outright.

The Committee supports the extradition of U.S. nationals in most instances. Criminal suspects should not be given safe haven in this country. The alternative—trying them in this country—is often not a realistic option, for two reasons. First, U.S. courts often lack jurisdiction over the crime, because not many crimes are subject to extraterritorial jurisdiction under U.S. law. Second, prosecuting such cases in the United States is often extremely difficult, particularly when the evidence and many of the witnesses are not located in this country, as would often be the case.

The Committee is deeply concerned that many nations around the world, particularly those in Europe, do not agree to extradite their own nationals to the United States. The Committee expects that U.S. negotiators will continue to press other nations to agree to extradite their nationals, including in existing treaty relationships. The Committee urges the Executive Branch to emphasize, in

discussing new extradition relationships with foreign states, that a reciprocal duty to extradite nationals is a key U.S. negotiating objective.

In addition, the United States could request extradition of nationals in some circumstances. In response to a question for the record, the State Department indicated that it might request extradition of nationals in an effort to encourage the country to exercise discretion available under its domestic law. The Committee anticipates that the United States will err on the side of making requests, unless U.S. law enforcement efforts would be compromised, in order to continue to force treaty partners to respond to U.S. requests for extradition of nationals.

D. EXTRADITION TREATY WITH INDIA

The Committee believes that special concerns are raised in the Extradition Treaty with India, as evidenced by an exchange of letters accompanying the Treaty (See Treaty Doc. 105-30, at pages 18-19). The concern arises because when the treaty was under negotiation, India had in effect a special law, the Terrorist and Disruptive (Prevention) Act, which, according to the Department of State, "limited the rights of a defendant accorded under ordinary Indian criminal law in a number of important respects." The limits on a defendant's rights included permitting detention for a year without charge, trial proceedings *in camera*, permitting the court to keep secret the identity of witnesses, reversing the burden of proof in certain situations, and limiting the right to appeal. The Act lapsed on May 23, 1995, and has not been replaced, but it continues to have effect with respect to cases under investigation and trial as of that date.

In an exchange of letters signed the same day as the Extradition Treaty, the United States and India agreed to an understanding that, as a general matter, persons extradited under the treaty will be prosecuted or punished under the ordinary criminal laws of the Requesting State. The Parties further agreed that if either party is considering prosecution or punishment under other laws, the "Requesting State shall request consultations and shall make such a request only upon the agreement of the Requested State."

During the hearing before the Committee, Deputy Legal Adviser Jamison Borek testified that there would be a "presumption" against extraditing a criminal suspect in the event that a request is made by India under this act or any similar law. In response to a question for the record, the Executive Branch indicated that while it could not "rule out the possibility that a [such a request] might merit serious consideration" it did not anticipate being presented with such a case, at least based on information currently available.

It is evident from a brief review of the limitations set forth in Terrorist and Disruptive (Prevention) Act that many of its provisions do not accord with basic due process rights that are central to American notions of justice and fundamental fairness. It is difficult to envision a case that would warrant extradition under such circumstances. Accordingly, the Committee expects that it will be the rare case—a matter of the gravest consequence—in which ex-

tradition would be granted by the United States in matters that may be prosecuted under this or a similar law.

VII. EXPLANATIONS OF PROPOSED TREATIES

The following are the article-by-article technical analyses provided by the Departments of State and Justice regarding the extradition treaties.

Technical Analysis of the Extradition Treaty Between the United States of America and Antigua and Barbuda

On June 3, 1996, the United States signed a treaty on extradition with Antigua and Barbuda (hereinafter “the Treaty”), which is intended to replace the outdated treaty currently in force between the two countries¹ with a modern agreement on the extradition of fugitives. The new extradition treaty is one of twelve treaties that the United States negotiated under the auspices of the Organization of Eastern Caribbean States to modernize our law enforcement relations in the Eastern Caribbean. It represents a major step forward in the United States’ efforts to strengthen cooperation with countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed for the United States. Antigua and Barbuda has its own internal legislation on extradition,² which will apply to United States’ requests under the treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.³ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. This Treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (*i.e.*, imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from the Antigua and Barbuda delegation that extradition would be possible for such high priority offenses as drug trafficking (including operating a continuing criminal enterprise, in violation of Title 21, United States Code, Section 848); offenses under the racketeering statutes (Title 18, United States Code, Section 1961—1968), if the predicate offense would be an extraditable offense; money laundering; terrorism; crimes against environmental protection laws; and antitrust violations punishable in both states by more than one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Antigua and Barbuda has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Antigua and Barbuda authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation

of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.⁴ In Antigua and Barbuda, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Antigua and Barbuda's agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Antigua and Barbuda's law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Antigua and Barbuda agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Antigua and Barbuda. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served. This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement.⁵ Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,⁶ and the Antigua and Barbuda extradition law contains no exception for Antiguan nationals. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.⁷

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses that are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁸

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.⁹ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.¹⁰

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.¹¹

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.¹² The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is

charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 are met.

Paragraph 2 outlines the information which must accompany every request for extradition under the Treaty. Most of the items listed in this paragraph enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, Article 6(2)(c)(iii) calls for "information as to the provisions of law describing any time limit on the prosecution," even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and Antigua and Barbuda delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Paragraph 3 describes the additional information required when the person is sought for trial in the Requesting State. Paragraph 3(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide "such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested." This provision will alleviate one of the major practical problems with extradition from Antigua and Barbuda. The Treaty currently in force permits extradition only if "...the evidence be found sufficient, according to the

laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in the case the crime or offense had been committed in the territory of such High Contracting party, or to prove that the person is the identical person convicted by the courts of the High Contracting Party who makes the requisition ...".¹³ Antigua and Barbuda's courts have interpreted this clause to require that a *prima facie* case against the defendant be shown before extradition will be granted.¹⁴ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.¹⁵ Antigua and Barbuda's agreement to extradite under this new Treaty on a "reasonable basis" standard eliminates this imbalance on the burden of proof for extradition and should dramatically improve the United States' ability to extradite from Antigua and Barbuda.

Paragraph 4 lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even absent a specific treaty provision.¹⁶

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Antigua and Barbuda resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current treaty.¹⁷ When the request is from Antigua and Barbuda, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados accredited to Antigua and Barbuda, pursuant to United States extradition law.¹⁸

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing merely because of an inadvertent error or omission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states.¹⁹ The U.S. and Antiguan delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.²⁰

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Antigua and Barbuda. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the provisional arrest be terminated if the Requesting State does not file a fully documented request for extradition within forty-five days of the date on which the person was arrested. This period may be extended for up to an additional fifteen days. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.²¹

Paragraph 5 makes it clear that in such cases the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article provides that the two States shall agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody and the Requested State may subsequently refuse to extradite for the same offense. United States law currently permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,²² or of the conclusion of any litigation challenging that finding,²³ whichever is later. The law in Antigua and Barbuda permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.²⁴

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment that has been imposed.²⁵ The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence in that State, even if all necessary extradition proceedings have been completed.

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision.²⁶

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.²⁷ The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to ensure that the property

is returned as soon as practicable. This paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.²⁸ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.²⁹

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.³⁰

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.

ARTICLE 16—TRANSIT

Paragraph 1 gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.³¹ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in Antigua and Barbuda, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. This paragraph also permits the transit State to detain a fugitive and a request for transit as received and executed, so long as the request is received within 96 hours of the unscheduled landing.

Antigua and Barbuda does not appear to have specific legislation on this matter, and the Antigua and Barbuda delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Antigua and Barbuda in connection with a request from Antigua and Barbuda for extradition before the courts in this country, and that Antigua and Barbuda will arrange for the representation of the United States in connection with United States extradition requests to Antigua and Barbuda.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State. The negotiators agreed that in some cases the Requested State might wish to retain private counsel to assist it in the presentation of the extradition request. The Attorney General of Antigua and Barbuda has a very small staff, and might need to enlist outside counsel to aid in handling a complex, contested international extradition proceeding. It is anticipated that in such cases the fees of private counsel retained by the Requested State would be paid by the Requested State. The negotiators also recognized that cases might arise in which the Requesting State would wish to retain its own private counsel to advise it on extradition matters or even assist in presenting the case, if the Requested State agrees. In such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings,

including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General's Chambers in Antigua and Barbuda may consult with each other with regard to an individual extradition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.³²

The article also states that consultations shall include issues involving training and technical assistance. At the request of Antigua and Barbuda, the United States delegation promised to recommend training and technical assistance to better educate and equip prosecutors and legal officials in Antigua and Barbuda to implement this Treaty.

During the negotiations, the Antigua and Barbuda delegation also expressed concern that the United States might invoke the Treaty much more often than Antigua and Barbuda, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general.

ARTICLE 19—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1972 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1972 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language on the procedure for terminating the Treaty. Termination shall become effective six months after notice of termination is received.

The following are the article-by-article technical analysis provided by the Departments of State and Justice regarding the mutual legal assistance treaties.

Technical Analysis of the Extradition Treaty Between The United States of America and the Argentine Republic signed June 10, 1997

On June 10, 1997, at Buenos Aires, Argentina, the United States signed a new extradition treaty with Argentina (hereinafter “the new Treaty,” “the Treaty,” or “this Treaty”). In recent years, the United States has signed similar treaties with many other countries, as part of an ongoing and highly successful effort to modernize our international law enforcement relations. The new Treaty will replace the treaty currently in force between the United States and Argentina³³ (hereinafter “the 1972 treaty”) with a modern agreement to facilitate the extradition of serious offenders, including narcotics traffickers, regardless of their nationality.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed.

With regard to Argentina, once the Treaty is approved by the Argentine Congress, a law published in the “Official Bulletin” will render the Treaty applicable under Argentine law and subject to implementation upon completion of the Treaty’s requirements for entry into force (i.e., exchange of instruments of ratification). No additional or special legislation will be required in Argentina for implementation of the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

Article 1 of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other, pursuant to the provisions and conditions of the Treaty, persons “charged with” or “found guilty” of an extraditable offense.

The negotiating delegations intended that the term “charged with” be interpreted broadly to include those persons who, being the subject of an outstanding warrant of arrest in the Requesting State, are sought for prosecution. Accordingly, for fugitives from the United States, this provision is intended to apply to those persons for whom a warrant of arrest has been issued, whether the warrant was issued pursuant to an indictment, complaint, information, or other means. In addition, under Argentine criminal procedure, a person may not be formally indicted until after he is in custody and brought before a judge in Argentina. Therefore, this provi-

sion is also intended to apply to those fugitives from Argentina whose cases may not yet have reached the indictment stage, but for whom there are pending criminal proceedings and outstanding warrants of arrest.³⁴

It also was agreed by the negotiating delegations that the term “found guilty” in this Article includes instances in which the person has been convicted, either by trial or guilty plea, but a sentence has not yet been imposed. Accordingly, the negotiators intended to make it clear that the Treaty applies not only to charged and sentenced persons, but also to persons adjudged guilty who flee prior to sentencing.³⁵

This Article also refers to offenses “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases.

ARTICLE 2—EXTRADITABLE OFFENSES

This Article contains the basic guidelines for determining what offenses are extraditable. This Treaty, like other recent United States extradition treaties,³⁶ does not list the offenses for which extradition may be granted. Instead, paragraph 1 of this Article permits extradition for any offense punishable under the laws in both countries by deprivation of liberty (i.e., imprisonment, or other form of detention) for a maximum period of more than one year, or by a more severe penalty (such as capital punishment). The term “maximum” was included to ensure that, in regard to offenses whose potential penalties are described in terms of a range (e.g. 6 months to 3 years of imprisonment), the Requested State would look only to the maximum potential penalty in determining whether the offense meets the requirement of being punishable by “more than one year” imprisonment.

Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity or if the list inadvertently fails to cover an important type of criminal activity punishable in both countries. For example, at this time, Argentine law criminalizes money laundering only as it relates to narcotics trafficking. However, once laws are enacted in Argentina, like those in the United States, to cover the laundering of proceeds from other types of criminal activity, such offenses will automatically be included as extraditable offenses under the dual criminality provision without having to amend the Treaty.

During the negotiations, the Argentine delegation indicated that key offenses such as drug trafficking and related money laundering and organized criminal activity (RICO) would be extraditable.

In regard to a request for a person who has already been sentenced in the Requesting State, paragraph 1 of this Article contains an additional requirement that such person must have more than six months of his or her sentence still to serve.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition shall also be granted for attempting or conspiring to commit, or otherwise participating in, the commission of an extraditable offense. Conspiracy charges are frequently used

in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the Treaty be clear on this point. For the same reasons, the negotiating delegations agreed that “illicit association”, which is the closest analogue to conspiracy under Argentine law, should also be expressly included as an extraditable offense.³⁷ Accordingly, paragraph 2(b) specifies that the offense of conspiracy, as defined under United States law, and the offense of illicit association, as defined under Argentine law, shall be extraditable.

Paragraph 3 reflects the intention of both countries to interpret the principles of this Article broadly. Paragraph 3(a) requires the Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists and to overlook mere differences in the terminology used to define the offense under the laws in each country. Provisions similar to paragraph 3(a) are contained in many recent United States extradition treaties.³⁸

Paragraph 3(b) is also included to further prevent technical differences in Argentine and United States law from creating obstacles to extradition. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because there is no similar requirement in their own country’s criminal law, foreign judges occasionally have denied the extradition of U.S. fugitives charged under these federal statutes on the basis of lack of dual criminality. Therefore, paragraph 3(b) requires that such elements be disregarded in applying the dual criminality principle. For example, Argentine authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property.

Paragraph 4 ensures that extradition shall be granted for offenses even when the illegal acts constituting the offense are committed outside the territory of the Requesting State. United States jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert extraterritorial jurisdiction.³⁹ Accordingly, many federal statutes (including drug laws) criminalize acts committed wholly outside United States territory, and it was very important to the U.S. negotiating delegation that such offenses be extraditable. The United States initially proposed language for this provision stating that extradition shall be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.⁴⁰ During the negotiations, no U.S. proposal received more vehement opposition from the Argentine delegation, but the U.S. delegation was able to persuade the Argentine delegation to accept an alternative formulation. This alternative formulation, set forth in paragraph 4, not only provides for extradition for offenses committed in whole or in part in the territory of the Requesting State, but also

for offenses committed outside the territory of the Requesting State if the offenses have effects in the territory of the Requesting State.⁴¹ In addition, paragraph 4 provides for the extraditability of extraterritorial offenses based on other theories of jurisdiction, provided that the laws of the Requested State would recognize jurisdiction over such an offense under similar circumstances. Accordingly, paragraph 4 will greatly improve the ability of the United States to obtain extradition for a great number of offenses, including narcotics trafficking and terrorism, which frequently are initiated or orchestrated from abroad.

Paragraph 5 provides that when extradition has been granted for an extraditable offense, it shall also be granted for other less serious offenses with which the person is charged, but which, standing alone, would not be extraditable for the sole reason that they are not punishable by more than one year of imprisonment. Thus, if Argentina agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged and specified in the request, so long as those misdemeanors would also be recognized as criminal offenses in Argentina, and all other requirements of the Treaty (except the minimum penalty requirement of Article 2(1)) are met. This provision, which is consistent with recent United States extradition practice, is generally desirable from the standpoint of both the fugitive and the prosecuting country. It permits all charges against the fugitive to be disposed of more quickly and efficiently, by facilitating either plea agreements, when appropriate, or trials while evidence is still fresh, and by permitting the possibility of concurrent sentences. Similar provisions are found in many recent United States extradition treaties.⁴²

ARTICLE 3—NATIONALITY

Article 3 provides that extradition and surrender shall not be refused on the ground that the person sought is a national of the Requested Party.

Although Argentina has no constitutional provision or statute which expressly prohibits the extradition of Argentine nationals, in our experience, securing the extradition of Argentine citizens from Argentina has been extremely difficult. The 1972 treaty does not mandate the extradition of nationals, and, in the absence of such an affirmative obligation to do so, Argentine courts have interpreted Argentine law to allow Argentine citizens who have been found extraditable to the United States to choose whether they wish to be extradited or, in the alternative, to stand trial in Argentina for the offenses committed in the United States. It is the policy of the United States to extradite its citizens for offenses committed abroad.⁴³

The Argentine delegation agreed to the U.S. proposal in Article 3, which clearly provides for the mandatory extradition of nationals with no restrictions or exceptions.⁴⁴ This provision will greatly improve the ability of the United States to secure the extradition of Argentine citizens who violate state or federal criminal laws in the United States and thereafter seek haven in Argentina.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this Article contains a general rule that prohibits extradition for political offenses. This principle is commonly known as the “political offense exception” to extradition.⁴⁵

Notwithstanding the general rule in paragraph 1, paragraph 2 describes several categories of offenses that shall not be considered to be political offenses. This is a common provision in United States extradition treaties.⁴⁶

First, paragraph 2(a) provides that the political offense exception shall not apply to an attack or other willful crime against the physical integrity of a Head of State of the United States or Argentina or a member of their families. This is the so-called “attentat clause,” which first began appearing in extradition treaties in the early 1900s in order to preclude lenient treatment of anarchists and assassins of Heads of State. Recent U.S. treaties have broadened its coverage to include attacks against a Head of State’s family as well. The phrase “attack or other willful crime against the physical integrity” was used to limit this clause’s coverage to violent crimes.

Second, paragraph 2(b) states that the political offense exception shall not apply to offenses for which both Parties have, pursuant to a multilateral treaty, the obligation to extradite or prosecute. This clause is included to ensure that the political offense exception does not conflict with and frustrate international obligations that the United States and Argentina have undertaken, or will undertake, in other treaties to ensure that persons accused of certain serious, internationally recognized crimes are brought to justice. Examples of conventions to which this clause would apply at present include: the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents;⁴⁷ the International Convention Against the Taking of Hostages;⁴⁸ the Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking);⁴⁹ and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage). At the instance of the Argentine delegation and to stress the seriousness of those offenses, the delegations included specific reference to treaties relating to genocide, acts of terrorism, and narcotics trafficking.

Paragraph 4 of this Article states that the Requested State may refuse extradition if the request relates to an offense under military law which would not be an offense under ordinary criminal law.⁵⁰ This also is a common provision in United States extradition treaties.⁵¹

Finally, paragraph 2, subparagraphs (c), (d), and (e), states that the political offense exception shall not apply to an attempt to commit, a conspiracy or illicit association to commit, or participation in the commission of, the offenses in subparagraphs (a) and (b).

Paragraph 3 states that extradition shall not be granted if the competent authority of the Requested State determines that the extradition request was politically motivated. This provision applies when the offense for which extradition has been requested does not fall within the definition of a political offense, but it is shown that the foreign State’s extradition request is for the actual purpose of

punishing the person sought for political reasons. Under U.S. law and practice, a claim that the extradition request was politically motivated, unlike a claim involving the political offense exception, falls outside the scope of judicial review and is exclusively for the executive branch (i.e., the Secretary of State) to consider and decide.

ARTICLE 5—PRIOR PROSECUTION

Paragraph 1 of this Article prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested,⁵² and its language is similar to that contained in many United States extradition treaties.⁵³ This paragraph will permit extradition in situations in which the activities of the fugitive result in his being charged with different offenses in both countries arising out of the same basic transaction.⁵⁴

Paragraph 2 of this Article makes clear that extradition shall not be precluded by the fact that the Requested State's authorities declined to prosecute the person sought for the same offense for which extradition is requested. Moreover, paragraph 2 would permit extradition in situations in which the Requested State instituted such criminal proceedings, but thereafter elected to discontinue the proceedings, provided that the laws of the Requested State regarding double jeopardy would permit their future re-institution.⁵⁵ This provision should enhance the ability to extradite criminals to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—DEATH PENALTY

This Article permits the Requested State to refuse extradition in cases where the offense for which extradition is sought is punishable by death in the Requesting State but not so punishable in the Requested State, unless the Requesting State provides assurances that the person sought will not be executed. The Argentine delegation insisted on this provision because Argentina has abolished the death penalty and would not sign a treaty that would obligate it to contravene its law and policy against the death penalty. Similar provisions are found in many recent United States extradition treaties.⁵⁶

If Argentina ever re-establishes the death penalty, this Article would not prevent the United States from securing extradition for a capital offense provided that the offense is subject to capital punishment in both States.

ARTICLE 7—LAPSE OF TIME

This Article provides that extradition shall not be denied on the basis that the prosecution or penalty would be barred under the statute of limitations of the Requested State.

This Article embodies the U.S. preferred view that, provided the other conditions of the Treaty are met, extradition should not be barred on the technicality that the time period established by the statute of limitations of the Requested State has expired. Rather, this Article recognizes that statutes of limitations, which may vary

greatly between different countries and jurisdictions, are procedural obstacles to prosecution, often with complicated rules for their interruption, and due deference should be given to the laws of the Requesting State and its courts in determining whether the time for prosecution or punishment has lapsed.

The 1972 treaty provides that extradition may be refused if the statute of limitations of either the Requesting or Requested State has expired. The new Treaty would require that the Requesting State include in the documentation accompanying extradition requests a statement that the statute of limitations has not expired under the Requesting State's law. The Requested State will be bound to accept such statement and, moreover, will not be permitted to consider whether its own statute of limitations would have run. It is expected that this will prevent extradition from being refused in cases where the Requested State's statute of limitations is shorter than that in the Requesting State, or where the two States' rules regarding the tolling (suspension) of the statute of limitations are different.

ARTICLE 8—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This Article sets forth the appropriate means of transmitting an extradition request and the required documentation and evidence to be submitted in support thereof. Basically, this Article contains similar provisions to corresponding articles in the United States' most recent extradition treaties.⁵⁷

Paragraph 1 of this Article requires that all requests for extradition be submitted in writing through the diplomatic channel. Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Paragraph 3 describes the information needed, in addition to the requirements of paragraph 2, when the person is sought for prosecution in the Requesting State. Paragraph 4 describes the information needed, in addition to the requirements of paragraph 2, when the person sought has already been convicted in the Requesting State.

Most of the items listed in paragraph 2 enable the authorities of the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, the "summary of the facts of the offense" and "the text of the law or laws describing the offense for which extradition is requested" called for in paragraph 2(b) and (c) enable the Requested State to make a preliminary determination whether lack of dual criminality would be a basis for denying extradition under Article 2. Other items, such as the physical description and probable location of the fugitive required under paragraph 2(a), assist the Requested State in locating and apprehending the fugitive, and in proving his identity at the extradition hearing.

Paragraph 2(d) requires the Requesting State to provide a statement that neither the prosecution nor punishment of the person sought is barred by the Requesting State's statute of limitations. Because Article 7 of the Treaty precludes consideration of the Requested State's statute of limitations in the decision on extradition, this subparagraph was included to provide a minimum degree of reassurance to the Requested State that authorities in the Requesting State have reviewed their own statute of limitations, and that

such statute will not bar prosecution or punishment once the fugitive is returned to the Requesting State.

Paragraph 3 requires that if the fugitive is a person sought for prosecution (i.e., pre-conviction), the Requesting State must provide: (a) a copy of the warrant of arrest; (b) a copy of the charging document, if any;⁵⁸ and (c) “such information as would justify the detention of the person if the offense had been committed in the Requested State.” The language in paragraph 3(c) is consistent with fundamental extradition jurisprudence in the United States, in that it will be interpreted to require that Argentina provide such information as is necessary to establish “probable cause” to believe that a crime was committed and the person sought committed it.⁵⁹ The Argentine delegation assured the United States delegation that, under Argentine law, the evidentiary standard for a court to order the “detention” of a person for an alleged criminal offense in Argentina, and thus the standard to be applied in Argentina to extradition requests under the Treaty, is in fact very much akin to our probable cause requirement.⁶⁰

Paragraph 4 describes the information needed, in addition to that required by paragraph 2, when the person sought has already been convicted in the Requesting State. Recognizing that a person may have been found guilty but not yet sentenced, Paragraph 4(a) requires that the Requested State provide a copy of the judgment of conviction, only if available.⁶¹ The paragraph makes clear that once a finding of guilt has been made, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even without a specific treaty provision.⁶² Under paragraph 4(b), the Requesting State is merely required to provide evidence which establishes that the person sought is the person to whom the finding of guilt refers. Finally, paragraph 4(c) requires that the Requesting State provide information regarding the sentence imposed (if the person has been sentenced) and the extent to which the sentence has been carried out. This information is relevant to the Requested State’s determination under Article 2(1) whether the person sought has a sufficient portion of his or her sentence left to serve to justify extradition.

ARTICLE 9—TRANSLATION

This Article is a standard treaty provision which requires that all documents submitted in support of an extradition request must be translated into the language of the Requested State. Thus, requests by Argentina to the United States will be translated into English and requests by the United States to Argentina will be translated into Spanish.

ARTICLE 10—ADMISSIBILITY OF DOCUMENTS

This Article governs the certification and authentication procedures for documents accompanying an extradition request. It states that the documents shall be accepted as evidence in extradition proceedings if certified or authenticated by the appropriate accredited diplomatic or consular officer of the Requested State resident

in the Requesting State,⁶³ or if certified or authenticated in any other manner accepted by the laws in the Requested State.

ARTICLE 11—PROVISIONAL ARREST

This Article describes the process by which a person may be arrested and detained in the Requested State while the extradition documents required by Article 8 are being prepared and translated in the Requesting State, a process which normally may take a number of weeks. Similar articles are included in all modern U.S. extradition treaties.

Provisional arrest serves the interests of justice by allowing for the apprehension of fugitives who pose a risk of flight or danger to the community. Fleeing fugitives often do not stay in one place for any significant period of time, and frequently for less time than it takes to prepare and translate formal extradition documentation. Moreover, the ability to immediately arrest dangerous criminals obviates risks to the safety of the citizenry of the requested country by denying such criminals the opportunity to continue to engage in illegal activity while the full extradition documentation is being prepared.

This Article also contains certain provisions to protect against capricious or unjustified use of provisional arrest authority. For example, the Article provides that provisional arrest may be effected only under urgent circumstances, requires that a valid warrant for the fugitive's arrest be outstanding in the requesting country, and imposes a time limit within which the formal extradition documentation must be presented to the requested country. These provisions are discussed in greater detail below.

Paragraph 1 provides that provisional arrest is reserved for cases of urgency and such a request shall be transmitted by any written means either through the diplomatic channel or directly between the United States Department of Justice and the Argentine Ministry of Foreign Relations.

Paragraph 2 sets forth the information that the Requesting State must provide in support of a provisional arrest request. This paragraph requires that the Requested State be provided with: (1) a description of the person sought; (2) his or her location, if known; (3) a brief statement of the facts of the case; (4) a citation to the laws allegedly violated; (5) statement of the existence of an arrest warrant or judgment of conviction; (6) an explanation of the reasons for the urgency of the request; and (7) a statement that the formal extradition request will be presented.

Paragraph 3 states that the Requesting State must be promptly notified of the disposition of the provisional arrest request.

Paragraph 4 provides that a fugitive who has been provisionally arrested may be released from custody if the Requested State does not receive the fully documented request for extradition within sixty (60) days from the date of the fugitive's provisional arrest.

Finally, although the person sought may be released from custody if the full extradition documentation is not received within the sixty day period, paragraph 5 makes clear that in such cases the person may be taken into custody again and the extradition proceedings recommenced if the formal request is received at a later date.

ARTICLE 12—DECISION ON EXTRADITION AND SURRENDER OF THE
PERSON SOUGHT

Paragraph 1 of this Article requires that the Requested State promptly notify the Requesting State of its decision on the extradition request.

Paragraph 2 requires that, if extradition is denied in whole or in part, the Requested State must provide a reasoned explanation for the denial and, upon request, a copy of the pertinent decisions by its judicial authorities.

Paragraph 3 provides that if, pursuant to Article 6, the Requested State requires assurances regarding the death penalty, such assurances shall be provided by the Requesting State prior to the surrender of the person sought.

Paragraph 4 provides that if extradition is granted, the Parties shall agree on the date and place of the fugitive's surrender. However, if the fugitive is not removed within thirty (30) days of the notification described in paragraph 1 or within the time prescribed by the law of the Requested State, whichever is longer,⁶⁴ then the Requesting State risks the release of the person from custody and subsequent refusal of extradition for the same offense.

ARTICLE 13—TEMPORARY AND DEFERRED SURRENDERS

Occasionally, a person sought for extradition may be facing prosecution or serving a sentence on other charges in the Requested State. Article 13 provides a means for the Requested State to temporarily surrender the person sought to the Requesting State for the purpose of prosecution or, in the alternative, to defer extradition in such cases until the conclusion of the Requested State's proceedings against the person sought and the service of any sentence that may be imposed in connection therewith. Similar provisions appear in recent United States extradition treaties.⁶⁵

Paragraph 1 of Article 13 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be kept in custody while in the Requesting State, and will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits the Requesting State to try the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws of each State, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him.

Notwithstanding the above, temporary surrender may not always be feasible, especially if it would significantly interfere with or impede the ongoing criminal proceedings in the Requested State. Accordingly, paragraph 2 of this Article provides that the Requested State may opt to postpone the surrender of a person who is being

prosecuted or serving a sentence in the Requested State until the conclusion of the prosecution or the completion of the service of any sentence imposed.⁶⁶

Paragraph 3 provides that, if surrender is postponed, such postponement shall suspend the running of the statute of limitations in the Requesting State for the offenses for which extradition is sought.⁶⁷

ARTICLE 14—CONCURRENT REQUESTS

From time to time, a State will receive concurrent requests from two or more other States for the extradition of the same person, and thus the Requested State must decide to which of the Requesting States to surrender the person. In such situations where one of the Parties to this Treaty, the United States or Argentina, is the Requested State, and the other Party to this Treaty is one of the Requesting States, Article 14 sets forth factors that the Requested State shall consider in determining to which country the person should be surrendered. Such factors include: (1) whether the requests were made pursuant to a treaty; (2) the place where each offense for which extradition is requested was committed; (3) the gravity of the respective offenses for which extradition is requested; (4) the respective interests of the Requesting States; (5) the possibility of further extradition between the Requesting States; and (6) the chronological order in which the requests were received from the Requesting States.

This Article makes clear that the Requested State is not limited to the above enumerated factors but should consider all relevant factors in weighing its decision to which State to surrender the person sought. The enumerated factors, however, are intended to provide guidance to the Requested State and prevent arbitrary decisions. Among other things, the enumerated factors recognize: (1) the precedence of requests for which there is a treaty obligation to extradite over requests for which there is no such obligation; (2) the importance of surrendering the person to the State where the principal individual or societal harm was done as a result of the offenses, where the most serious charges are being pursued, or where there is otherwise the greatest interest in prosecuting the person sought; (3) the importance of each Requesting State's ability to subsequently extradite the person to another Requesting State for prosecution, so as to ensure that the person can be prosecuted to the fullest extent possible; and (4) the precedence of a request received first in time.

For the United States, the Executive Branch will make the decision to which country the person should be surrendered in accordance with this Article.⁶⁸ The Argentine delegation advised that, for Argentina, the competent authority would likely be the judicial branch.

ARTICLE 15—SEIZURE AND SURRENDER OF PROPERTY

At the time of their arrest in the Requested State for the purpose of extradition, persons are often in possession of property which may represent the proceeds, instrumentalities, or other evidence of the offenses of which they are accused in the Requesting State. As

such, the Requesting State has an interest in having this property surrendered with the fugitive upon his extradition, so that the property may be used in the prosecution of the person sought, returned to the victims, or otherwise disposed of appropriately.

Accordingly, paragraph 1 of this Article provides that, to the extent permitted by the law in the Requested State, all articles, documents, and evidence connected with the offense for which extradition is granted may be seized and surrendered to the Requesting State. Paragraph 1 further provides that the surrender of such property may occur even if extradition cannot be effected due to the death, disappearance, or escape of the person sought.

Notwithstanding the above, paragraph 2 provides that the Requested State may condition the surrender of the property upon assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. Alternatively, the Requested State may defer the surrender of the property if it is needed as evidence in that State.

Finally, paragraph 3 provides that the obligation to surrender property under this provision shall be subject to due respect for the rights of third parties in such property.

ARTICLE 16—RULE OF SPECIALITY

This Article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Generally, the rule of speciality prohibits the prosecution of an extraditee for offenses other than those for which extradition was granted. By limiting prosecution to those offenses for which extradition was granted, the rule is intended to prevent a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges that may not be extraditable under the Treaty or properly documented at the time that the request is granted. This Article sets forth the current formulation of the rule and its established exceptions.

Paragraph 1 of this Article provides that a person extradited under the Treaty may not be detained, tried, or punished in the Requesting State except for: (1) an offense for which extradition was granted or a differently denominated or less serious offense that nonetheless is based on the same facts as the offense for which extradition was granted provided such offense is extraditable;⁶⁹ (2) an offense committed after extradition⁷⁰; or (3) any other offense for which the Requested State gives consent.⁷¹ Paragraph 1 also provides that, in cases where such consent is sought, the Requested State may require the submission of the supporting documentation called for in Article 8 and the State seeking the consent may detain the person for ninety days, or such longer period of time as the Requested State may authorize, while the request for consent is being processed.

Paragraph 2 of this Article prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to extradition under this Treaty without the consent of the State from which extradition was first obtained.⁷²

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, trial, or punishment of an extraditee for offenses other than those for which extradition was granted, or the

extradition of that person to a third State, if: (1) the extraditee leaves the Requesting State and voluntarily returns to it; or (2) the extraditee does not leave the Requesting State within twenty days of being free to do so.⁷³

ARTICLE 17—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State.⁷⁴ This Article provides that when a fugitive consents to surrender to the Requesting State, the person may be returned to the Requesting State as expeditiously as possible without further proceedings. Such consent must be given before a judicial authority of the Requested State. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 8, or further judicial or administrative proceedings of any kind.

Furthermore, in the case where the person sought elects to return voluntarily to the Requesting State under this Article, it would not be deemed an “extradition”, and therefore the rule of speciality in Article 16 would not apply.

ARTICLE 18—TRANSIT

At times, law enforcement authorities escorting a surrendered person back to the State where he is wanted for trial or punishment are unable to take such person directly from the surrendering State to the receiving State and must make a stop, scheduled or unscheduled, in another State. This Article governs those situations in which one Party to this Treaty is the receiving State and the other Party is the State through which the surrendered person must be transited.⁷⁵

Paragraph 1 of this Article gives each Party the power to authorize transit through its territory of persons being surrendered to the other Party by a third country. Requests for transit under this Article are to be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Argentine Ministry of Foreign Relations or through the facilities of the International Criminal Police Organization (INTERPOL). Transit requests must contain a description of the person being transported and a brief statement of the facts of the case upon which his extradition is based. Paragraph 1 also provides that the person in transit may be detained in custody during the period of transit.

Paragraph 2 states that no authorization is needed if air transportation is being used and no landing is scheduled in the territory of the other Party. If an unscheduled landing occurs in the territory of a Party, that Party may require a request as provided in paragraph 1 of this Article. If such request is required, it shall be provided within ninety-six hours of the unscheduled landing, and the person in transit may be detained until the transit is effected.

ARTICLE 19—REPRESENTATION AND EXPENSES

Paragraph 1 of this Article provides that authorized representatives of the Requested State shall advise, assist, appear in court on

behalf of, and represent the interests of the Requesting State in any proceedings related to a request for extradition.⁷⁶

Paragraph 2 provides that the Requesting State will bear expenses of extradition relating to the translation of documents and the transportation of a fugitive to the Requesting State. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

Paragraph 3 provides that neither State shall make any pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, custody, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.⁷⁷

ARTICLE 20—COMPETENT AUTHORITY

This Article states that, for the United States, the term “competent authority”, as used in the Treaty, means the appropriate authorities of the executive branch.

The term “competent authority” is used in Articles 4, 14, and 16 of the Treaty, and this provision was included to make clear that the executive branch of the United States will make the decisions under those Articles concerning: (1) whether an extradition request was politically motivated; (2) to which State to surrender a fugitive in the face of concurrent extradition requests from two or more States; and (3) whether to consent to a surrendered person’s subsequent prosecution in the Requesting State for offenses other than those for which extradition was granted.

Under United States law and practice, it is well-established that the executive branch is the competent authority for making such decisions. Accordingly, this Article neither expands the power of the executive nor diminishes the power of the judiciary beyond that which is already recognized in U.S. extradition law.

This Article was made to apply only to the United States because the Argentine delegation maintained that, under Argentine extradition practice, the “competent authority” as used in the Treaty may in some cases be the Argentine judicial branch.

ARTICLE 21—CONSULTATION

This Article provides that the Parties may consult with each other directly in connection with the processing of individual extradition cases and in furtherance of maintaining and improving procedures for the implementation of the Treaty. This is a standard provision in modern U.S. extradition treaties.⁷⁸

ARTICLE 22—APPLICATION

This Article, like its counterparts in many of the other United States extradition treaties negotiated in the past two decades,⁷⁹ expressly makes the Treaty retroactive to cover offenses that occurred before as well as after it enters into force.

The retroactive application of extradition treaties does not violate the ex post facto clause of the U.S. Constitution.⁸⁰ Extradition treaties do not, of course, make acts crimes. They merely provide a means by which persons who committed acts that were criminal of-

fenses at the time of their commission can be held to answer for those offenses.⁸¹

ARTICLE 23—RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

This Article contains standard treaty provisions regarding the ratification, entry into force, and termination of the Treaty. Paragraph 1 provides that the Treaty shall be subject to ratification, and that instruments of ratification shall be exchanged as soon as possible. Paragraph 2 provides that the Treaty will enter into force the day after the date of the exchange of the instruments of ratification.

Paragraph 3 of this Article provides that the 1972 treaty shall cease to be in effect upon entry into force of this Treaty. Nevertheless, the 1972 treaty shall continue to apply to extradition proceedings in which extradition documents have already been submitted to the courts when this Treaty enters into force. Paragraph 3 contains additional caveats, however, that Article 17 of this Treaty (waiver of extradition) shall apply to such proceedings,⁸² and Article 16 of this Treaty (rule of speciality) shall apply to persons found extraditable under the 1972 treaty.⁸³

Paragraph 4 of this Article contains standard treaty language for the termination of the Treaty by either Party through written notice to the other Party, and states that termination shall become effective six months after the date of such notice.

Technical Analysis of The Extradition Treaty Between The United States of America and the Republic of Austria signed January 8, 1998

On January 8, 1998, the United States signed a treaty on extradition with the Republic of Austria (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will replace the treaty now in force,⁸⁴ and constitutes a major step forward in the United States’ efforts to win the cooperation of key foreign countries in combating transnational organized crime, terrorism, and drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed. The Republic of Austria has its own internal law⁸⁵ that will apply to United States’ requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, like the first article in every recent United States extradition treaty, formally obligates each Contracting State to extradite to the other Contracting State persons charged with or found guilty of an extraditable offense, subject to the provisions of the Treaty. The article refers to authorities “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local authorities as well as federal cases. The term “found guilty” was used instead of “convicted” because in Austria a person is not considered convicted until a sentence has been imposed, whereas in the United States, a sentence is ordinarily not imposed on a convicted person until after a presentence report has been prepared and reviewed. Thus, sentencing in the United States may occur at some considerable time after there has been a finding of guilt. The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.⁸⁶

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what constitutes an extraditable offense. The Treaty, like the recent United States extradition treaties with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention) and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 permits extradition for any offense which is subject under the laws in both Contracting States to deprivation of liberty (i.e., imprisonment or other form of detention) for more than one year, or by a more severe penalty (such as capital punishment under the laws in the United States). Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both Contracting States pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a type of criminal activity punishable in both nations.

Paragraph 2 requires that if the person has already been convicted and sentenced, the person must have at least three months of that sentence still to serve. Most U.S. extradition treaties signed in recent years do not contain such a requirement, but provisions of this kind do appear in some recent United States extradition treaties.⁸⁷

Paragraph 3 states that when extradition has been granted for an extraditable offense, it shall also be granted for any other offense even if the time conditions in Paragraphs 1 and 2 do not apply, provided that all of the other requirements for extradition are met. For example, if Austria agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge (punishable by more than one year of imprisonment), the United States may also obtain extradition for any misdemeanor offenses (punishable by a shorter sentence) that have been charged, as long as those misdemeanors are also recognized as criminal offenses in the Republic of Austria. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive’s extradition

is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of the Requesting State in that it permits all charges to be disposed of more quickly, thereby facilitating trials while evidence is fresh and a concurrent sentence is possible. Similar clauses are found in our recent extradition treaties with Australia, Ireland, Italy, and Costa Rica.

Paragraph 4 reflects the intention of the Contracting States to interpret the principles of this article broadly. Subparagraph (A) requires the Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of the Contracting States. Subparagraph (B) prevents extradition from being denied in tax, customs duties, or import or export of commodities solely because the Requested State does not have the same taxes, currency controls, or import-export laws. This was included to override Section 15(2) of Austrian Extradition Law, which would otherwise forbid extradition for crimes that are exclusively tax, customs, or import offenses. Subparagraph (C) was included because judges in foreign countries often are confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in United States federal courts. Because these judges know of no similar requirements in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Austria's authorities must treat United States mail fraud charges⁸⁸ in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property⁸⁹ as they would unlawful possession of stolen property.

Paragraph 5 follows the practice of recent extradition treaties in providing that extradition be granted for attempting or conspiring to commit, or otherwise participating in the commission of an extraditable offense. As conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, it is especially important that the Treaty be clear on this point. Thus, Paragraph 5 makes it clear that crimes, such as attempts and conspiracy, that might be considered inchoate are extraditable if the related offense is an extraditable one pursuant to paragraph 1.

Paragraph 6 deals with the fact that federal crimes may involve acts committed wholly outside United States territory by providing that either State may grant extradition for an extraditable offense regardless of where the act or acts constituting the offense were committed. Our jurisprudence recognizes the jurisdiction of our courts to hear criminal cases involving offenses committed outside the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.⁹⁰ The Austrian Government's ability to prosecute extraterritorial offenses is also quite wide, for its law gives it extensive jurisdiction to prosecute for extraterritorial offenses and an obligation to prosecute of-

fenses committed by Austrian nationals anywhere in the world provided that the acts constituting the offense were punishable at the place of commission.⁹¹ Paragraph 6 reflects the Parties' agreement that either State may grant extradition to each other for extraterritorial offenses regardless of where the offense was committed.⁹² A similar provision is contained in other recent U.S. extradition treaties.⁹³

ARTICLE 3—NATIONALITY

Article 3 states that neither State shall be bound to extradite its own nationals, but the executive authority of the Requested State shall have the power to do so [if, in its discretion, it be deemed proper to do so and] provided that the law of the Requested State does not so preclude. The United States does not deny extradition on the basis of the offender's citizenship.⁹⁴ Our long-standing policy is to draw no distinction between citizens and others for extradition purposes. Austria, however is specifically prohibited under its extradition law from extraditing its nationals.⁹⁵ Therefore, it is unlikely that Austria will actually surrender its nationals to the United States under the Treaty unless Austria's law and policy changes.

Paragraph 2 states that if the Requested State denies extradition solely on the basis of the nationality of the offender, that State must submit the case to its authorities for prosecution if requested to do so by the Requesting State. Similar provisions are in many of our extradition treaties.⁹⁶

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 prohibits extradition if the offense for which extradition is requested is a political offenses.⁹⁷ This is a standard provision in recent United States extradition treaties.

Paragraph 2 describes three categories of offenses that shall not be considered political offenses.

First, the political offense exception does not apply to murder, against any person or under any circumstances.

Second, the offense does not apply to any other willful crimes against the person of a Head of State of one of the Contracting States, or a member of the Head of State's family.

Third, the political offense exception does not apply to offenses for which both Contracting States have an obligation pursuant to a multilateral international agreement either to extradite the person sought or to submit the case to their competent authorities for decision regarding prosecution, such as the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁹⁸

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State determines that the request is politically motivated.⁹⁹ United States law and practice have been that the Secretary of State has the sole discretion to determine whether an extradition request is based on improper political motivation.¹⁰⁰

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request

involves offenses under military law which would not be offenses under ordinary criminal law.¹⁰¹

ARTICLE 5—JURISDICTION OF THE REQUESTED STATE

Paragraph 1 permits the Requested State to refuse extradition if the person sought is being prosecuted in the Requested State for the offense for which extradition is requested. This provision was included to keep the treaty consistent with Austrian law.¹⁰²

Paragraph 2 makes it clear that either Party may grant extradition where the Requested State's authorities have declined to prosecute the offender, or have instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision by the Requested State to forego prosecution, or to drop charges already filed, could be the result of a failure to obtain sufficient evidence or witnesses for trial, whereas the prosecution in the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction with the better chance of a successful prosecution.¹⁰³

ARTICLE 6—NON BIS IN IDEM

This article permits extradition when the person sought is charged by each Contracting State with different offenses arising out of the same basic transaction.

Paragraph 1, which prohibits extradition if the person sought has been convicted or discharged with final and binding effect in the Requested State for the offense for which extradition is requested, is similar in effect to language present in many United States extradition treaties. This provision applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State. It is not enough that the same facts were involved. Thus, if the person sought is accused by one Contracting State of illegally smuggling narcotics into that country, and is charged by the other Contracting State with unlawfully exporting the same shipment of drugs, an acquittal or conviction in one Contracting State does not insulate that person from extradition because different crimes are involved.

Paragraph 2 states that an acquittal or discharge for lack of jurisdiction is not an obstacle to extradition. This provision avoids the possibility of a miscarriage of justice if the Requested State were to attempt to prosecute a suspect over which it has no jurisdiction, discover that it cannot proceed, then use its error as a basis for shielding the suspect from extradition to the State that does have jurisdiction and wishes to prosecute.

ARTICLE 7—LAPSE OF TIME

Article 7 states that extradition shall not be granted if the prosecution or the carrying out of the sentence has become barred by lapse of time under the laws of the Requesting State. The reference to "the carrying out of the sentence" reflects the fact that Austria, like many civil law countries, has a statute of limitations relating

to such matters, in addition to a statute of limitation on prosecutions.

Under this provision a court in the Requested State will not apply the Requested State's statute of limitations under the erroneous belief that it should do so in order to determine whether dual criminality exists. The article permits extradition to be denied only if the Requesting State's statute of limitations bars prosecution or enforcement of the sentence. Several recent U.S. extradition treaties contain similar provisions.¹⁰⁴

ARTICLE 8—CAPITAL PUNISHMENT

This article was the subject of extensive discussion between the two delegations, inasmuch as the revision of this provision of the 1930 Convention was an important objective for the Austrian delegation. Austria's Constitution forbids the death penalty,¹⁰⁵ and Austria regards the extradition of a person from Austria to face execution or even the imposition of the death penalty in the United States as inconsistent with its Constitution. Austrian law explicitly requires that "in respect of an offense punishable by the death penalty according to the law of the requesting state [extradition] shall be allowed only if it is guaranteed that the death penalty will not be pronounced. An extradition for enforcement of the death penalty shall not be allowed."¹⁰⁶

Paragraph 1 permits the Requested State to refuse to extradite when the offense for which extradition is sought is punishable by death in the Requesting State but is not punishable by death in the Requested State, unless the Requesting State provides an assurance that the death penalty will not be imposed (in the case of a person sought for trial) or carried out (in the case of a person already sentenced to death at the time extradition is requested). The Austrian delegation told the United States delegation that it is virtually inconceivable that Austria would ever grant extradition without the assurances described in this paragraph, which is similar in spirit and effect to provisions found in other recent United States extradition treaties.¹⁰⁷

Paragraph 2 provides that when the Requesting State gives assurances in accordance with paragraph 1, extradition shall be granted, and the assurances shall be binding on the Requesting State.

ARTICLE 9—CONVICTIONS IN ABSENTIA

This article states that if the person sought was convicted *in absentia*, the Requesting State's executive authority may refuse extradition unless the Requesting State supplies information demonstrating that the person has been given an adequate opportunity to present a defense to the charges. This paragraph will enable the Secretary of State to carry out the long-standing United States policy of extraditing persons who were convicted *in absentia* only when the person has had or will have a meaningful opportunity in the Requesting State to be heard on the issue of guilt or innocence. A similar provision is found in some other U.S. extradition treaties.¹⁰⁸

ARTICLE 10—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets forth the documentary and evidentiary requirements for an extradition request. Similar articles are present in most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the person sought pursuant to Article 13. Provisional arrest requests need not be initiated through the diplomatic channel provided that the requirements of Article 13 are met.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Paragraph 3 describes the additional information needed when the person is sought for trial in the Requesting State. Paragraph 4 describes the information needed, in addition to the requirements of paragraph 2, when the person sought has already been tried and found guilty in the Requesting State.

Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, paragraph 2(c) calls for “the text of the law describing the essential elements of the offense for which extradition is requested,” which enables the Requested State to determine easily whether the request satisfies the requirement for dual criminality.

Paragraph 3 requires that if the fugitive has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide a copy of the arrest warrant, a copy of the charging document, if available, and “documents setting forth sufficient information to provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the warrant of arrest.” This provision is meant to satisfy the standard of “probable cause,” under which our courts permit extradition if there is probable cause to believe that an extraditable offense was committed and that the fugitive committed it.¹⁰⁹

Paragraph 4 lists the information needed to extradite a person who has been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.¹¹⁰

Paragraph 5 states that the documents transmitted through diplomatic channels in support of the extradition request shall be admissible in extradition proceedings without further certification, authentication, or legalization.

ARTICLE 11—SUPPLEMENTARY INFORMATION

This article provides for the submission of additional evidence or information if the original request and supporting documentation are viewed as insufficient by the Requested State. This is intended to permit the Requesting State to have an opportunity to cure any defects in the request and to permit the court in the Requested

State, in appropriate cases, to grant a reasonable continuance to obtain, translate, and transmit additional materials. A somewhat similar provision is found in other United States extradition treaties.¹¹¹

ARTICLE 12—TRANSLATION

Article 12 requires that unless otherwise agreed, all documents submitted in support of the request shall be translated by the by the Requesting State into the language of the Requested State. The article also states that translations need not be certified.

ARTICLE 13—PROVISIONAL ARREST

This article describes the process by which a person in a Contracting State may be arrested and detained while the formal extradition papers are being prepared.

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and Austria's Ministry of Justice. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be notified without delay of the disposition of the request and the reasons for its denial.

Paragraph 4 provides that a person who has been provisionally arrested may be released from detention if the Requesting State does not submit a fully documented request for extradition to the executive authority of the Requested State within 60 days of the provisional arrest. When the United States is the Requested State, the executive authority includes the Secretary of State and the United States Embassy in Vienna.¹¹² This provision does not create a right in the provisionally arrested person to immediate release, but affords the Requested State the discretion to cause such a release.

Although the person sought may be released from custody if the documents are not received within the sixty-day period or any extension thereof, the extradition proceedings against the fugitive need not be dismissed. The final paragraph in this article makes it clear that the person may be taken into custody again, and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 14—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide the reasons for the denial.

Paragraph 2 states that if extradition is granted, the authorities of the Contracting States must agree on a time and place for surrender of the person sought.

Paragraph 3 states that the Requesting State must remove the person within the time prescribed by the law of the Requested

State, or, if the Requested State has no such law, within a reasonable period of time to be determined by the Requested State. If not, the person may be discharged from custody, and the Requested State may subsequently refuse to extradite the person for the same offense. United States law provides that surrender should occur within two calendar months of a finding that the person is extraditable,¹¹³ or of the conclusion of any litigation challenging that finding,¹¹⁴ whichever is later. The law in Austria does not set a specific time period for removal,¹¹⁵ and Austrian authorities will have to prescribe a reasonable period of time in each case.

Paragraph 4 provides that when surrender or acceptance of delivery of a fugitive is delayed because of circumstances beyond the control of one of the Parties, the Party will notify the other before the expiration of any time limits, and a new date for surrender or delivery will be set.

ARTICLE 15—POSTPONED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person and the full execution of any punishment imposed.

Paragraph 1 provides that the executive authority of the Requested State may postpone surrender of a person who is serving a sentence in the Requested State until the prosecution has been concluded and any sentence has been served.¹¹⁶ The provision allows the Requested State to postpone the surrender of a person facing prosecution or serving a sentence in the Requested State.

Paragraph 2 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State.¹¹⁷ A person temporarily transferred pursuant to the Treaty will be returned to the Requested State at the conclusion of the proceedings against that person. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of a successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it permits resolution of the charges sooner; (2) subject to the laws in each state, it makes it possible for any sentence to be served in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits defense against the charges while favorable evidence is fresh and more likely to be available. Similar provisions are found in many recent extradition treaties.

Paragraph 2 also requires that a person temporarily surrendered under this provision receive credit for the time spent in custody in the territory of the Requesting State toward the penalty imposed or to be imposed in the Requested State.

ARTICLE 16—DEFERRAL OF EXTRADITION PROCEEDINGS

This article complements Article 15 by expressly permitting the Requested State to defer the initiation of extradition proceedings as well as the actual surrender of the fugitive.

ARTICLE 17—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties in listing some of the factors that the executive authority of the Requested State must consider when reviewing requests from two or more countries for the extradition of the same person. For the United States, the Secretary of State decides to which country the person should be surrendered;¹¹⁸ for the Republic of Austria, the decision is made by the Minister of Justice.¹¹⁹

ARTICLE 18—SEIZURE AND SURRENDER OF PROPERTY

Article 18(1) addresses the seizure and surrender by the Requested State of articles, documents and evidence connected with the offense for which extradition is requested. To the extent permitted by its laws, the Requested State may seize such property that is connected with an offense for which extradition is sought. The section also provides for objects seized thereunder to be surrendered to the Requested State if extradition is granted¹²⁰, and it states that such items may be surrendered even if extradition cannot be effected due to the death, disappearance or escape of the person sought.

Paragraph 2 states that the Requested State may condition its surrender of property upon satisfactory assurances that the property will be returned to the Requested State as soon as practicable. Paragraph 2 also permits the surrender of property to be deferred if it is needed as evidence in the Requested State.

Paragraph 3 provides that the surrender of property under this provision is expressly made subject to due respect for the rights of third parties in such property.

Paragraph 4 states that restrictive regulations concerning the import and export of articles and foreign currency shall not apply to items surrendered under this Treaty. This provision was included because Austria has strict currency control regulations that might otherwise block the return to the United States of evidence or proceeds of the offense located in Austria, during the extradition proceedings.¹²¹

ARTICLE 19—RULE OF SPECIALTY

This article covers the rule of specialty, a standard principle of United States extradition law and practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of specialty prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or execution of a sentence on different charges that are not extraditable or properly documented in the request.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be de-

tained, tried, or punished in the Requesting State for: (1) the offense for which extradition was granted or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) an offense committed after the extradition; or (3) an offense for which the executive authority of the Requested State consents.¹²² Paragraph 1(C)(II) also permits the Contracting State that is seeking consent to pursue new charges to detain the person extradited for 90 days or for such longer period as the Requested State may authorize while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third state without the Requested State's consent.

Paragraph 3 permits the detention, trial or punishment of an extradited person for additional offenses or extradition to a third state if: (1) the extradited person leaves the Requesting State after extradition and voluntarily returns, or is lawfully returned, to it; or (2) the extradited person does not leave the Requesting State within thirty days of being free to do so.

Paragraph 4 states that this article does not prevent the Requesting State from taking measures necessary to effect the departure of the extradited person from its territory, or to prevent expiration of a right of action through lapse of time.

ARTICLE 20—SIMPLIFIED EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State. This article provides that when a fugitive consents to surrender to the Requesting State, the person may be returned to the Requesting State as expeditiously as possible without further proceedings. The negotiators anticipated that in such cases there will be no need for the formal documentation described in Article 10 or further judicial or administrative proceedings of any kind. The second sentence states that the rule of specialty is inapplicable to persons who elect simplified extradition. This is consistent with long-standing United States policy¹²³ and with Austrian law.¹²⁴

ARTICLE 21—TRANSIT

Paragraph 1 gives each Contracting State the power to authorize transit through its territory of persons being surrendered to the other Contracting State by a third state. A person in transit may be detained in custody during the transit period. Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which transit is sought. The transit request may be submitted through diplomatic channels, or directly between the United States Department of Justice and the Republic of Austria Ministry of Justice. INTERPOL may be used for the transmittal of such requests for transit.

Paragraph 2 provides that no advance authorization is needed for transit pursuant to the article if travel is by aircraft and no landing is scheduled in the territory of the country being transited. Should an unscheduled landing occur, a request for transit may be

required at that time, and the Requested State may grant the request if, in its discretion, it is deemed appropriate to do so. The Treaty ensures that the person will be kept in custody for up to 96 hours until a request for transit is received and thereafter until it is executed.

ARTICLE 22—ASSISTANCE AND EXPENSES

Paragraph 1 provides that the Requested State shall advise the Requesting State and represent its interests by all legal means within its power in extradition proceedings before the judges and officials of the Requested State. Thus, the United States will represent Austria in connection with requests from Austria for extradition before the courts in this country, and the Austrian Minister of Justice will represent the United States in connection with United States extradition requests to Austria.

Paragraph 2 states that the Requesting State shall bear the expenses of translation and transportation of the person sought, and the Requested State shall pay all other expenses.

Paragraph 3 provides that neither Contracting State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination and surrender of the person sought. This includes any claim by the person sought for damages, reimbursement of legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 23—CONSULTATION

This article provides that the United States Department of Justice and the Republic of Austria Ministry of Justice may consult with each other with regard to an individual extradition case or extradition procedures in general. A similar provision is found in other recent United States extradition treaties.¹²⁵

ARTICLE 24—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive and covers offenses that occurred before as well as after the Treaty enters into force.

ARTICLE 25—RATIFICATION AND ENTRY INTO FORCE

The first two paragraphs of this article provide that the treaty will become effective only after an exchange of instruments of ratification at Washington, and that the Treaty will enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

Paragraph 3 provides that the 1930 Treaty and 1934 Supplementary Convention will cease to have effect upon the entry into force of the Treaty, but extradition requests pending before the courts when this Treaty enters into force will nevertheless be processed to conclusion under the prior Treaty and Supplementary Convention. Nevertheless, Article 2 of this Treaty (which defines extraditable offenses) shall apply to such proceedings, as well as Article 15 (which deals with temporary and deferred surrender),

and Article 19 (which concerns the rule of specialty). Thus, persons involved in such proceedings may temporarily be surrendered if the Parties agree, and the new provision on specialty will apply.

ARTICLE 26—TERMINATION

This article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting State. Termination shall become effective six months after the date of such notice.

Technical Analysis of the Extradition Treaty Between the United States of America and Barbados signed February 28, 1996

On February 28, 1996, the United States signed a treaty on extradition with Barbados (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries, as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will replace the treaty now in force,¹²⁶ and constitutes a major step forward in the United States’ efforts to win the cooperation of countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed for the United States. Barbados has its own internal legislation on extradition,¹²⁷ which will apply to United States’ requests under the treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.¹²⁸ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. This Treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from the Barbados delegation that U.S. offenses such as operating a continuing criminal enterprise (Title 21, United States Code, Section 848), would be extraditable, and that offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968) would be extraditable if the predicate offense would be an extraditable offense. The Barbados delegation also stated that extradition would be possible for such high priority offenses as drug trafficking, terrorism, money laundering, tax fraud or tax evasion, crimes against environmental protection laws, and antitrust violations punishable in both states by one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Barbados has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Barbados authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and

view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.¹²⁹ In Barbados, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Barbados' agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Barbados' law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Barbados agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Barbados. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.¹³⁰ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,¹³¹ and the Barbados extradition law contains no exception for Barbadian nationals. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.¹³²

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses that are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.¹³³

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Article 4(3) provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.¹³⁴ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.¹³⁵

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.¹³⁶

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.¹³⁷ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same ship-

ment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel.¹³⁸ A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 are met.

Article 6(2) outlines the information which must accompany every request for extradition under the Treaty. Most of the items listed in Article 6(2) enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in Article 6(2), however, are required strictly for informational purposes. Thus, Article 6(2)(c)(iii) calls for "information as to the provisions of the law describing any time limit on the prosecution," even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and Barbados delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Article 6(3) describes the additional information required when the person is sought for trial in the Requesting State. Article 6(3)(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide "such information as would provide probable cause, according to the law of the Requested State, for the arrest and committal for trial of the person if the offense had been committed in the Requested State." This provision will alleviate one of the major practical problems with extradition from Barbados. The 1931 Treaty permits extradition only if "... the evidence be found sufficient, according to the laws of the High Contracting

Party applied to, either to justify the committal of the prisoner for trial, in the case the crime or offense had been committed in the territory of such High Contracting party, or to prove that the person is the identical person convicted by the courts of the High Contracting Party who makes the requisition . . .".¹³⁹ Barbados' courts have interpreted this clause to require that a *prima facie* case against the defendant be shown before extradition will be granted. By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.¹⁴⁰ Barbados' agreement to extradite under the above standard in this Treaty eliminates this imbalance in the burden of proof for extradition, and should dramatically improve the United States' ability to extradite from Barbados.

Article 6(4) lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even absent a specific treaty provision.¹⁴¹

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Barbados resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current law in Barbados.¹⁴² When the request is from Barbados, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados, in accordance with United States extradition law.¹⁴³

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should insure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding

lapse of time in either the requesting or requested states.¹⁴⁴ The U.S. and Barbadian delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.¹⁴⁵

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Barbados. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the fugitive may be released from detention if the Requesting State does not file a fully documented request for extradition with the executive authority of the Requested State within sixty days of the date on which the person was arrested. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.¹⁴⁶

Article 9(5) makes it clear that in such cases the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article provides that the two States agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law currently permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,¹⁴⁷ or of the conclusion of any litigation challenging that finding,¹⁴⁸ whichever is later. The law in Barbados permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.¹⁴⁹

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Re-

requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Article 11(1) provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Article 11(2) provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment that has been imposed.¹⁵⁰ The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence in that State, even if all necessary extradition proceedings have been completed.

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision;¹⁵¹ for Barbados, the decision would be made by the Attorney General.¹⁵²

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.¹⁵³ The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Article 13(2) states that the Requested State may condition its surrender of property in such a way as to ensure that the property is returned as soon as practicable. This paragraph also permits the

Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Article 13(3) makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALTY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.⁵⁴ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.⁵⁵

Finally, Paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.

ARTICLE 16—TRANSIT

Article 16(1) gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.¹⁵⁶ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in Barbados, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Article 16(2) provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. This paragraph also permits the transit State to detain a fugitive and a request for transit as received and executed, so long as the request is received within 96 hours of the unscheduled landing.

Barbados does not appear to have specific legislation on this matter, and the Barbados delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Barbados in connection with a request from Barbados for extradition before the courts in this country, and the Barbados' Attorney General will arrange for the representation of the United States in connection with United States extradition requests to Barbados.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State.¹⁵⁷ The negotiators recognized that cases may arise in which the Requesting State may wish to retain private counsel to assist in the presentation of the extradition request. It is anticipated that in such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General's Chambers in Barbados may consult with each other with regard to an individual extra-

dition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.¹⁵⁸

During the negotiations, the Barbados delegation raised concerns that the United States might invoke the Treaty much more often than Barbados, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general. At the request of Barbados, the United States delegation also promised to provide training and technical assistance to prosecutors and legal officials in Barbados, to better educate and equip them to implement this Treaty.

ARTICLE 19—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1931 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1931 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language on the procedure for termination of the Treaty by either State. Termination shall become effective six months after notice of termination is received.

Technical Analysis of The Extradition Treaty Between The United States of America and the Republic of Cyprus signed June 17, 1996

On June 17, 1996, the United States signed a treaty on extradition with the Republic of Cyprus (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will replace the treaty now in force,¹⁵⁹ and constitutes a major step forward in the United States’ efforts to win the cooperation of key foreign countries in combating transnational organized crime, terrorism, and drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by

Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed. The Republic of Cyprus has its own internal law,¹⁶⁰ which will apply to United States' requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters' knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, like the first article in every recent United States extradition treaty, formally obligates each Contracting State to extradite to the other Contracting State persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the Treaty. The negotiators agreed that the term "convicted" includes instances in which the person has been found guilty but the sentence has not yet been imposed.¹⁶¹ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what constitutes an extraditable offense. The Treaty, similar to the recent United States extradition treaties with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention) and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 permits extradition for any offense punishable under the laws of both Contracting States by deprivation of liberty (i.e., imprisonment or other form of detention) for more than one year, or by a more severe penalty such as capital punishment under the laws of the United States. Defining extraditable offenses in terms of "dual criminality" rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both Contracting States pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a type of criminal activity punishable in both nations.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring, or otherwise being an accessory to an extraditable offense. As conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, it is especially important that the Treaty be clear on this point. Paragraph 2 creates an exception to the dual criminality rule of paragraph 1 by expressly making inchoate crimes such as conspiracy extraditable offenses if the object of the inchoate offense is an extraditable offense pursuant to paragraph 1.

Paragraph 3 reflects the intention of the Contracting States to interpret the principles of this article broadly. Judges in foreign

countries often are confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in United States federal courts. Because these judges know of no similar requirements in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, it will ensure that Cyprus' authorities treat United States mail fraud charges¹⁶² in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property¹⁶³ in the same manner as unlawful possession of stolen property. This paragraph also requires the Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of the Contracting States. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that federal crimes may involve acts committed wholly outside United States territory. Our jurisprudence recognizes the jurisdiction of our courts to hear criminal cases involving offenses committed outside the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.¹⁶⁴ In Cyprus, however, the government's ability to prosecute extraterritorial offenses is much more limited. Paragraph 4 reflects Cyprus' agreement to recognize United States jurisdiction to prosecute offenses committed outside the United States if Cyprus' law would permit the Republic of Cyprus to prosecute similar offenses committed abroad in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request by not setting in motion the procedure for extradition.

Paragraph 5 states that when extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, if all of the requirements for extradition are met, except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Cyprus agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States may also obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors are also recognized as criminal offenses in the Republic of Cyprus. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the Requesting State in that it permits all charges to be disposed of more quickly, thereby facilitating trials while evidence is fresh and permitting the possibility of concurrent sentences. Similar clauses are found in recent United States extradition treaties with Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.¹⁶⁵ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—TREATMENT OF NATIONALS

Article 3 states that neither State shall be obligated to extradite its own nationals, but each may do so unless otherwise provided by its laws and Constitution. The United States does not deny extradition on the basis of the offender's citizenship;¹⁶⁶ our long-standing policy is to draw no distinction between citizens and others for extradition purposes. However, Cyprus is specifically prohibited from extraditing its nationals by its extradition law¹⁶⁷ and Constitution.¹⁶⁸ Therefore, it is unlikely that Cyprus will actually surrender its nationals to the United States under the Treaty unless Cyprus' law and Constitution are amended in the future.

Paragraph 2 states that if the Requested State denies extradition solely on the basis of the nationality of the offender, that State must submit the case to its authorities for prosecution if asked to do so by the Requesting State.¹⁶⁹ Similar provisions are found in other U.S. extradition treaties.¹⁷⁰

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 prohibits extradition for political offenses. This is a standard provision in recent United States extradition treaties.¹⁷¹

Paragraph 2 describes three categories of offenses that shall not be considered political offenses.

First, the political offense exception does not apply to murder or other willful crimes against the person of one of a Head of State of the Contracting States, or a member of the Head of State's family.¹⁷²

Second, the political offense exception does not apply to offenses for which both Contracting States have an obligation pursuant to a multilateral international agreement either to extradite the person sought or to submit the case to their competent authorities for prosecution, such as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.¹⁷³

Third, the political offense exception does not apply to conspiring or attempting to commit, or aiding or abetting the commission or attempted commission of, any of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State determines that the request is politically motivated.¹⁷⁴ United States law and practice have been that the Secretary of State has the sole discretion to determine whether an extradition request is based on improper political motivation.¹⁷⁵

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.¹⁷⁶

ARTICLE 5—PRIOR PROSECUTION

This article permits extradition when the person sought is charged by each Contracting State with different offenses arising out of the same basic transaction.

Paragraph 1, which prohibits extradition if the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested, is similar to language present in many United States extradition treaties.¹⁷⁷ This provision applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State. It is not enough that the same facts were involved. Thus, if the person sought is accused by one Contracting State of illegally smuggling narcotics into that country, and is charged by the other Contracting State with unlawfully exporting the same shipment of drugs, an acquittal or conviction in one Contracting State does not insulate that person from extradition because different crimes are involved.

Paragraph 2 makes it clear that neither Contracting State may refuse to extradite a person sought on the basis that the Requested State's authorities declined to prosecute the person or instituted and later discontinued proceedings against the person. This provision was included because a decision of the Requested State to forego prosecution or to drop charges previously filed could be the result of a failure to obtain sufficient evidence or witnesses for trial, whereas the Requesting State's prosecution might not suffer from the same impediments. This provision should enhance the ability of the Contracting States to extradite to the jurisdiction with the better chance of a successful prosecution.

ARTICLE 6—CAPITAL PUNISHMENT

Paragraph 1 permits the Requested State to refuse extradition in cases in which the offense for which extradition is sought is punishable by death in the Requesting State, but is not punishable by death in the Requested State, unless the Requesting State provides assurances that the death penalty, if imposed, will not be carried out. Similar provisions are found in many recent United States extradition treaties.¹⁷⁸

Paragraph 2 provides that when the Requesting State gives assurances in accordance with paragraph 1, the assurances shall be respected, and the death penalty, if imposed, shall not be carried out.

The Cyprus delegation insisted on this provision because its extradition law gives the Minister of Justice the explicit discretion to deny extradition for crimes not punishable by death in Cyprus if the person sought "could be or has been sentenced to death for that offense in the country by which the request for his return is made."¹⁷⁹ However, while Cyprus itself has abolished the death penalty, the Cyprus delegation assured the United States delega-

tion that in a particularly aggravated case, Cyprus might grant extradition without requiring assurances under this paragraph.

ARTICLE 7—LAPSE OF TIME

Article 6 states that extradition shall not be barred because of the prescriptive laws of either the Requesting State or the Requested State.¹⁸⁰ The U.S. and Cypriot delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 8—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets forth the documentary and evidentiary requirements for an extradition request. Similar articles are present in most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the person sought pursuant to Article 11. Provisional arrest requests need not be initiated through the diplomatic channel provided that the requirements of Article 11 are met.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Paragraph 3 describes the additional information needed when the person is sought for trial in the Requesting State. Paragraph 4 describes the information needed, in addition to the requirements of paragraph 2, when the person sought has already been tried and found guilty in the Requesting State.

Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, paragraph 2(c) calls for “a copy of the law or a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested,” which enables the Requested State to determine easily whether the request satisfies the requirement for dual criminality under Article 2.

Paragraph 3 requires that if the fugitive has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide a copy of the arrest warrant, a copy of the charging document, if available, and “a statement of the facts summarizing the testimony of witnesses and describing physical and documentary evidence and disclosing reasonable grounds to believe that an offense was committed and the person sought committed it. For this purpose, the actual affidavits or testimony of witnesses need not be forwarded.” This is consistent with extradition law in the United States, and is similar to language in other United States extradition treaties. It is meant to satisfy the standard of “probable cause,” under which our courts permit extradition if there is probable cause to believe that an extraditable offense was committed and that the fugitive committed it.¹⁸¹

This provision should alleviate one of the major practical problems with extradition from Cyprus. The Treaty currently in force permits extradition only if “... the evidence be found sufficient, ac-

cording to the laws of the High Contracting State applied to, either to justify the committal of the prisoner for trial, in the case the crime or offense had been committed in the territory of such High Contracting party, or to prove that the person is the identical person convicted by the courts of the High Contracting State who makes the requisition ...". Cyprus' courts have interpreted this clause to require that a prima facie case against the defendant be shown before extradition will be granted. By contrast, U.S. courts interpret the same language to permit extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.¹⁸² The language of Cyprus' agreement to have extradition under the new Treaty based on a "reasonable grounds to believe" standard, rather than a prima facie case standard, equalizes the burden of proof for extradition and should improve the United States' ability to extradite from Cyprus. In Cyprus, as in many European nations, the law permits extradition without review of any evidence at all (provided that the arrest warrant and other documents are presented). Cyprus offered to include this in the new Treaty, but the U.S. delegation declined because of our Constitutional requirements.

Paragraph 4 lists the information required to extradite a person who has been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.¹⁸³ Subsection (c) states that if the person sought was found guilty *in absentia*, the documentation required for extradition includes both proof of conviction and the same documentation required in cases in which no conviction has been obtained. This is consistent with the long-standing United States policy of requiring such documentation in the extradition of persons convicted *in absentia*.

Paragraph 5 states that if the information communicated by the Requesting State is insufficient, the Requested State shall request the necessary supplemental information, and may fix a time limit for producing such information. This article is intended to permit the Requesting State to cure any defects in the request and accompanying materials which are found by a court in the Requested State or by the attorney acting on behalf of the Requesting State, and to permit the court, in appropriate cases, to grant a reasonable continuance to obtain, translate, and transmit additional materials. A somewhat similar provision is found in other United States extradition treaties.¹⁸⁴

Paragraph 6 states that if the person sought was convicted *in absentia*, the Requesting State's executive authority may refuse extradition unless the Requesting State supplies information demonstrating that the person has been given an adequate opportunity to present a defense to the charges. This paragraph will enable the Secretary of State to carry out the long-standing United States policy of extraditing persons who were convicted *in absentia* only when the person has had or will have a meaningful opportunity in the Requesting State to be heard on the issue of guilt or innocence.

Paragraph 7 states that the extradition procedures of the Requested State shall govern except when this treaty provides other-

wise. This clause was requested by the Government of Cyprus, and carries forward a principle contained in the treaty now in force between the United States and Cyprus.¹⁸⁵

ARTICLE 9—ADMISSIBILITY OF DOCUMENTS

Article 9 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be admitted into evidence if they purport to be certified by a judge, magistrate or officer of the U.S. to be the original or true copies of such documents and they are authenticated by the oath of a witness or the seal of the Secretary of State. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current treaty.¹⁸⁶

When the request is from the Republic of Cyprus, the documents must be admitted into evidence if they are certified by the principal diplomatic or consular officer of the United States resident in the Republic of Cyprus, in accordance with United States extradition law.¹⁸⁷

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 10—TRANSLATION

Article 10 requires that all documents submitted in support of the request shall be in the language of either the Requesting State or the Requested State, but that the Requested State has the right to insist upon a translation into its own language.

ARTICLE 11—PROVISIONAL ARREST

This article describes the process by which a person in one Contracting State may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and Cyprus' Ministry of Justice and Public Order. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be notified without delay of the disposition of the request and the reasons for any denial.

Paragraph 4 provides that a person who has been provisionally arrested may be released from detention if the Requesting State does not submit a fully documented request for extradition to the executive authority of the Requested State within 60 days of the provisional arrest. When the United States is the Requested State, the executive authority includes the Secretary of State and the United States Embassy in Nicosia.¹⁸⁸

Although the person sought may be released from custody if the documents are not received within the sixty-day period or any extension thereof, the final paragraph in this article makes clear that the person may be taken into custody again, and the extradition proceedings may commence, if the formal request is presented subsequently.

ARTICLE 12—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide the reasons for the denial. If extradition is granted, this article provides that authorities of the Contracting States shall agree on a time and place for surrender of the person sought. The Requesting State must remove the person within the time prescribed by the law of the Requested State or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite the person for the same offense. United States law requires that surrender occur within two calendar months of a finding that the person is extraditable,¹⁸⁹ or of the conclusion of any litigation challenging that finding,¹⁹⁰ whichever is later. The law in the Republic of Cyprus permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.¹⁹¹

ARTICLE 13—TEMPORARY AND DEFERRED SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person and the full execution of any punishment imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to the Treaty will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of a successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it permits resolu-

tion of the charges sooner; (2) subject to the laws in each state, it makes it possible for any sentence to be served in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits defense against the charges while favorable evidence is fresh and more likely to be available. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of any punishment that has been imposed.¹⁹² The wording of the provision also allows the Requested State to postpone the surrender of a person facing prosecution or serving a sentence even if all necessary extradition proceedings have been completed.

ARTICLE 14—REQUESTS FOR EXTRADITION MADE BY MORE THAN ONE STATE

This article reflects the practice of many recent United States extradition treaties in listing some of the factors that the executive authority of the Requested State must consider when reviewing requests from two or more countries for the extradition of the same person. For the United States, the Secretary of State decides to which country the person should be surrendered;¹⁹³ for the Republic of Cyprus, the decision is made by the Minister of Justice and Public Order.¹⁹⁴

ARTICLE 15—SEIZURE AND SURRENDER OF PROPERTY

This article permits the seizure by the Requested State of all property—articles, documents and other evidence—connected with the offense for which extradition is requested to the extent permitted by the Requested State's internal law. The article also provides that these objects may be surrendered to the Requesting State upon the granting of the extradition or even if extradition cannot be effected due to the death, disappearance or escape of the person sought. Paragraph 2 states that the Requested State may condition its surrender of property upon satisfactory assurances that the property will be returned to the Requested State as soon as practicable. Paragraph 2 also permits the surrender of property to be deferred if it is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties in such property.

ARTICLE 16—RULE OF SPECIALITY

This article covers the rule of speciality, a standard principle of United States extradition law and practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or execution of a sentence on different charges that are not extraditable or properly documented in the request.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for: (1) the of-

fense for which extradition was granted or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) an offense committed after the extradition; or (3) an offense for which the executive authority of the Requested State consents.¹⁹⁵ Paragraph 1(c)(ii) permits the Contracting State that is seeking consent to pursue new charges to detain the person extradited for 90 days or for such longer period as the Requested State may authorize while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third state for a crime committed prior to his extradition under this Treaty without the consent of the Requested State.

Paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, trial or punishment of an extradited person for additional offenses or extradition to a third state if: (1) the extradited person leaves the Requesting State after extradition and voluntarily returns to it; or (2) the extradited person does not leave the Requesting State within ten days of being free to do so.

ARTICLE 17—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State. This article provides that when a fugitive consents to surrender to the Requesting State, the person may be returned to the Requesting State as expeditiously as possible without further proceedings. The negotiators anticipated that in such cases, there will be no need for the formal documentation described in Article 8, or further judicial or administrative proceedings of any kind.

If the United States is the Requested State and the person sought elects to return voluntarily to the Republic of Cyprus before the United States Secretary of State signs a surrender warrant, the United States does not deem the process an “extradition.” Long-standing United States policy has been that the rule of speciality as described in Article 17 does not apply to such cases.¹⁹⁶

ARTICLE 18—TRANSIT

Paragraph 1 gives each Contracting State the power to authorize transit through its territory of persons being surrendered to the other Contracting State by a third state. A person in transit may be detained in custody during the transit period. Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which transit is sought. The transit request may be submitted through diplomatic channels, or directly between the United States Department of Justice and the Republic of Cyprus Ministry of Justice and Public Order, or the facilities of INTERPOL may be used. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Contracting States and is traveling by aircraft and no landing is scheduled in the territory of the other. Should an unscheduled landing occur, a request

for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours.

ARTICLE 19—REPRESENTATION AND EXPENSES

Paragraph 1 provides that the United States represents the Republic of Cyprus in connection with requests from the Republic of Cyprus for extradition before the courts in this country, and the Republic of Cyprus Attorney General arranges for the representation of the United States in connection with United States extradition requests to the Republic of Cyprus.

Paragraph 2 states that the Requesting State shall bear the expenses of translation and transportation of the person sought, and the Requested State shall pay all other expenses.

Paragraph 3 provides that neither Contracting State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the person sought. This includes any claim by the person sought for damages, reimbursement of legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 20—CONSULTATION

This article provides that the United States Department of Justice and the Republic of Cyprus Ministry of Justice and Public Order may consult with each other with regard to an individual extradition case or extradition procedures in general. A similar provision is found in other recent United States extradition treaties.¹⁹⁷

ARTICLE 21—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive and accordingly covers offenses that occurred before as well as after the Treaty enters into force.

ARTICLE 22—RATIFICATION AND ENTRY INTO FORCE

The first two paragraphs of this article contain standard treaty language providing for the exchange of instruments of ratification at Nicosia, and indicating that the Treaty will enter into force immediately upon the exchange.

Paragraph 3 provides that the 1931 Treaty will cease to have effect upon the entry into force of the Treaty, but extradition requests pending before the courts when the Treaty enters into force will nevertheless be processed to conclusion under the 1931 Treaty. However, Article 16 of this Treaty, which concerns the rule of speciality, and Article 17, which deals with simplified extradition, will apply in such extradition proceedings. This means that persons involved in such proceedings may waive extradition if they wish, and the Government of the Requested State will be able to waive the application of the rule of speciality if it is persuaded that it is in the interests of justice to do so.

ARTICLE 23—TERMINATION

This article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting State. Termination shall become effective six months after the date of such notice.

Technical Analysis of the Extradition Treaty Between the United States of America and Dominica Signed October 10, 1996

On October 10, 1996, the United States signed a treaty on extradition with Dominica (hereinafter “the Treaty”), which is intended to replace the outdated treaty currently in force between the two countries¹⁹⁸ with a modern agreement on the extradition of fugitives. The new extradition treaty is one of twelve treaties that the United States negotiated under the auspices of the Organization of Eastern Caribbean States to modernize our law enforcement relations in the Eastern Caribbean. It represents a major step forward in the United States’ efforts to strengthen cooperation with countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed for the United States. Dominica has its own internal legislation on extradition,¹⁹⁹ which will apply to United States’ requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.²⁰⁰ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offense are extraditable. This Treaty, like most recent United

States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from Dominica that extradition would be possible for such high priority offenses as drug trafficking (including operating a continuing criminal enterprise, in violation of Title 21, United States Code, Section 848); offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968), provided the predicate offense would be an extraditable offense; money laundering; terrorism; tax fraud and tax evasion; crimes against environmental protection laws; and any antitrust violations punishable in both states by more than one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Dominica has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Dominica authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality

exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.²⁰¹ In Dominica, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Dominica's agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Dominica's law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Dominica agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Dominica. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.²⁰² This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny

extradition on the basis of the offender's citizenship,²⁰³ and the Dominican extradition law contains no exception for Dominica's nationals. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.²⁰⁴

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses which are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.²⁰⁵

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.²⁰⁶ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.²⁰⁷

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.²⁰⁸

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.²⁰⁹ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 have been satisfied.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Most of the items listed in this paragraph enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, Article 6(2)(c)(iii) calls for "information as to the provisions of law describing any time limit on the prosecution," even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and Dominica delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Paragraph 3 describes the additional information required when the person is sought for trial in the Requesting State. Paragraph 3(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide "such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested." This provision will alleviate one of the major practical problems with extradition from Dominica. The Treaty currently in force permits extradition only if "... the evidence be found sufficient, according to the law of the Requested Party ... to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party..."²¹⁰ Dominica's courts have interpreted this clause to require that a *prima facie* case against

the defendant be shown before extradition will be granted.²¹¹ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.²¹² Dominica's agreement to extradite under this new Treaty based on a "reasonable basis" standard eliminates this imbalance in the burden of proof for extradition and should significantly improve the United States' ability to extradite from Dominica.

Paragraph 4 lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.²¹³

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Dominica resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current treaty.²¹⁴ When the request is from Dominica, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados accredited to Dominica, in accordance with United States extradition law.²¹⁵

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should insure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states. The U.S. and Dominican delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.²¹⁶

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.²¹⁷

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Dominica. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the provisional arrest be terminated if the Requesting State does not file a fully documented request for extradition within forty-five days of the date on which the person was arrested. This period may be extended for up to an additional fifteen days. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.²¹⁸

Paragraph 5 makes it clear that in such cases the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article requires that the two States agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law currently permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,²¹⁹ or of the conclusion of any litigation challenging that finding,²²⁰ whichever is later. The law in Dominica permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.²²¹

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment that has been imposed.²²² The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence in that State, even if all necessary extradition proceedings have been completed.

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision;²²³ for Dominica, the decision would be made by the Attorney General.²²⁴

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.²²⁵ The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to ensure that the property is returned as soon as practicable. This paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.²²⁶ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.²²⁷

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings and to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.

ARTICLE 16—TRANSIT

Paragraph 1 gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.²²⁸ Requests for transit are to contain a description of the person whose transit is proposed and a brief

statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in Dominica, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. Under this provision a person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. This paragraph also permits the transit State to detain a fugitive until a request is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

Dominica does not appear to have specific legislation on this matter, and the Dominica delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Dominica in connection with a request from Dominica for extradition before the courts in this country, and the Dominica Attorney General will arrange for the representation of the United States in connection with United States extradition requests to Dominica.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State. The negotiators agreed that in some cases the Requested State might wish to retain private counsel to assist it in the presentation of the extradition request. The Attorney General of Dominica has a very small staff, and might need to enlist outside counsel to aid in handling a complex, contested international extradition proceeding. It is anticipated that in such cases the fees of private counsel retained by the Requested State would be paid by the Requested State. The negotiators also recognized that cases might arise in which the Requesting State would wish to retain its own private counsel to advise it on extradition matters or even assist in presenting the case, if the Requested State agrees. In such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General's Chambers in Dominica may consult with one another with regard to an individual extradition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.²²⁹

The article also states that consultations shall include issues involving training and technical assistance. At the request of Dominica, the United States delegation promised to recommend training and technical assistance to better educate and equip prosecutors and legal officials in Dominica to implement this treaty.

During the negotiations, the Dominica delegation also expressed concern that the United States might invoke the Treaty much more often than Dominica, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general.

ARTICLE 19—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1972 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1972 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either State. Termination shall become effective six months after notice of termination is received.

Technical Analysis of The Extradition Treaty Between The United States of America and the Republic of France signed April 23, 1996

On April 23, 1996, as the result of negotiations first undertaken in 1981, the United States signed a new treaty on extradition with the Republic of France (hereinafter "the Treaty"). In recent years, the United States has signed similar treaties with many other

countries as part of a highly successful effort to modernize our law enforcement relations. The Treaty will replace the old treaty and supplementary convention now in force.²³⁰ It constitutes a major step forward in efforts by the United States to win the cooperation of our major European allies in combating transnational organized crime, terrorism, and drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed. The Republic of France has its own internal law²³¹ that will apply to requests by the United States under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters' knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, like the first article in every recent United States extradition treaty, formally obligates each Contracting State to extradite to the other Contracting State persons charged with or found guilty of extraditable offenses, subject to the provisions of the Treaty.

Article 1 refers to charges brought by authorities “in” the Requesting State rather than “of” the Requesting State. It thereby obligates France to extradite fugitives to the United States in state and local cases as well as federal cases. The term “found guilty” is used instead of “convicted” to make clear that the Treaty applies to persons adjudged guilty who flee the jurisdiction prior to sentencing.²³²

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what constitutes an extraditable offense. The Treaty, like the recent United States extradition treaties with Costa Rica, Ireland, Italy, Jamaica, Jordan, Sweden (Supplementary Convention), and Thailand, does not list the offenses for which extradition may be granted. Instead, paragraph 1 permits extradition for any offense punishable under the laws of both Contracting States by deprivation of liberty (i.e., imprisonment or other form of detention) for a term of one year or more, or by a more severe penalty such as capital punishment (under the laws of the United States). This “dual criminality” approach to defining extraditable offenses obviates the need to renegotiate the Treaty or to supplement it if both Contracting States pass laws dealing with a new type of criminal activity. It also avoids problems resulting if a treaty list of extraditable offenses inadvertently fails to cover a type of criminal activity punishable in both nations.

Paragraph 1 also provides that persons who have been convicted of an extraditable offense and sentenced to imprisonment may be extradited only if at least six months of the sentence remain to be served. Most U.S. extradition treaties signed in recent years do not contain such a requirement, but provisions of this kind do appear in some recent United States extradition treaties.²³³

Paragraph 2 follows the practice of recent extradition treaties in making extraditable both the attempt to commit an extraditable offense, and otherwise participating in the commission of an extraditable offense.

It was important to the United States that conspiracy be extraditable. U.S. criminal cases, particularly those involving complex transnational criminal activity, frequently use conspiracy charges. However, many foreign laws on concerted criminal activity differ from the U.S. offense of conspiracy. Some U.S. extradition treaties handle this problem by creating an exception to the dual criminality requirement and expressly making extraditable both conspiracy and its closest analogue in the law of our treaty partner.²³⁴ That approach ultimately proved unnecessary in this Treaty. The French delegation assured the U.S. delegation that France would not deny extradition for U.S. conspiracy charges on dual criminality grounds if “conspiracy” were used in the English and “complicité” in the French language text. That accordingly is what was done.

Paragraph 3 reflects the intention of the Contracting States to interpret the principles of this article broadly. Judges in France have sometimes been confused by United States federal offenses whose elements include use of the mails or interstate transportation solely to establish federal jurisdiction. Because there are no similar jurisdictional requirements in French law, French judges have occasionally denied extradition on such charges. This paragraph requires that such U.S. federal jurisdictional elements be disregarded in applying the dual criminality principle. For example, it will ensure that French authorities treat United States mail fraud charges²³⁵ in the same manner as fraud charges under state laws, and that they view the federal crime of interstate transportation of stolen property²³⁶ in the same manner as unlawful possession of stolen property. This paragraph also requires the Requested State to disregard differences in the categorization of an offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used in the laws of the respective Contracting States to define the offense. Article II of the Supplementary Convention of 1970 and all recent United States extradition treaties have similar provisions.

Paragraph 4 deals with crimes committed wholly outside the territory of a Contracting Party. U.S. jurisprudence recognizes the jurisdiction of U.S. courts in criminal cases involving offenses committed outside the United States if (1) they were intended to have, or did have, effects in this country, or if (2) the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.²³⁷ French jurisprudence, however, has a different basis for prosecuting extraterritorial offenses.²³⁸ Paragraph 4 embodies France’s agreement to recognize United States jurisdiction to prosecute offenses committed outside the United States if French law

would permit France to prosecute similar offenses committed abroad in corresponding circumstances.

Paragraph 5 provides that when extradition is requested for distinct acts, only some of which satisfy the requirements of paragraphs 1 or 2 of this article, the Requested State shall extradite both for offenses punishable by a period of deprivation of liberty of one year or more, and for any other offense that meets all of the requirements for extradition except that the offense be punishable by one year or more of imprisonment. For example, if France agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States can also obtain extradition for misdemeanor offenses, as long as those misdemeanors are also recognized as criminal offenses in France. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition also for misdemeanors when a fugitive is extradited for another offense. This practice is generally desirable both for the prosecuting country and for the fugitive. It permits all charges against a fugitive to be disposed of while evidence is fresh and witnesses are available. It also permits the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with Australia, Costa Rica, Ireland, and Italy.

Paragraph 6 provides that extradition shall be granted, in accordance with the terms of the Treaty, in matters concerning tax, customs duty, and foreign exchange offenses if a given offense satisfies the requirements of Paragraphs 1 and 2 of this article.

ARTICLE 3—NATIONALITY

Paragraph 1 specifically states that neither Contracting State shall be obliged to extradite its own nationals, but that the executive authority of the United States shall have the power to do so if it deems this proper. The United States does not deny extradition on the basis of a fugitive's citizenship.²³⁹ Our long-standing policy is to draw no distinction between U.S. citizens and others for extradition purposes. French internal law, however, forbids France to extradite French nationals.²⁴⁰ The French delegation insisted that the language of the Treaty not suggest in any way that France would extradite its nationals to the United States unless French law is amended in the future.

Paragraph 2 requires that if the Requested State refuses extradition solely on the basis of nationality, it submit the case to its authorities for prosecution if the Requesting State asks it to. This provision is critical to the fair administration of justice. At present, France has no obligation to prosecute French nationals whose extradition to the United States it refuses.

Provisions similar to paragraph 2 are found in many other recent United States extradition treaties.²⁴¹

ARTICLE 4—POLITICAL OFFENSES

Paragraph 1 prohibits extradition for political offenses. This is a common provision in United States extradition treaties.

The jurisprudence on political offenses in the United States is quite different from that in France, a fact that has sometimes caused problems in our extradition relationship over the years.²⁴²

The language of the paragraph reflects those differences by articulating the political offense exception as it has developed in each system. Specifically it provides that when France is the Requested State, extradition will be denied if the offense is a political offense or an offense connected with a political offense, or if it is an offense inspired by political motives. When the United States is the Requested State, extradition will be denied if the offense is a political offense.

Paragraph 2 describes several categories of offenses that will not be considered to be political offenses.

Paragraph 2(a) provides that the political offense exception to extradition does not apply to a murder or other willful crime against the life of a Head of State of a Contracting Party or a member of the family of the Head of State.

Paragraph 2(b) states that the political offense exception does not apply to offenses for which both Contracting States have the obligation, pursuant to a multilateral treaty, convention, or international agreement, either to extradite a fugitive or to submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.²⁴³

Subparagraphs 2(c), (d), (e), and (f) specify that the Requested State shall not consider any of the following crimes to be political offenses: a serious offense involving an attack on the life, physical integrity, or liberty of internationally protected persons, including diplomatic agents;²⁴⁴ an offense involving kidnapping, the taking of a hostage, or any other form of unlawful detention;²⁴⁵ an offense involving the use of a bomb, grenade, rocket, automatic firearm, or letter or parcel bomb, if its use endangers persons; or conspiracy to commit any of these offenses. Thus, these subparagraphs of the Treaty create a regime similar to that of the 1977 European Convention on Terrorism under which certain very serious crimes often committed by terrorists cannot be deemed political offenses. This language is similar also to provisions in recent United States extradition treaties with Canada, Germany, Spain, and the United Kingdom in each of which the scope of the political offense exception was substantially narrowed to eliminate its application to certain crimes.

While Paragraph 2 narrows the ambit of the political offense exception, Paragraph 3 reaffirms the ability of the Requested State in limited circumstances to deny extradition for crimes falling within the Requested State's definition of a political offense, even if the offense falls within one of the categories in Paragraph 2. In evaluating the character of the offense, the Requested State is to take into consideration the particularly serious nature of the offenses listed in paragraph 2. The factors to be taken into consideration include (a) that a crime created a collective danger to the life, physical integrity, or liberty of persons; (b) that it affected persons foreign to the motives behind it; and (c) that cruel or treacherous means have been used in the commission of the offense.²⁴⁶

Paragraph 4, which is based on a similar provision in the U.S.-Ireland Treaty,²⁴⁷ states that extradition will not be granted if there are substantial grounds for believing that the request was made for the purpose of prosecuting or punishing a fugitive on account of that fugitive's race, religion, nationality, or political opin-

ion. When the United States is the Requested State, this determination will be made by the executive authorities, i.e., the Secretary of State.²⁴⁸ When France is the Requested State, the determination will be made by the competent authorities, including the courts.

ARTICLE 5—MILITARY OFFENSES

Article 5 is based on a similar article in the U.S.-Germany Extradition Treaty.²⁴⁹ It provides that the executive authority of the Requested State may deny extradition if a request relates to an offense under military law that is not an offense under ordinary criminal law.²⁵⁰

ARTICLE 6—HUMANITARIAN CONSIDERATIONS

This article provides that the executive authority of the United States or the competent authorities in France may refuse to surrender a fugitive when surrender might entail exceptionally serious consequences related to age or health.

ARTICLE 7—CAPITAL PUNISHMENT

Paragraph 1 permits the Requested State to refuse extradition in cases in which the offense for which extradition is sought is punishable by death in the Requesting State, but not in the Requested State, unless the Requesting State provides assurances that the death penalty will not be imposed, or, if imposed, will not be carried out.²⁵¹ Similar provisions are found in many recent United States extradition treaties.²⁵²

Paragraph 2 provides that when the Requesting State gives assurances in accordance with paragraph 1, it shall respect the assurances and the death penalty, if imposed, shall not be carried out. This provision was included because French authorities have previously questioned whether assurances by the United States Government that the death penalty will not be imposed on a fugitive whose extradition the United States seeks for a capital crime are enforceable in United States courts, particularly in state capital murder cases. Since the treaty is unquestionably the law of the land in the United States, this provision settles such questions.

ARTICLE 8—PRIOR PROSECUTION

This article will permit extradition when each Contracting State has charged a fugitive with different offenses arising out of the same acts.

Paragraph 1 prohibits extradition if the fugitive has been finally convicted or acquitted in the Requested State for the offense for which extradition is requested. This is similar to language found in many United States extradition treaties. It should be noted that the Treaty does not carry forward the provision in Article IV of the Supplementary Extradition Convention that entitled the fugitive to avoid extradition if already tried and acquitted, or punished, for the same acts in a third state.

Paragraph 2 makes it clear that neither Contracting State can refuse extradition on the ground that the Requested State's au-

thorities declined to prosecute the fugitive, or that it instituted criminal proceedings against the fugitive and thereafter dismissed them. This provision was included because the Requested State's decision to forego prosecution, or to drop charges already filed, could result from unanticipated unavailability of trial witnesses or other similar factors, whereas the Requesting State's prosecution might not suffer from similar impediments. This provision should enhance the ability of each Contracting State to extradite to the jurisdiction with the better chance of a successful prosecution.

ARTICLE 9—LAPSE OF TIME

Paragraph 1 states that the Requested State must deny extradition if, at the time it receives the extradition request, prosecution of the offense or execution of the penalty is barred by lapse of time under its law.²⁵³

Paragraph 2 states that acts committed in the Requesting State that would interrupt or suspend the so-called "prescriptive period" in that state should be taken into account by the Requested State to the extent possible. A similar provision is found in Article 2 of the recent extradition treaty with Belgium.

In the United States, the statute of limitations becomes irrelevant when criminal charges are filed. In France, however, the "period of prescription" for prosecution continues to run even when charges have been filed.²⁵⁴ In addition, a period of prescription applies in France to the incarceration of an offender after sentencing or after escape from incarceration. The second period of prescription is the same as that for the underlying offense. Thus, the period of prescription in France for prosecuting a rape is 10 years. Thereafter, a convicted rapist must be incarcerated within 10 years of being sentenced.

In the United States, moreover, the statute of limitations is tolled during the period that a defendant is a fugitive. In France, however, the flight of a defendant or escape of a convict does not toll the applicable period of prescription. Instead, each official act by the prosecution evidencing an intent to prosecute the defendant or to re-incarcerate an escaped prisoner "interrupts" the period of prescription by restarting the applicable period of prescription. Thus, if the United States seeks the extradition of a fugitive for a crime committed more than three or 10 years previously, as the case may be, it must demonstrate to France that the U.S. prosecution effected sufficient "interruptive acts" that the period of prescription would not have expired if the crime and the "interruptive acts" had taken place in France. Paragraph 2 obliges the Requested State to take account of such "interruptive acts" to the extent possible under its laws.

ARTICLE 10—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets forth the documentary and evidentiary requirements for an extradition request. Similar articles are present in most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition re-

quest may be preceded by a request pursuant to Article 13 for the provisional arrest of the fugitive. Provisional arrest requests need not be initiated through the diplomatic channel provided that they meet the requirements of Article 13.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Paragraph 3 describes the additional information needed when the fugitive is sought for trial in the Requesting State. Paragraph 4 describes the information needed, in addition to that specified in paragraph 2, when the fugitive has already been tried and found guilty in the Requesting State.

Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, paragraph 2(c) calls for “the text of the provisions describing the offense for which extradition is requested.” This enables the Requested State to determine whether the request satisfies the requirement for dual criminality under Article 2.

Paragraph 3 requires that if the fugitive is sought for prosecution, when the Requesting State is the United States, copies must be provided of the arrest warrant and the charging document; when the Requesting State is France, the original or a copy of the warrant or order of arrest must be submitted, as well as “such information as would justify the committal for trial of the person if the offense had been committed in the United States.” It should be noted that this provision is consistent with long-standing U.S. jurisprudence under which our courts permit extradition if there is probable cause to believe that an extraditable offense was committed and the fugitive committed it.²⁵⁵ The provision also reflects a concession by France, where, as in many European nations, the evidence against the accused is usually not weighed in determining whether or not to grant extradition.²⁵⁶ France offered to extradite to the United States without evidence if the United States would accord it reciprocity. The U.S. delegation declined, however, because of our Constitutional requirements.

Paragraph 4 lists the information needed to extradite a fugitive who has been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.²⁵⁷ Subsection (d) states that if the person sought was found guilty *in absentia*, the documentation required for extradition includes both proof of conviction and the same documentation required when extradition is sought for prosecution. This is consistent with the long-standing United States policy of requiring such documentation for the extradition of persons convicted *in absentia*.

ARTICLE 11—ADMISSIBILITY OF DOCUMENTS

Article 11 governs the authentication procedures for documents prepared for use in extradition cases.

The article provides that when the United States is the Requesting State, the documents in support of extradition must be admit-

ted into evidence if they are transmitted through diplomatic channels. No further authentication is required.

When the request is from the Republic of France, the documents must be admitted into evidence if they are certified by the principal diplomatic or consular officer of the United States resident in the Republic of France, in accordance with United States extradition law,²⁵⁸ or if they are authenticated in any other manner acceptable by the law of the United States.

ARTICLE 12—TRANSLATION

Article 12 requires that all documents submitted in support of the request shall be translated into the language of the Requested State.

ARTICLE 13—PROVISIONAL ARREST

This article describes the process by which a fugitive may be arrested and detained in a case of urgency while the formal extradition papers are being prepared by the Requesting State. Paragraph 1 expressly provides that a request for provisional arrest may be made directly between the Department of Justice in the United States and the Ministry of Justice in France, through the diplomatic channel, or via INTERPOL.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 provides that the Requesting State must be notified without delay of the disposition of the application and the reasons for any denial.

Paragraph 4 provides that a person who has been provisionally arrested may be released from detention if the Requesting State does not submit a fully documented request for extradition to the executive authority of the Requested State within 60 days of the date of provisional arrest. When the United States is the Requested State, the Requested State includes the Secretary of State and the United States Embassy in Paris.²⁵⁹

Although the fugitive may be released from custody if the documents are not received within the sixty day period or any extension thereof, the extradition proceedings against the fugitive need not be dismissed. The final paragraph in this article makes it clear that the person may be rearrested, and the extradition proceedings may commence, if the formal request and supporting documents are received at a later date.

ARTICLE 14—ADDITIONAL INFORMATION

Article 14 states that if the information communicated by the Requesting State is insufficient, the Requested State shall request the necessary supplemental information and may fix a time limit for producing such information. This article is intended to permit the Requesting State to cure any defects in the request and accompanying materials found either by the attorney representing the Requesting State or by a court in the Requested State. It permits the court, in appropriate cases, to grant a reasonable continuance so that the Requesting State may obtain, translate, and transmit additional materials. A somewhat similar provision is found in

other United States extradition treaties.²⁶⁰ To expedite delivery of the additional materials, they may be transmitted directly between the French Ministry of Justice and the U.S. Department of Justice, as well as through the diplomatic channel.

ARTICLE 15—DECISION AND SURRENDER

Paragraph 1 requires that the Requested State promptly notify the Requesting State of its decision on the extradition request.

Paragraph 2 provides that if extradition is denied in whole or in part, the Requested State must provide the reasons for the denial and, upon request, supply copies of any pertinent judicial decisions.

Paragraph 3 provides that if extradition is granted, authorities of the Contracting States must agree on a date and place for surrender of the fugitive. The Requested State must also notify the Requesting State of the time that the fugitive has been in custody pending extradition so that he or she may be given credit for time served against any sentence imposed for the offense if the law of the Requesting State so provides.

Paragraph 4 provides that a fugitive may be discharged from custody if not removed from the territory of the United States within the time prescribed by U.S. law, which is two calendar months, of a finding that the fugitive is extraditable,²⁶¹ or of the conclusion of any litigation challenging that finding, whichever is later. When France is the Requested State, the person must be removed within 30 days of the date set for surrender pursuant to Paragraph 3.²⁶²

Paragraph 5 provides that if circumstances beyond the control of either State prevent the surrender of the fugitive, the Contracting States shall agree on a new date for surrender, and the provisions of paragraph 4 shall apply anew.

ARTICLE 16—TEMPORARY AND DEFERRED SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution in the Requested State or serving a sentence there on other charges. This article allows the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the fugitive and the full execution of any punishment imposed.

Paragraph 1 provides for the temporary surrender of a fugitive wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to the Treaty will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the fugitive while evidence and witnesses are more likely to be available, thereby increasing the likelihood of a successful prosecution. It may also be advantageous to the fugitive in that it permits (1) more rapid resolution of the charges; (2) concurrent service of sentences received in the Requesting and Requested States; and (3) a more effective defense while favorable evidence is fresh and more likely to be available. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the Requested State may postpone the extradition proceedings against a fugitive who is being prosecuted

or serving a sentence there until the fugitive has finished serving any applicable sentence.²⁶³ The provision also allows the Requested State to postpone the surrender of such a fugitive, even if all necessary extradition proceedings have been completed.

ARTICLE 17—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article, like similar provisions in many recent United States extradition treaties, lists some of the factors that the executive authority of the Requested State must consider when reviewing requests from two or more countries for the extradition of the same fugitive. For the United States, the Secretary of State decides to which country the person should be surrendered.²⁶⁴ For the Republic of France, the court makes this decision.²⁶⁵

ARTICLE 18—SEIZURE AND SURRENDER OF PROPERTY

This article allows the Requested State to seize all property—articles, documents and other evidence—connected with the offense for which extradition is requested, to the extent that its internal law permits. The article also provides that the Requested State may surrender these objects to the Requesting State when extradition is granted, or even if extradition cannot be effected due to the fugitive's death, disappearance, or escape.

Paragraph 2 allows the Requested State to condition its surrender of property upon satisfactory assurances that the property will be returned to the Requested State as soon as practicable. Paragraph 2 also permits the surrender of property to be deferred if it is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property under this provision expressly subject to due respect for the rights of third parties in such property.

ARTICLE 19—RULE OF SPECIALITY

This article covers the rule of speciality, a standard principle of United States extradition law and practice. Designed to ensure that a fugitive surrendered for one offense is not tried for additional crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a fugitive for trial or for execution of a sentence on charges that are not extraditable or were not properly documented in the request.

This article codifies the current formulation of the rule. Paragraph 1 of this article provides that a person extradited under the Treaty may not be detained, tried, punished, or subjected to any restrictions of freedom in the Requesting State for any act prior to surrender, other than the offense for which extradition was granted, except (1) when the Requested State has given its consent, or (2) when the person extradited had the opportunity to leave the Requesting State and did not do so within 30 days of release, or left and returned to it. Paragraph 1 also provides that a request for the Requested State's waiver of the rule of speciality shall be accompanied by the documents listed in Article 10 and any statement of the person extradited regarding the offense for which consent of the Requested State is requested.

Paragraph 2 states that if the denomination of the offense for which extradition has been granted is altered after the extradition or the fugitive is then charged with a differently denominated offense, prosecution or sentencing shall proceed if the offense under its new legal description is based on the same facts contained in the extradition request, and if the maximum penalty is the same as or less than that described in the extradition request.

ARTICLE 20—REEXTRADITION TO A THIRD STATE

Persons extradited to either Contracting State cannot be extradited to a third State unless the Requested State consents, or unless the person extradited had the opportunity to leave the Requesting State and failed to do so within 30 days of release, or left and returned to it.

The second paragraph states that the Requested State may request the documents described in Article 10, as well as any statements of the extradited person with respect to the offense for which the Requested State's consent is requested.

ARTICLE 21—TRANSIT

Paragraph 1 enables each Contracting State to authorize the transit through its territory of persons whom a third state is surrendering to the other Contracting Party. A person in transit may be held in custody during the transit period. A request for transit is to contain a description of the person whose transit is proposed and a brief statement of the facts of the case. The transit request may be submitted through diplomatic channels or directly between the United States Department of Justice and the French Ministry of Justice, or via INTERPOL.

Paragraph 2 sets forth the procedure for a Contracting State that seeks to transport a person in custody through the territory of the other. Under this provision, no authorization is needed if the person in custody is in transit by aircraft and no landing is scheduled in the territory of a Contracting Party. If an unscheduled landing occurs, however, the Contracting State on whose territory this happens may require a request for transit and is required to detain the person to be transported until the request is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 22—REPRESENTATION AND EXPENSES

One major problem in U.S.-French extradition relations has been the U.S. government's inability at times to obtain full information and advice from France in individual extradition cases and adequate legal representation for U.S. interests during French judicial proceedings in extradition cases. Under French law, the French public prosecutor appears in the proceedings, but as the representative of French interests and "ordre publique," not as the representative of the requesting state.

To remedy this situation, Paragraph 1 provides that the Requested State shall advise and assist the Requesting State in connection with an extradition request, and that such advice and as-

sistance shall be provided in accordance with the agreed minute included in the Treaty.

In the agreed minute, each State agrees to provide legal representation and legal advice to the other to the greatest degree permitted by its constitution and laws. While France did not agree to provide legal representation in its courts, it did agree to supply "legal advice and representation (including representation in court) at least equal to that given any other country pursuant to an extradition relationship whether existing at the present time or entered into in the future." France also promised to make ten significant improvements in the nature of its assistance. It will:

- (1) include in the file presented to the chambre d'accusation (competent court) any memorandum or document that the United States transmits in support of its extradition request. This will enable the United States to provide the French court with its own legal arguments for granting the U.S. extradition request if the French public prosecutor for some reason is unwilling to support the request;

- (2) ask the United States for supplementary information or explanations if necessary for the request to succeed. Thus, if the French Government feels that critical information is missing from the request, it will ask us for that information, and give us an opportunity to supplement the request, rather than merely advising its court to deny the request based on the perceived defect;

- (3) notify the United States when an extradition request has been transmitted to the French courts for action;

- (4) seek to postpone judicial action on the request, if necessary, to allow the United States to argue its position and to submit additional memoranda in response to oral arguments by the defense;

- (5) accept communications from representatives of the U.S. Embassy or the U.S. Department of Justice's Office of International Affairs regarding the case. The French Ministry of Justice and, if necessary, the individual public prosecutor handling the case, will be given the names of the appropriate U.S. officials;

- (6) provide representatives of the U.S. Embassy or Department of Justice with an opportunity to furnish a note to the Ministry of Justice on useful legal or factual data to support the request;

- (7) notify the United States when the request has been transmitted to the appropriate public prosecutor's office for action;

- (8) notify the United States (through the U.S. Embassy in Paris) of the date when the extradition request may be heard by the French court;

- (9) provide the representatives of the United States with an opportunity to furnish an additional note to be included in the file before the hearing; and

- (10) provide U.S. Government representatives with an opportunity to communicate through the Ministry of Justice with the court prior to the hearing "to the same degree permitted to the Ministry of Justice."

It is hoped that these measures will go far toward improving the administration of justice in U.S. extradition requests to France.

Paragraph 2 requires the Requesting State to bear the expenses of translation and transportation of the fugitive. The Requested State shall pay all other expenses in that State.

Paragraph 3 provides that neither Contracting State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement of legal fees, or other expenses occasioned by execution of the extradition request.

ARTICLE 23—CONSULTATION

This article provides that the United States Department of Justice and the French Ministry of Justice may consult with each other, directly or via INTERPOL, with regard to either an individual extradition case or extradition procedures in general. A similar provision is found in other recent United States extradition treaties.²⁶⁶

ARTICLE 24—APPLICATION

Paragraph 1 states that this Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive and covers offenses that occurred before as well as after the Treaty enters into force.

Paragraph 2 states that the 1909 Treaty and the 1970 Supplementary Convention will cease to have effect upon the entry into force of the Treaty, but that extradition requests pending before the courts when the Treaty enters into force will nevertheless be processed to conclusion under the earlier agreements.

ARTICLE 25—RATIFICATION AND ENTRY INTO FORCE

This article provides for the entry into force of the treaty on the first day of the second month following the date on which both Contracting States have notified one another of the completion of the constitutional procedures for ratification.

ARTICLE 26—TERMINATION

This article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting Party. Termination shall become effective six months after the date of receipt of such notice.

Technical Analysis of the Extradition Treaty Between the United States of America and Grenada Signed May 30, 1996

On May 30, 1996, the United States signed a treaty on extradition with Grenada (hereinafter “the Treaty”), which is intended to replace the outdated treaty currently in force between the two countries²⁶⁷ with a modern agreement on the extradition of fugitives. The new extradition treaty is one of twelve treaties that the United States negotiated under the auspices of the Organization of Eastern Caribbean States to modernize our law enforcement rela-

tions in the Eastern Caribbean. It represents a major step forward in the United States' efforts to strengthen cooperation with countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed for the United States. Grenada has its own internal legislation on extradition,²⁶⁸ which will apply to United States' requests under the treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters' knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges "in" the Requesting State rather than "of" the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term "convicted" includes instances in which the person has been found guilty but a sentence has not yet been imposed.²⁶⁹ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. This Treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of "dual criminality" rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from Grenada that extradition would be possible for such high priority offenses as drug trafficking (including operating a continuing criminal enterprise, in violation of Title 21, United

States Code, Section 848); offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968), provided that the predicate offense is an extraditable offense; money laundering; terrorism; tax fraud and tax evasion; crimes against environmental protection laws; and any antitrust violations punishable in both states by more than one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Grenada has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Grenada authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.²⁷⁰ In Grenada, however, the Government’s ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Grenada’s agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Grenada’s law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State’s laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the exec-

utive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Grenada agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Grenada. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.²⁷¹ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,²⁷² and Grenada's extradition law contains no exception for Grenada's nationals. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.²⁷³

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses that are included in a multilateral treaty, convention, or international agreement, which requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.²⁷⁴

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.²⁷⁵ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.²⁷⁶

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.²⁷⁷

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.²⁷⁸ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to cor-

responding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 have been satisfied.

Paragraph 2 outlines the information which must accompany every request for extradition under the Treaty. Most of the items listed in this paragraph enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, Article 6(2)(c)(iii) calls for "information as to the provisions of law describing any time limit on the prosecution," even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and Grenada delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Paragraph 3 describes the additional information requested when the person is sought for trial in the Requesting State. Paragraph 3(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide "such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested." This provision will alleviate one of the major practical problems with extradition from Grenada. The Treaty currently in force permits extradition only if "... the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in the case the crime or offense had been committed in the territory of such High Contracting party, or to prove that the person is the identical person convicted by the courts of the High Contracting Party who makes the requisition ...".²⁷⁹ Grenada's courts have interpreted this clause to require that a *prima facie* case against the defendant be shown before extradition will be granted.²⁸⁰ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.²⁸¹ Grenada's agreement to extradite under the new Treaty based on probable cause eliminates this imbalance in the burden of proof for extradition, and should dramatically improve the United States' ability to extradite from Grenada.

Paragraph 4 lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in re-

cent United States court decisions, even absent a specific treaty provision.²⁸²

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents must be received and admitted in evidence at extradition proceedings if they are authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Grenada resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current law in Grenada.²⁸³ When the request is from Grenada, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados accredited to Grenada, in accordance with United States extradition law.²⁸⁴

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states.²⁸⁵ The U.S. and Grenadan delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.²⁸⁶

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Grenada. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the provisional arrest be terminated if the Requesting State does not file a fully documented request for extradition within forty-five days of the date on which the person was arrested. This period may be extended for up to an additional fifteen days. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.²⁸⁷

Paragraph 5 makes it clear that in such cases the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article provides that the two States shall agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law currently permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,²⁸⁸ or of the conclusion of any litigation challenging that finding,²⁸⁹ whichever is later. The law in Grenada permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.²⁹⁰

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed. Similar provisions appear in our recent extradition treaties with countries such as Jordan, the Bahamas, and Australia.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him

to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment which has been imposed.²⁹¹ The provision's wording makes it clear that the Requested State may postpone the surrender of a person facing prosecution or serving a sentence in that State, even if all necessary extradition proceedings have been completed.

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision.²⁹²

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.²⁹³ The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to insure that the rights of third parties are protected and that the property is returned as soon as practicable. This paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.²⁹⁴ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.²⁹⁵

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.²⁹⁶

ARTICLE 16—TRANSIT

Paragraph 1 gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.²⁹⁷ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in Grenada, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

Grenada does not appear to have specific legislation on this matter, and the Grenada delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Grenada in connection with a request from Grenada for extradition before the courts in this country, and that Grenada will arrange for the representation of the United States in connection with United States extradition requests to Grenada.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and Requesting the translation of documents, which expenses are to be paid by the State. The negotiators agreed that in some cases the Requested State might wish to retain private counsel to assist it in the presentation of the extradition request. The Attorney General of Grenada has a very small staff, and might need to enlist outside counsel to aid in handling a complex, contested international extradition proceeding. It is anticipated that in such cases the fees of private counsel retained by the Requested State would be paid by the Requested State. The negotiators also recognized that cases might arise in which the Requesting State would wish to retain its own private counsel to advise it on extradition matters or even assist in presenting the case, if the Requested State agrees. In such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General's Chambers in Grenada may consult with each other with regard to an individual extradition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.²⁹⁸

The article also states that consultations shall include issues involving training and technical assistance. At the request of Grenada, the United States delegation promised to recommend train-

ing and technical assistance to better educate and equip prosecutors and legal officials in Grenada to implement this treaty.

During the negotiations, the Grenada delegation also expressed concern that the United States might invoke the Treaty much more often than Grenada, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general.

ARTICLE 19—APPLICATION

This Treaty, like most other United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1931 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1931 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either State, and the termination shall become effective six months after notice of termination is received.

Technical Analysis of The Extradition Treaty Between The Government of the United States of America and the Government of the Republic of India Signed June 25, 1997

On June 25, 1997, the United States signed a treaty on extradition with the Republic of India (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries as part of an ongoing effort to modernize our law enforcement relations. In addition, the Treaty will be an important catalyst in providing more effective cooperation against terrorism, including narco-terrorism, and drug trafficking. The Treaty is intended to replace the current extradition treaty in force with respect to both countries. That treaty, the Treaty for the Mutual Extradition of Criminals between the United States of America and Great Britain, signed at London December 22, 1931 (hereinafter “the 1931 Treaty”), became applicable to India at the time it gained independence by virtue of the Schedule to the Indian Independence

(International Arrangements) Orders, 1947.²⁹⁹ On the same day, there was an exchange of letters reflecting an understanding concerning the use of the Treaty for prosecution or punishment only with respect to the ordinary criminal laws of the Requested State.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters' knowledge.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18 U.S. Code, Section 3184 et seq; implementing legislation will not be needed. India has extradition legislation³⁰⁰ that will apply to U.S. requests under the Treaty. According to the Indian delegation which negotiated the Treaty, Indian constitutional law provides that pre-existing domestic law takes precedence over a treaty; however it was not anticipated that any provision of India's domestic law was inconsistent with the provisions of the Treaty.³⁰¹

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters' knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, like the first article in every recent United States extradition treaty, formally obligates both parties to the Treaty, referred to therein as the Contracting States, to extradite to the other, persons formally accused of, charged with, or convicted of extraditable offenses, subject to the provisions of the Treaty. The reference to "formally accused of" was included to recognize that in Indian criminal law practice a person is accused of certain offenses in the document known as a First Information Report and that reaching such a stage would be the equivalent, for purposes of this article, of charging an individual in an indictment under U.S. practice.

Article 1 refers to persons formally accused of, charged with, or convicted of an offense by the authorities "in" the Requesting State rather than "of" the Requesting State, thereby obligating each Contracting State to extradite a fugitive to the other with respect to a prosecution or conviction in any political subdivision as well as in national cases. The term "convicted" includes instances in which the person has been found guilty but the sentence has not yet been imposed.³⁰² The Treaty applies to persons adjudged guilty who flee the jurisdiction prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. The Treaty, like most recent U.S. extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of Article 2 permits extradition for any offense punishable under the laws of both Contracting States by deprivation of liberty (i.e., imprisonment, or other form of detention) for a period exceeding one year, or by a more severe penalty. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both Contracting Parties pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable by both Contracting Parties.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for an attempt or a conspiracy to commit, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to, any extraditable offense. This is significant because conspiracy charges are frequently used in U.S. criminal prosecutions, particularly those involving complex transnational criminal activity. An offense which falls within one of these categories under American law is extraditable even if India does not have such a provision, so long as the underlying offense is extraditable. Therefore, paragraph 2 creates a basis for extradition, in addition to the “dual criminality” rule of paragraph 1, by making conspiracy and the other enumerated similar actions an extraditable crime if the offense, which was the object of the conspiracy or other action, an extraditable offense.

Paragraph 3 reflects the intention of the Contracting States to interpret the principles of this article broadly. Similar provisions to those in subparagraphs (a) and (b) are contained in all recent U.S. extradition treaties.

Paragraph 3(a) requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each Contracting Party.

Paragraph 3(b) addresses the concerns sometimes raised by foreign authorities regarding jurisdictional elements, such as use of the mails or interstate transportation, of certain federal offenses, which are used solely to establish jurisdiction in federal courts. Because foreign authorities know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Indian authorities must treat United States mail fraud charges (18 U.S.C. §1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen prop-

erty (18 U.S.C. §2314) in the same manner as unlawful possession of stolen property.

Paragraph 3(c) was included in the treaty to make it unambiguous that criminal tax offenses are extraditable if they meet the test of dual criminality.

Paragraph 4 recognizes that extraditable crimes can involve acts committed wholly outside the territory of the Requesting State. United States jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.³⁰³ In India, an Indian national can be prosecuted for any crime he commits abroad as if he had committed the crime in India.³⁰⁴ If the dual criminality and other requirements of the Treaty are satisfied, extradition shall be granted for a crime or offense, regardless of where the act or acts constituting the offense occurred.

Paragraph 5 provides that when extradition has been granted for an extraditable offense, it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if India agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, so long as those misdemeanors would also be recognized as criminal offenses in India. Thus, the Treaty incorporates recent U.S. extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.³⁰⁵ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Authorities in some countries, because of statutory or constitutional prohibitions or as a matter of policy, will not extradite a national to another country. Neither the United States³⁰⁶ nor India³⁰⁷ denies extradition on the basis of the fugitive's nationality. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in U.S. extradition treaties and is incorporated in the Indian Extradition Act.³⁰⁸

Paragraph 2, in its eight subparagraphs, describe certain categories of offenses which, for purposes of the Treaty, shall not be considered to be political offenses. These categories include offenses that are the subject of multilateral treaties to which the Contracting States are parties, pursuant to which there is an obligation to extradite. By specifically excluding such offenses from the definition of political offense, the Contracting States have established a binding bilateral extradition commitment with respect to such crimes. The categories are as follows:

Murder or other willful crime against the person of a Head of State or Government of a Contracting State, or a member of the family of such Head of State or Government;

Aircraft hijacking offenses, as described in the Convention on the Suppression of Unlawful Seizures of Aircraft;³⁰⁹

Aviation sabotage, as described in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;³¹⁰

Any crime against an internationally protected person, as described in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents;³¹¹

Hostage taking, as described in the International Convention against the Taking of Hostages;³¹²

Offenses related to illegal drugs, as described in the Single Convention on Narcotic Drugs,³¹³ the Amending Protocol to the Single Convention,³¹⁴ and the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances;³¹⁵

Offenses which obligate the Contracting States to extradite the person sought or submit the matter for prosecution, pursuant to any multilateral treaty, convention, or international agreement to which they are parties; or

Conspiring or attempting to commit, or for aiding and abetting the commission or attempted commission of any of the foregoing offenses.

ARTICLE 5—MILITARY OFFENSES AND OTHER BASES FOR DENIAL OF EXTRADITION

Paragraph 1 provides that the extradition may be denied by the Requested State if the request relates to a matter that constitutes an offense only under military, and not criminal, law.³¹⁶ The paragraph would not bar extradition to stand trial in a military tribunal for an ordinary criminal offense.

Paragraph 2 of the article provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.³¹⁷ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.³¹⁸ Indian law currently provides for the denial of extradition either if the offense is of a political character (see Article 4) or if

the fugitive proves, to the satisfaction of the court or the government, that the request was, in fact, made “with a view to try or punish him for an offense of a political character.”³¹⁹

ARTICLE 6—PRIOR PROSECUTION

This article permits extradition when the person sought is charged by each Contracting State with different offenses arising out of the same basic transaction.

Paragraph 1, which prohibits extradition if the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested, is similar to language present in many U.S. extradition treaties.³²⁰ This provision applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State. It is not enough that the same facts were involved. This article will not preclude extradition in situations in which the fugitive is charged with different offenses in both countries arising out of the same basic transaction. Thus, if the person sought is accused by one Contracting State of illegally smuggling narcotics into that country, and is charged by the other Contracting State with conspiring to illegally export the same shipment of drugs, an acquittal or conviction in one Contracting State does not insulate that person from extradition because different crimes are involved.

Paragraph 2 makes it clear that neither Contracting State can refuse to extradite an offender on the ground that the Requested State’s authorities formally declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because, for example, the Requested State might have decided to forego prosecution or to dismiss charges because of a failure to obtain sufficient evidence for trial. Such declination or discontinuance should not be a bar to prosecution in the Requesting State, where substantial evidence might be available. This provision should enhance the ability of the Contracting States to extradite to the jurisdiction with the better chance of a successful prosecution.

ARTICLE 7—LAPSE OF TIME

Article 7 states that extradition shall not be granted when the prosecution has become barred by lapse of time according to the laws of the Requesting State.³²¹ Thus, if the Requesting State has a lapse of time provision which has run for the offense for which extradition is being requested, the Requested State shall not extradite the fugitive.³²²

ARTICLE 8—CAPITAL PUNISHMENT

Paragraph 1 permits the Requested State to refuse to extradite a fugitive in cases in which the offense for which extradition is sought is punishable by death in the Requesting State, but is not punishable by death in the Requested State. This paragraph provides two exceptions to this general rule, if:

Under subparagraph (a), the extraditable offense constitutes murder under the laws of the Requested State; or

Under subparagraph (b), the Requesting State provides assurances that the death penalty, if imposed, will not be carried out.

Similar provisions are found in many recent U.S. extradition treaties.³²³

Paragraph 2 of this article provides that when the Requesting State gives assurances in accordance with paragraph 1, the death penalty, if imposed, shall not be carried out.

ARTICLE 9—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the procedural, documentary and evidentiary requirements to support an extradition request, and is generally similar to corresponding articles in recently concluded U.S. extradition treaties.

Paragraph 1 requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 12, which need not be initiated through diplomatic channels.

Paragraph 2 delineates the information that should accompany a request for extradition. Most of the items listed in Article 9(2) enable the Requested State to determine quickly whether extradition is appropriate. For example, Article 9(2)(c) calls for “a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested,” such information should enable the Requested State to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Moreover, Article 9(2)(d) specifies that the extradition request must be accompanied by “a statement of the provisions of the law describing the punishment for the offense,” enabling the Requested State to determine whether there is a basis for denying extradition for insufficient punishment under Article 2. Other requirements listed in Article 9(2), are needed for informational purposes. These include information describing the identity and probable location of the person sought, the facts of the offense and procedural history of the offense, and other documents, statements and information.

Paragraph 3 requires that, if the fugitive is being sought for prosecution, the Requesting State must provide a copy of the warrant or arrest order,³²⁴ any charging document, and “such information as would justify the committal for trial of the person if the offense had been committed in the Requested State.” This provision is meant to satisfy the standard of “probable cause,” under which our courts permit extradition if there is probable cause to believe that an extraditable offense was committed and that the fugitive committed it.³²⁵ The delegation of India advised the U.S. delegation that under current Indian law the somewhat higher *prima facie* standard of evidence would need to be met for India to extradite under the Treaty.³²⁶

Paragraph 4 lists the additional information required to support a judicial finding of extraditability of a person convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of the relevant burden of proof as described in paragraph 3 is required. In essence, the fact of conviction speaks for itself, a position taken in recent

United States court decisions even absent a specific treaty provision.³²⁷

Subsection (d) of paragraph 4 states that if the person sought was found guilty *in absentia*, the documentation and information required under paragraph 3 must be submitted with the extradition request. This provision is consistent with the long-standing United States policy of requiring such documentation in the extradition of persons convicted *in absentia*.

ARTICLE 10—ADMISSIBILITY OF DOCUMENTS

Article 10 sets forth the authentication procedures for receiving and admitting into evidence extradition documents.

Subparagraph (a) states that evidence intended for use in extradition proceedings in India shall be admissible if certified by the principal diplomatic or consular officer of India resident in the United States.³²⁸

Subparagraph (b) states that evidence intended for use in extradition proceedings in the United States shall be admissible if certified by the principal diplomatic or consular officer of the United States resident in India, in accordance with U.S. extradition laws.³²⁹

Subparagraph (c) provides an alternative method for authenticating evidence in an extradition proceeding, by permitting such evidence to be admitted if it is authenticated in any manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition. The Requested State is free under subsection (c) to utilize that information if it is admissible under the ordinary rules of evidence in the Requested State. Moreover, subparagraph (c) should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the Requested State, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 11—TRANSLATION

All documents submitted by either Requesting State in support of an extradition request shall be in the English language. If any document in support of a request is written in another language, it must be accompanied by an English translation.

ARTICLE 12—PROVISIONAL ARREST

This article describes the process, known as provisional arrest, by which a fugitive in one country may be arrested and detained before a formal extradition request is completed and submitted by the Requesting State.³³⁰

Paragraph 1 provides that, “in a case of urgency,” a request for provisional arrest may be made. It provides that such a request may be made through the diplomatic channel. INTERPOL facilities may also be used to transmit such a request.

Paragraph 2 lists the information that the Requesting State must provide in its request for provisional arrest. The application needs to set forth identification and location information, the facts of the case, and a description of the laws violated and, in addition,

include statements that an arrest warrant and a finding of guilt or judgment of conviction exists and that the formal extradition request will follow.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the fugitive may be discharged from custody if the executive authority of the Requested State does not receive a fully documented extradition request within sixty days of the provisional arrest. When the United States is the Requested State, the “executive authority” for purposes of paragraph 4 would include the Secretary of State or the U.S. Embassy in New Delhi, India.³³¹

Although the person arrested may be released from custody if the documents are not received within the sixty-day period, the proceedings against the fugitive need not be dismissed. Paragraph 5 makes it clear that the fugitive may be rearrested and the extradition proceedings may commence if the formal, documented request is presented at a later date.

ARTICLE 13—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through the diplomatic channel of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide the reasons for the denial. The Requested State shall also provide any pertinent judicial opinions if the Requesting State so requests. If the extradition request is granted, the article provides that the Contracting States shall agree on a time and place for the surrender of the fugitive.

According to Paragraph 4, if the fugitive is not removed from the territory of the Requested State within the time prescribed by the law of the Requested State, the person may be discharged from custody and the Requested State may subsequently refuse to extradite for the same offense. U.S. law requires that surrender occur within two calendar months of the finding that the offender is extraditable,³³² or of the conclusion of any litigation challenging that finding,³³³ whichever is later. India has a similar law, which provides that a fugitive, in custody for more than two months following a determination of extraditability, may be discharged by the High Court, unless sufficient cause is shown to the contrary.³³⁴

ARTICLE 14—TEMPORARY AND DEFERRED SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person and the full execution of any punishment imposed.³³⁵

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to the Treaty shall be kept in custody and returned to the Requested State at the conclusion of

the proceedings in the Requesting State. The Contracting States shall determine the conditions of the fugitive's return to the Requested State. Such temporary surrender furthers the interests of justice in that it permits a trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of a successful prosecution. Such a transfer may also be advantageous to the person sought in that: (1) it permits resolution of the charges sooner; (2) it makes it possible for any sentence to be served in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits defense against the charges while favorable evidence is fresh and more likely to be available.

Paragraph 2 provides that the Requested State may postpone the extradition proceedings against a person who is being prosecuted or serving a sentence in the Requested State until the conclusion of the prosecution or the full execution of the punishment that has been imposed.³³⁶ The wording of this provision also makes clear that the Requested State may postpone the surrender of the person facing prosecution or serving a sentence even if all necessary extradition proceedings have been completed.

ARTICLE 15—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article, which is also included in many recent U.S. extradition treaties, lists some of the factors that the executive authority of the Requested State must consider in determining to which country to surrender a person whose extradition has been requested by two or more countries. This article is invoked when multiple extradition requests are made for a person either for the same offense or for different extraditable offenses. For the United States, the Secretary of State makes this decision;³³⁷ for India, the decision is made by the Central Government.³³⁸

ARTICLE 16—SEIZURE AND SURRENDER OF PROPERTY

This article provides for the seizure by the Requested State, and surrender to the Requesting State, of all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.³³⁹ Such actions are subject to the laws of the Requested State. The article also provides that these objects shall be so surrendered upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property upon satisfactory assurances that the objects will be returned as soon as practicable. The Requested State may defer surrender altogether if the property is needed as evidence in the Requested State. Pursuant to paragraph 3, the obligation to surrender property under this article is expressly made subject to due respect for the rights of third parties in such property.

ARTICLE 17—RULE OF SPECIALITY

This article incorporates the principle known as the rule of speciality, which is a standard component of U.S. and international ex-

tradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents an extradition request from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges that may not be extraditable or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule. Paragraph 1 provides that a person extradited under the Treaty may not be detained, tried, or punished in the Requesting State except for (a) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense;

(b) an offense committed after the extradition; or

(c) an offense for which the executive authority of the Requested State consents.³⁴⁰

Paragraph 1(c)(i) provides that before giving such consent, the Requested State may require the Requesting State to document its request as if it were an ordinary extradition request under the Treaty. Paragraph 1(c)(ii) permits the Requesting State to detain the extraditee for 90 days, or for a longer period authorized by the Requested State, while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his surrender under this Treaty, without the consent of the Requested State.³⁴¹

Finally, Paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, if the extraditee (1) leaves and returns to the Requesting State, or (2) does not leave the Requesting State within fifteen days of being free to do so.

ARTICLE 18—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings and to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings, subject to the laws of the Requested State. In such cases there would be no need for any further formal documentation or judicial proceedings.

If a person sought for extradition from the United States returns to the Requesting State before the signing of a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this Article as an “extradition.” U.S. practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.

ARTICLE 19—TRANSIT

Paragraph 1 gives each Contracting State the power to authorize transit through its territory of persons being surrendered to the other Contracting State by third States, and to hold such persons

in custody during the period of transit.³⁴² Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph provides that the request should be transmitted through the diplomatic channel. It also permits the use of INTERPOL facilities to transmit the request.

Paragraph 2 provides that no authorization is needed if the person in custody is being moved by air and no landing is scheduled in the territory of the other Contracting State. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also requires the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 20—REPRESENTATION AND EXPENSES

Paragraph 1 provides that in extradition proceedings under the Treaty, the Requested State shall advise, assist, and appear in court on behalf of the Requesting State. This is consistent with other U.S. extradition treaties and U.S. law on the subject.³⁴³ Thus, the Department of Justice attorneys will represent the Government of India in connection with a request from India for extradition before U.S. courts, and counsel designated by the Indian Government will perform reciprocal services on behalf of the United States before Indian courts.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which are paid by the Requesting State.

Paragraph 3 provides that neither Contracting State shall make a pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of any fugitive. This includes any claim brought on behalf of the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 21—CONSULTATION

Article 21 of the treaty provides that the competent authorities of the United States and India may consult with each other with regard to an individual extradition case or extradition procedures in general. Such consultation may occur directly between the competent authorities or through the facilities of INTERPOL. A similar provision is found in other recent U.S. extradition treaties.³⁴⁴

ARTICLE 22—MUTUAL LEGAL ASSISTANCE IN EXTRADITION

This article provides that each Contracting State shall, to the extent permitted under its laws, afford the other the widest measure of mutual assistance in criminal matters in connection with offenses for which extradition has been requested.

ARTICLE 23—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for ratification and the exchange of instruments of ratification as soon as possible. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that when the Treaty enters into force, the 1931 Treaty will cease to have effect between the Contracting States. However, if extradition documents have already been submitted to the courts of the Requested State at the time the Treaty enters into force, the 1931 treaty will remain applicable to such proceedings, although Article 17 of the Treaty (addressing the Rule of Speciality) will apply.

ARTICLE 24—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting State. Either Contracting State may terminate the Treaty at any time after its entry into force by giving written notice to the other Contracting State. Termination becomes effective six months after the date of such notice.³⁴⁵

Technical Analysis of the Extradition Treaty Between the United States of America and St. Christopher and Nevis Signed September 18, 1996

On September 18, 1996, the United States signed a treaty on extradition with St. Christopher and Nevis (hereinafter “the Treaty”), which is intended to replace the outdated treaty currently in force between the two countries³⁴⁶ with a modern agreement on the extradition of fugitives. The new extradition treaty is one of twelve treaties that the United States negotiated under the auspices of the Organization of Eastern Caribbean States to modernize our law enforcement relations in the Eastern Caribbean. It represents a major step forward in the United States’ efforts to strengthen cooperation with countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed for the United States. St. Christopher and Nevis has its own internal legislation on extradition,³⁴⁷ which will apply to United States’ requests under the treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.³⁴⁸ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what are extraditable offenses. This treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from St. Christopher and Nevis that extradition would be possible for such high priority offenses as drug trafficking (including operating a continuing criminal enterprise, in violation of Title 21, United States Code, Section 848); offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968); money laundering; terrorism; crimes against environmental protection laws; and any antitrust violations punishable in both states by more than one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. St. Christopher and Nevis has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, St. Christopher and Nevis authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.³⁴⁹ In St. Christopher and Nevis, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects St. Christopher and Nevis's agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if St. Christopher and Nevis's law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if St. Christopher and Nevis agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in St. Christopher and Nevis. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that

it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.³⁵⁰ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,³⁵¹ and the St. Christopher and Nevis' extradition law contains no exception for St. Christopher and Nevis's nationals. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.³⁵²

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses that are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.³⁵³

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.³⁵⁴ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.³⁵⁵

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request

involves offenses under military law which would not be offenses under ordinary criminal law.³⁵⁶

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.³⁵⁷ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 have been satisfied.

Paragraph 2 outlines the information which must accompany every request for extradition under the Treaty. Most of the items listed in this paragraph enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, Ar-

ticle 6(2)(c)(iii) calls for “information as to the provisions of law describing any time limit on the prosecution,” even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and St. Christopher and Nevis delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Paragraph 3 describes the additional information required when the person is sought for trial in the Requesting State. Paragraph 3(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide “such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested.” This provision will alleviate one of the major practical problems with extradition from St. Christopher and Nevis. The Treaty currently in force permits extradition only if “...the evidence be found sufficient, according to the law of the Requested Party... to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party...”³⁵⁸ St. Christopher and Nevis’s courts have interpreted this clause to require that a *prima facie* case against the defendant be shown before extradition will be granted.³⁵⁹ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.³⁶⁰ St. Christopher and Nevis’s agreement to extradite under the new Treaty based on a reasonable basis standard eliminates this imbalance in the burden of proof for extradition, and should dramatically improve the United States’ ability to extradite from St. Christopher and Nevis.

Paragraph 4 lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of reasonable basis is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even absent a specific treaty provision.³⁶¹

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents must be received and admitted in evidence at extradition proceedings if they are authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of St. Christopher and Nevis resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current treaty.³⁶² When the request is from St. Christopher and Nevis, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados accredited to St. Christopher and Nevis, in accordance with United States extradition law.³⁶³

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states.³⁶⁴ The delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.³⁶⁵

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in St. Christopher and Nevis. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the provisional arrest be terminated if the Requesting State does not file a fully documented request for extradition within forty-five days of the date on which the person was arrested. This period may be extended for up to an additional fifteen days. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.³⁶⁶

Paragraph 5 makes it clear that in such a case the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part,

the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article provides that the two States shall agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law currently permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,³⁶⁷ or of the conclusion of any litigation challenging that finding,³⁶⁸ whichever is later. The law in St. Christopher and Nevis permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.³⁶⁹

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment which has been imposed.³⁷⁰ The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence in that State, even if all necessary proceedings have been completed.

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing re-

quests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision.³⁷¹

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.³⁷² The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to ensure that the property is returned as soon as practicable. The paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of specialty prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

Since a variety of exceptions to the rule have developed over the years, this article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.³⁷³ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty without the consent of the State from which extradition was first obtained.³⁷⁴

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.³⁷⁵

ARTICLE 16—TRANSIT

Paragraph 1 gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.³⁷⁶ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in St. Christopher and Nevis, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

St. Christopher and Nevis does not appear to have specific legislation on this matter, and the St. Christopher and Nevis delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent St. Christopher and Nevis in connection with a request from St. Christopher and Nevis for extradition before the courts in this country, and the St. Christopher and Nevis Attorney General will arrange for the representation of the United States in connection with United States extradition requests to St. Christopher and Nevis.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State. The negotiators agreed that in some cases the Requested State might wish to retain private counsel to assist it in the presentation of the extradition request. The Attorney General of St. Christopher and Nevis has a very small staff, and might need to enlist outside counsel to aid in handling a complex, contested international extradition proceeding. It is anticipated that in such cases the fees of private counsel retained by the Requested State would be paid by the Requested State. The negotiators also recognized that cases might arise in which the Requesting State would wish to retain its own private counsel to advise it on extradition matters or even assist in presenting the case, if the Requested State agrees. In such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General in St. Christopher and Nevis may consult with one another with regard to an individual extradition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.³⁷⁷

The article also states that consultations shall include issues involving training and technical assistance. At the request of St. Christopher and Nevis, the United States delegation promised to recommend training and technical assistance to better educate and equip prosecutors and legal officials in St. Christopher and Nevis to implement this treaty.

During the negotiations, the St. Christopher and Nevis delegation also expressed concern that the United States might invoke the Treaty much more often than St. Christopher and Nevis, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general.

ARTICLE 19—APPLICATION

This Treaty, like most other United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1972 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1972 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either State. Termination shall become effective six months after notice of termination is received.

Technical Analysis of the Extradition Treaty Between the United States of America and Saint Lucia Signed April 18, 1996

On April, 18, 1996, the United States signed a treaty on extradition with Saint Lucia (hereinafter “the Treaty”), which is intended to replace the outdated treaty currently in force between the two countries³⁷⁸ with a modern agreement on the extradition of fugitives. The new extradition treaty is one of twelve treaties that the United States negotiated under the auspices of the Organization of Eastern Caribbean States to modernize our law enforcement relations in the Eastern Caribbean. It represents a major step forward in the United States’ efforts to strengthen cooperation with countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed for the United States. Saint Lucia has its own internal legislation on extradition,³⁷⁹ which will apply to United States’ requests under the treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remain-

der of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.³⁸⁰ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. This Treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from Saint Lucia that extradition would be possible for such high priority offenses as drug trafficking (including operating a continuing criminal enterprise, in violation of Title 21, United States Code, Section 848); offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968) provided that the predicate offense is an extraditable offense; money laundering; terrorism; tax fraud and tax evasion; crimes against environmental protection laws; and any antitrust violations punishable in both states by more than one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Saint Lucia has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of

no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Saint Lucia authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.³⁸¹ In Saint Lucia, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Saint Lucia's agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Saint Lucia's law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Saint Lucia agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Saint Lucia. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence

(often six months) remains to be served.³⁸² This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,³⁸³ and Saint Lucia's extradition law contains no exception for Saint Lucian nationals. Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.³⁸⁴

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses which are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.³⁸⁵

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.³⁸⁶ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.³⁸⁷

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.³⁸⁸

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for

which extradition is requested, and is similar to language present in many United States extradition treaties.³⁸⁹ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 are met.

Paragraph 2 outlines the information which must accompany every request for extradition under the Treaty. Most of the items listed in this paragraph enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, Article 6(2)(c)(iii) calls for "information as to the provisions of law describing any time limit on the prosecution," even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and Saint Lucia delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Paragraph 3 describes the additional information required when the person is sought for trial in the Requesting State. Paragraph 3(c) requires that if the fugitive is a person who has not yet been

convicted of the crime for which extradition is requested, the Requesting State must provide “such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested.” This provision will alleviate one of the major practical problems with extradition from Saint Lucia. The Treaty currently in force permits extradition only if “...the evidence be found sufficient, according to the law of the Requested Party... to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party...”³⁹⁰ The courts in many countries interpret this to require that sufficient evidence to convict the fugitive be shown before extradition will be granted.³⁹¹ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.³⁹² Saint Lucia’s agreement to extradite under the new Treaty based on a “reasonable basis” standard eliminates this imbalance in the burden of proof for extradition, and should dramatically improve the United States’ ability to extradite from Saint Lucia. It also will be a useful precedent in dealing with other former British colonies.

Paragraph 4 lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even absent a specific treaty provision.³⁹³

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Saint Lucia resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current treaty.³⁹⁴ When the request is from Saint Lucia, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados accredited to Saint Lucia, in accordance with United States extradition law.³⁹⁵

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not

excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states.³⁹⁶ The United States and Saint Lucian delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.³⁹⁷

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Saint Lucia. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the provisional arrest be terminated if the Requesting State does not file a fully documented request for extradition within forty-five days of the date on which the person was arrested. This period may be extended for up to an additional fifteen days. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.³⁹⁸

Paragraph 5 makes it clear that in such cases the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article provides that the two States should agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,³⁹⁹ or of the conclusion of any litigation challenging that finding,⁴⁰⁰ whichever is later. The law in Saint Lucia permits the

person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.⁴⁰¹

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws of each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment which has been imposed. The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence even if all necessary extradition proceedings have been completed.⁴⁰²

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision;⁴⁰³ for Saint Lucia, the decision would be made by the Attorney-General.⁴⁰⁴

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.⁴⁰⁵ The article also provides that these objects shall be surrendered to the Requesting

State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to insure that the property is returned as soon as practicable. This paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.⁴⁰⁶ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.⁴⁰⁷

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial, or punishment of an extraditee for additional offenses, or extradition a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender war-

rant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.⁴⁰⁸

ARTICLE 16—TRANSIT

Paragraph 1 gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.⁴⁰⁹ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in Saint Lucia, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

Saint Lucia does not appear to have specific legislation on this matter, and the Saint Lucia delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Saint Lucia in connection with a request from Saint Lucia for extradition before the courts in this country, and the Saint Lucia Attorney General will arrange for the representation of the United States in connection with United States extradition requests to Saint Lucia.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State. The negotiators agreed that in some cases the Requested State might wish to retain private counsel to assist it in the presentation of the extradition request. The Attorney General of Saint Lucia has a very small staff, and might need to enlist outside counsel to aid in handling a complex, contested international extradition proceeding. It is anticipated that in such cases the fees of private counsel retained by the Requested State would be paid by the Requested State. The negotiators also recognized that cases might arise in which the Requesting State would wish to retain its own private counsel to advise it on extradition matters or even as-

sist in presenting the case, if the Requested State agrees. In such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General's Chambers in Saint Lucia may consult with each other with regard to an individual extradition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.⁴¹⁰

The article also states that consultations shall include issues involving training and technical assistance. At the request of Saint Lucia, the United States delegation promised to recommend training and technical assistance to better educate and equip prosecutors and legal officials in St. Lucia to implement this treaty.

During the negotiations, the Saint Lucia delegation expressed concern that the United States might invoke the Treaty much more often than St. Lucia, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general.

ARTICLE 19—APPLICATION

This Treaty, like most other United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1972 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1972 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either State. Termination

nation shall become effective six months after notice of termination is received.

Technical Analysis of The Extradition Treaty Between The United States of America and the Grand Duchy of Luxembourg signed October 1, 1996

On October 1, 1996, the United States signed a treaty on extradition with the Grand Duchy of Luxembourg (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will replace the treaty now in force,⁴¹¹ and it constitutes an important step forward in the United States’ efforts to win the cooperation of foreign nations in combating crime.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed. Luxembourg has its own extradition legislation that will apply to U.S. requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, like the first article in every recent United States extradition treaty, formally obligates each Contracting State to extradite to the other Contracting State persons charged with, found guilty of, or convicted of an extraditable offense, subject to the provisions of the Treaty.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what constitutes an extraditable offense. The Treaty, like most recent United States extradition treaties, including those with Costa Rica, Ireland, Italy, Jamaica, Jordan, Sweden (Supplementary Convention) and Thailand, does not list the offenses for which extradition may be granted.

Paragraph 1 permits extradition for an offense punishable under the laws of both Contracting States by deprivation of liberty (*i.e.*, imprisonment or other form of detention) for a maximum period of more than one year or by a more severe penalty. As Luxembourg law provides for maximum and minimum sentences, the term “maximum” was included to make clear that the Requested State is to look only to the upper limit of the potential penalty when determining whether an offense meets that requirement of being punishable by more than one year. By defining extraditable offenses in terms of “dual criminality” and the requirement of being a felony rather than listing each extraditable crime, the Treaty obviates the

need to renegotiate or supplement it should the Contracting States pass laws dealing with a new type of criminal activity or if the list inadvertently fails to cover an important type of criminal activity punishable in both nations.

Paragraph 1(a) makes clear that attempts to commit and participation as an accomplice or accessory to the commission of an extraditable offense are also extraditable offenses if the dual criminality and minimum penalty provisions of paragraph 1 are met. Paragraph 1(b) follows the practice of recent extradition treaties in providing that offenses under paragraph 1 include conspiring to commit an offense, or in the case of Luxembourg, being a member of an association of wrongdoers, the equivalent in Luxembourg of a U.S. conspiracy offense.

Paragraph 2 provides that a person who has already been sentenced in the Requesting State may be extradited only if more than six months of his or her sentence remains to be served. Most U.S. extradition treaties signed in recent years do not contain such a requirement, but provisions of this kind do appear in some recent United States extradition treaties.⁴¹²

Paragraph 3 reflects the intention of the Contracting States to interpret the principles of this article broadly. Judges in foreign countries often are confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in United States federal courts. Because these judges know of no similar requirements in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, it will ensure that Luxembourg authorities treat United States mail fraud charges in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property in the same manner as unlawful possession of stolen property. This paragraph also requires the Requested State to disregard differences in the categorization of an offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to describe the offense in the laws of each country. A similar provision is included in all recent United States extradition treaties.

Paragraph 4 states that an offense will be extraditable regardless of where the act constituting the offense was committed. This provision deals with the fact that federal crimes may involve acts committed wholly outside United States territory. American jurisprudence recognizes the jurisdiction of United States courts to hear criminal cases involving offenses committed outside the United States if the crime was intended to, or did, have effects in the United States, or if the legislative history of the statute shows clear congressional intent to assert such jurisdiction.⁴¹³ The Contracting States agreed that this provision does not mean that the Requested State loses jurisdiction to prosecute an offense committed within its territory if the Requesting State transmits a request prior to the Requested State's prosecution. The Requested State could postpone extradition under provisions relating to temporary and deferred surrender, and if prosecution in the Requested State

occurs, extradition shall occur consistent with other provisions of the Treaty.

Paragraph 5 provides that if a request includes, in addition to an offense extraditable under the Treaty, an offense that would be extraditable but for the condition regarding the amount of punishment that may be imposed, the Requested State shall grant extradition for the latter offense. The wording of the article is based on Article 3(2) of the Council of Europe Convention on Extradition, and the contracting parties agreed that it meant that once extradition is granted for an extraditable offense, it shall also be granted for any other offense set forth even if the latter offense is punishable by deprivation of liberty for a period shorter than that set forth in the Treaty, as long as all other requirements for extradition are met. Thus, if Luxembourg agrees to extradite to the United States a fugitive wanted for prosecution on an offense punishable by more than a year, the United States may also obtain extradition for misdemeanor offenses, specifically offenses punishable by a year or less, as long as those offenses are also recognized as criminal offenses in Luxembourg. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the Requesting State in that it permits all charges to be disposed of more quickly, thereby facilitating trials while evidence is fresh and permitting the possibility of concurrent sentences. Provisions addressing this issue are also found in recent United States extradition treaties with Australia, Costa Rica, Ireland and Italy.

Paragraph 6 permits the Requested State to deny extradition if prosecution of the offense or execution of the penalty would be barred by the Requested State's statute of limitations. Other treaties have similar provisions which permit or require denial of a request if the statute of limitations would have run in the Requested State had the offense been committed in that state.⁴¹⁴ The practical effect of the provision is to permit the Requested State to oblige the Requesting State to comply with the prescriptive laws of the Requested State. Even if the statute of limitations has expired in the Requested State, the denial of extradition is not automatic. In the United States, the decision whether to grant or deny extradition would be made by the Secretary of State. In Luxembourg, a court has the power to recommend a grant or denial of extradition to the government, with all relevant factors considered in the decision-making process. The negotiators agreed that one important consideration is whether there has been any tolling, interruption or suspension of the statute of limitations in the Requesting State. The last sentence of paragraph 6 requires the parties, insofar as possible, to take into consideration whether the statute has been tolled in the Requesting State.

ARTICLE 3—NATIONALITY

Article 3 provides that neither State shall be required to extradite its own nationals, but the Executive Authority of the United States may do so at its discretion. The United States does not deny extradition on the basis of the offender's citizenship,⁴¹⁵ and our

long-standing policy is to draw no distinction between citizens and others for extradition purposes. Luxembourg, like a number of other European jurisdictions, indicated that it could not agree to extradition of a national under any circumstances.

Paragraph 2 provides that if the Requested State refuses extradition solely on the basis of the nationality of the offender, that State must submit the case to its authorities for prosecution if asked by the Requesting State. Similar provisions are found in many United States extradition treaties.⁴¹⁶

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 prohibits extradition for political offenses. This is a standard provision in recent United States extradition treaties.

Paragraph 2 describes seven categories of offenses that, for the purposes of the Treaty, shall not be considered to be political offenses.

First, the political offense exception does not apply to a murder or willful crime against the person of a Head of State of the Contracting States or a member of the Head of State's family.

Second, the political offense exception does not apply to an offense for which both Contracting States are obligated pursuant to a multilateral international agreement either to extradite the person sought or to submit the case to their competent authorities for decision regarding prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁴¹⁷

Third, as set forth in Article 4(2)(c), the parties agreed that the political offense exception does not apply to murder, manslaughter, malicious wounding or inflicting grievous bodily harm.

Fourth, as set forth in Article 4(2)(d), the parties agreed that the political offense exception does not apply to offenses involving kidnapping, abduction, or unlawful detention, including hostage taking.

Fifth, as set forth in Article 4(2)(e), the parties agreed that the political offense exception does not apply to the placement or use of an explosive, incendiary or destructive device or substance capable of endangering life or doing grievous bodily harm. Articles 4(2)(c), (d) and (e) narrow the scope of the political offense exception to exclude terrorist-type offenses and ensure that extradition will be mandatory under the Treaty for such offenses.

The sixth and seventh exceptions set forth in Articles 4(2)(f) and (g) ensure that attempts to commit, participation in the commission of, an "association of wrongdoers" under Luxembourg law and a conspiracy under U.S. law are not considered political offenses under the Treaty when they relate to an offense covered by Articles 4(2)(a)-(e).

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.⁴¹⁸ The negotiators agreed that under paragraph 3 the executive authority may refuse extradition when a request is not made in good faith or when, in the executive's judgment, the fugitive will not be able to obtain a fair trial in the Requesting State. Under United States law and practice, the

Secretary of State has the sole discretion to determine whether an extradition request is based on improper political motivation.⁴¹⁹

Paragraph 4 states that the executive authority of the Requested State shall refuse extradition for offenses under military law that are not punishable under ordinary criminal law.⁴²⁰

ARTICLE 5—FISCAL OFFENSES

Some United States extradition treaties contain provisions permitting extradition for fiscal offenses. Article 5 balances the interests of the United States in prosecuting major offenders for all offenses, including tax offenses, and the interests of Luxembourg, which has generally refused to assist other nations enforce their tax laws. This article allows extradition if a fugitive has engaged in other serious criminal activity, for instance drug trafficking or organized criminal activity, even if the admissible evidence of the other activity is insufficient to assure a conviction.

Paragraph 1 provides that the executive authority of the Requested State shall have discretion to deny extradition when the offense for which extradition is requested is a fiscal offense.

Paragraphs 2(a) and (b) define fiscal offenses for purposes of the Treaty as offenses relating to the reporting and payment of taxes or customs duties and offenses relating to currency exchange laws.

Paragraph 3 provides that an offense that would otherwise be a fiscal offense under Article 5(2) may nonetheless be considered not to be a fiscal offense if it relates to drug trafficking, a crime of violence, or other criminal acts of a particularly serious nature. The parties agreed that the drug trafficking offense, crime of violence, or other crime must be particularly serious to fall within this paragraph. It was also agreed that the offense may nonetheless be considered not to be a fiscal offense even though extradition is not sought for the other criminal activity, e.g., for drug trafficking or violent criminal activity.

ARTICLE 6—PRIOR PROSECUTION

This article, while prohibiting extradition if a person has been prosecuted in the Requested State for the same offense, permits extradition when the person sought is charged by each Contracting State with different offenses arising out of the same basic transaction.

Paragraph 1, which prohibits extradition if the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested, is similar to language present in many United States extradition treaties. This provision applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State. It is not enough that the same facts were involved. Thus, if the person sought is accused by one Contracting State of illegally smuggling narcotics into that country and is charged by the other Contracting State with unlawfully exporting the same shipment of drugs, an acquittal or conviction in one Contracting State does not insulate that person from extradition because different crimes are involved. The negotiators agreed that ex-

tradition is not to be denied on the basis that a fugitive has been prosecuted in a third state for the same offense.

Paragraph 2 makes it clear that neither Contracting State may refuse to extradite a person sought on the basis that the Requested State's authorities declined to prosecute the person or instituted and later discontinued proceedings against the person. This provision was included because a decision of the Requested State to forego prosecution or to drop charges previously filed could be the result of a failure to obtain sufficient evidence or witnesses for trial, whereas the Requesting State's prosecution might not suffer from the same impediments. This provision should enhance the ability of the Contracting States to extradite to the jurisdiction with the better chance of a successful prosecution.

ARTICLE 7—CAPITAL PUNISHMENT AND HUMANITARIAN CONCERNS

Paragraph 1 requires the Requested State to refuse extradition when the offense for which extradition is sought is punishable by death in the Requesting State, but not in the Requested State, unless the Requesting State provides sufficient assurances that the death penalty will not be imposed or, if imposed, will not be carried out. Similar provisions are found in many recent United States extradition treaties.⁴²¹

The Luxembourg delegation insisted on this provision, noting that Luxembourg would not accept a treaty that suggested it had discretion to allow a person to be extradited who might receive a death penalty.

Paragraph 2 permits the executive authority of the Requested State to refuse extradition on humanitarian grounds. Under current Luxembourg law, the only humanitarian factors to be taken into consideration are youth, old age or health. Luxembourg insisted on having a provision similar to those included in other Benelux treaties, specifically, treaties signed with Belgium and the Netherlands⁴²². Similar provisions are found in many extradition treaties.⁴²³ When a case presents compelling humanitarian concerns, the Requested State is to contact the Requesting State to determine whether there is a method for handling the case that will alleviate the humanitarian concerns. If so, assurances may be provided and the extradition may proceed.

ARTICLE 8—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets forth the documentary and evidentiary requirements for an extradition request. Similar articles are found in most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be made through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the person sought pursuant to Article 12. Provisional arrest requests need not be made through the diplomatic channel provided that the requirements of Article 12 are met.

Paragraph 2 specifies the information that must accompany each request for extradition under the Treaty. Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example,

paragraph 2(c) calls for “the text of the law describing the essential elements of the offense for which extradition is requested,” which enables the Requested State to determine easily whether a lack of dual criminality is an appropriate basis for denying extradition. Paragraph 2(e) facilitates the determination regarding the statute of limitations under Article 1(6) by requiring information both on the time limit for prosecution and on interruption or suspension of the time limit.

Paragraph 3 lists the additional information required when the person is sought for trial in the Requesting State. Paragraph 3 (c) requires that if the person sought has not been convicted of the crime for which extradition is requested, the Requesting State must provide, in addition to a copy of the arrest warrant and charging document, “such information as would justify the commitment for trial of the person if the offense had been committed in the Requested State.” In Luxembourg, as in many European nations, the law permits extradition without review of any evidence, provided the arrest warrant and formal documents are presented. Under U.S. law, there must be an examination of the facts to establish probable cause to believe that an offense was committed and that the fugitive committed it.⁴²⁴ This provision requires that the Requesting State submit such information as meets the requirements of the Requested State.

Paragraph 4 lists the information needed, in addition to the requirements of paragraph 2, when the person sought has already been found guilty of an offense in the Requesting State. It clarifies that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.⁴²⁵ Paragraph 4(d) requires that if a person has been convicted but not yet sentenced, the Requesting State must provide a copy of the warrant for the arrest of the person sought and affirm an intention to impose a sentence.

Paragraph 4(e) provides that if a person sought was found guilty in *absentia*, the documentation required includes both proof of conviction and the same documentation as in cases in which no conviction has been obtained. This provision is consistent with the long-standing United States policy of requiring such documentation in the extradition of persons convicted *in absentia*. Convictions *in absentia* are extremely rare under Luxembourg law.

ARTICLE 9—SUPPLEMENTARY INFORMATION

This article states that if the Requested State considers the information furnished in support of the request for extradition insufficient under its law with respect to extradition, it may ask that the Requesting State submit supplementary information and fix a time limit for receipt of this information. This article is intended to permit the Requesting State to cure defects in the request and accompanying materials that are found by a court in the Requesting State or by the attorney acting on behalf of the Requesting State, and to permit the court, in appropriate cases, to grant a reasonable continuance to obtain, translate, and transmit additional materials. A similar provision is found in other United States extradition treaties.⁴²⁶

Paragraph 2 indicates that if the person whose extradition is requested is under arrest and the supplementary information requested is not sufficient or does not arrive within the time specified, the person may be released from custody, but the Requesting State may, nonetheless, make a new request for extradition.

Paragraph 3 requires that when a person so held is released, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 10—ADMISSIBILITY OF DOCUMENTS

Article 10 pertains to the authentication procedures for the documents provided by the Requesting State so that the documents are received and admitted in the Requested State's extradition proceeding.

The article states that when the United States is the Requesting State, the documents in support of extradition must be admitted into evidence if they are authenticated by the U.S. Department of State. When Luxembourg is the Requesting State, the documents are to be admitted into evidence in the U.S. extradition proceeding if they have been certified by the principal diplomatic or consular officer of the United States resident in Luxembourg, as is provided under United States extradition law.⁴²⁷

Paragraph (c) provides that documents shall also be admitted into evidence if authenticated in any other manner accepted by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State itself is free under (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence that is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the Treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 11—TRANSLATION

This article requires that all documents submitted by Luxembourg be translated into English and that all documents submitted by the United States be translated into French.

ARTICLE 12—PROVISIONAL ARREST

This article describes the process by which a person sought in one Contracting State may be arrested and detained in the other while the formal extradition documentation is prepared by the Requesting State.

Paragraph 1 provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Luxembourg. The provision also specifies that INTERPOL may be used to transmit such a request.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 requires that the Requested State notify the Requesting State without delay of the disposition of its application for provisional arrest and the reasons for any denial.

Paragraph 4 provides that the person who is provisionally arrested may be released from detention if the Requesting State does not submit a fully documented request for extradition to the executive authority of the Requested State within 60 days of the provisional arrest. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Luxembourg.⁴²⁸

Although the person sought may be released from custody if the documents are not received within the 60-day period or any extension thereof, the extradition proceedings against the fugitive need not be dismissed. The final paragraph in this article makes it clear that the person may be taken into custody again, and the extradition proceedings may commence, if the formal request and supporting documents are presented subsequently.

ARTICLE 13—DECISION AND SURRENDER

This article provides that the Requested State promptly notify the Requesting State of its decision on the request for extradition. The delegations agreed the notification could be through informal channels, such as the respective Justice Ministries, and that formal notice in the form of a diplomatic note should follow. If the request is denied in whole or in part, the Requested State must explain the reasons for the denial. If extradition is granted, this article requires authorities of the Contracting States to agree on a time and place for the surrender of the person sought. The Requesting State must remove the person within such time as may be prescribed by the law of the Requested State or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite the person for the same offense. United States law requires that surrender occur within two calendar months of a finding that the person is extraditable,⁴²⁹ or of the conclusion of any litigation challenging that finding,⁴³⁰ whichever is later. The law in Luxembourg does not specify a time by which a person must be removed.

In addition, paragraph 5 requires that the period of time spent in custody in the Requested State pursuant to the Requesting State's extradition request be subtracted from the period of detention to be served in the Requesting State. Providing credit for time in detention awaiting extradition is in accordance with current U.S. policy and practice.

ARTICLE 14—TEMPORARY AND DEFERRED SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclu-

sion of the proceedings against the person and the full execution of any punishment imposed.

Paragraph 1 provides for the temporary surrender of a person sought for prosecution in the Requesting State who is being proceeded against or serving a sentence in the Requested State. A person thus surrendered shall be returned to the Requested State at the conclusion of the proceedings in the Requesting State. The time spent in detention in the territory of the Requesting State is to be deducted from the time remaining to be served in the Requested State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the probability of a successful prosecution. Such transfer may also be advantageous to the person sought in that it: (1) permits resolution of the charges sooner; (2) may make it possible for any sentence to be served in the Requesting State concurrently with the sentence in the Requested State; and (3) permits a defense against the charges while favorable evidence is fresh and more likely to be available. Such provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the initiation of extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of any punishment that has been imposed.⁴³¹ The wording of the provision also allows the Requested State to postpone the surrender of a person facing prosecution or serving a sentence even if all necessary extradition proceedings have been completed.

ARTICLE 15—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties in listing some of the factors that the executive authority of the Requested State must consider when reviewing requests from two or more countries for the extradition of the same person. For the United States, the Secretary of State decides to which country the person should be surrendered.⁴³²

ARTICLE 16—SEIZURE AND SURRENDER OF PROPERTY

This article permits the seizure by the Requested State of all items including articles, documents and other evidence connected with the offense for which extradition is requested to the extent permitted by the Requested State's internal law. The article also provides that these items may be surrendered to the Requesting State upon the granting of the extradition or even if extradition cannot be effected due to the death, disappearance or escape of the person sought.

Paragraph 2 states that the Requested State may condition its surrender of items upon satisfactory assurances that the items will be returned to the Requested State as soon as practicable. Paragraph 2 also permits the surrender of items to be deferred if they are needed as evidence in the Requested State.

In Paragraph 3, surrender of items under this provision is expressly made subject to due respect for the rights of third parties in such property.

ARTICLE 17—RULE OF SPECIALITY

This article deals with the principle known as the rule of speciality, a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or execution of a sentence on different charges that are not extraditable or properly documented in the request.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for: (1) the offense for which extradition was granted or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) an offense committed after the extradition; or (3) an offense for which the executive authority of the Requested State consents.⁴³³ The Contracting Parties agreed that the lesser included offense need not be a felony.

Paragraph 1(c) permits the Requested State to require the Requesting State seeking consent to prosecute for new charges to submit documents identified in Article 8 and a statement of the position of the person whose extradition is sought. The contracting parties agreed that a statement from the attorney representing the fugitive would be sufficient and that the Requesting State may, in appropriate circumstances, submit a statement that the fugitive declined to make a statement. Paragraph 1(c) permits the Requesting State to detain the person extradited for 75 days or for such longer period as the Requested State may authorize while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third state without the consent of the Requested State.

Paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial, or punishment of an extradited person for additional offenses or extradition to a third state if: (1) the extradited person leaves the Requesting State after extradition and voluntarily returns to it; or (2) the extradited person does not leave the Requesting State within 15 days of being free to do so.

ARTICLE 18—SIMPLIFIED EXTRADITION

Persons sought for extradition often elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State. This article provides that when a fugitive waives extradition in accordance with the laws of the Requested State, the person may be returned to the Requesting State as expeditiously as possible without further proceedings.

United States practice dictates that when a fugitive waives extradition and voluntarily returns to the Requesting State, the rule of speciality does not apply. However, under Luxembourg law, the rule of speciality does apply in such cases. The United States

agreed to recognize such application upon the receipt of an accompanying diplomatic note indicating that the rule of specialty is applicable to the extradition.

ARTICLE 19—TRANSIT

Paragraph 1 gives each Contracting State the power to authorize transit through its territory of a person being surrendered to the other Contracting State by a third state. A person in transit may be detained in custody during the transit period. Requests for transit are to contain a description of the person being transported and a brief statement of the facts of the case for which the person is sought. Requests for transit may be made through the diplomatic channel, directly between the United States Department of Justice and the Ministry of Justice of Luxembourg, or through the facilities of INTERPOL. Requests for transit may be denied for a national of the Requested State or for a person sought for prosecution or to serve a sentence in the Requested State.

Paragraph 2 describes the procedure each Contracting State should follow when seeking to transport a person in custody through the territory of the other. Under this provision, no advance authorization is needed if the person in custody is in transit to one of the Contracting States and is traveling by aircraft and no landing is scheduled in the territory of the other. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also provides for the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 20—REPRESENTATION AND EXPENSES

Paragraph 1 provides that the Requested State shall, by all legal means within its power, advise, assist, appear in court for and represent the interests of the Requesting State in extradition request proceedings. Thus, the United States will provide complete representation for Luxembourg. As Luxembourg law prohibits either a government attorney or private counsel from representing the United States before its courts in an extradition proceeding, Luxembourg is not able to represent the United States in a reciprocal fashion. Luxembourg also indicated that communications between the Public Prosecutor and representatives of the United States regarding a request for extradition may be improper. The Luxembourg Ministry of Justice will review requests for extradition and communicate with United States authorities.

Paragraph 2 states that the Requesting State shall bear the expenses of translation and transportation of the person sought, and that the Requested State shall pay all other expenses.

Paragraph 3 provides that neither Contracting State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination and surrender of the person sought. This includes any claim by the person sought for damages, reimbursement of legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 21—CONSULTATION

This article provides that the United States Department of Justice and the Ministry of Justice of Luxembourg may consult with each other, directly or through INTERPOL, regarding an individual extradition case or extradition procedures in general. A similar provision is found in other recent United States extradition treaties.⁴³⁴

ARTICLE 22—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the last two decades, is expressly made retroactive to cover offenses that occurred before as well as after the Treaty enters into force. The negotiators agreed that for this provision to apply, the conduct had to have been criminal in both the Requesting and Requested States at the time it occurred.

ARTICLE 23—RATIFICATION AND ENTRY INTO FORCE

The first two paragraphs of this article contain standard treaty language providing for the exchange of instruments of ratification and specifies the day on which the Treaty will enter into force after the exchange.

Paragraph 3 provides that the 1883 Treaty and the Supplementary Convention of 1935 will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1883 Treaty and the 1935 Supplementary Convention. Nonetheless, Article 2 of this Treaty becomes applicable. This assures that such a case may proceed if the dual criminality requirements of this Treaty are met. In addition, Article 14 of this Treaty, which addresses temporary and deferred surrender, and Article 17, which concerns the rule of speciality, will apply in such extradition proceedings. This means that if a person found extraditable under the 1883 Treaty and Supplementary Convention of 1935 is serving a sentence in the Requested State when this Treaty enters into force, the Requested State has discretion to grant temporary surrender. The Requested State may also waive the application of the rule of speciality if it is persuaded that it is in the interests of justice to do so.

ARTICLE 24—TERMINATION

This article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting State. Termination becomes effective six months after the date of such notice.

**Technical Analysis of The Protocol to the Extradition Treaty
Between the United States of America and the United
Mexican States of May 4, 1978 Signed September 2, 1998**

The Protocol to the Extradition Treaty between the United States of America and the United Mexican States of May 4, 1978 (“the Protocol”) was signed in Washington, D.C., on November 13, 1997. The Protocol authorizes the temporary extradition to the Requesting Party of individuals charged with crimes there who are

serving penal sentences in the Requested Party. Absent the authorization provided by the Protocol, surrender through the extradition process of persons already convicted and sentenced in the country from which extradition is sought must generally be deferred until the completion of their sentences, by which time the evidence in the other country may no longer be compelling or available. Pursuant to the Protocol, such individuals, after the Requested Party has granted a request for their extradition, can be temporarily surrendered to the Requesting Party for purposes of immediate prosecution and then returned to the Requested Party for the completion of their original sentences.

The Protocol serves as a supplement to, and is incorporated as a part of, the existing Extradition Treaty between the United States of America and the United Mexican States, which was signed at Mexico on May 4, 1978, and entered into force on January 25, 1980 (“the Treaty”).⁴³⁵ The mechanism established by the Protocol is a standard feature in treaties concluded between the United States and other countries in recent years.⁴³⁶ The addition of this mechanism to the U.S.-Mexico Treaty serves to improve the bilateral extradition process in light of modern treaty practice and modern patterns of chronic criminal behavior. It is in accordance with Declaration of the Mexican-U.S. Alliance Against Drugs, signed at Mexico City on May 6, 1997, in which Presidents Clinton and Zedillo stated their intention to “ensure that fugitives are expeditiously and with due legal process brought to justice and are unable to evade justice in one of our countries by fleeing to or remaining in the other.”

The following technical analysis of the Protocol was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1

Article 1, paragraph 1, of the Protocol changes the title of Article 15 of the Treaty from “Delayed Surrender” to “Delayed and Temporary Surrender.”

Paragraph 2 of Article 1 describes the new mechanism of temporary extradition for individuals serving sentences in the Requested Party. It adds two new paragraphs to Article 15 of the Treaty. The first new provision, new Article 15(2), sets forth the substantive authorization for the Requested Party to allow the temporary surrender to the Requesting Party of individuals who have been found extraditable, but have already been convicted and sentenced in the Requested Party. Prior to this amendment, Article 15 of the Treaty provided only that the surrender of such individuals (or of persons against whom charges had been initiated) could be deferred until the punishment imposed against them had been fully executed. To prevent the injustice potentially created by prolonged delays prior to surrender, the expedited transfer procedure of the

new Article 15(2) provides another option to assist both governments in the effective pursuit and prosecution of criminal fugitives.

The mechanism of temporary surrender applies only to those who have been sentenced in the Requested Party. It does not encompass persons who are simply facing charges in the Requested Party or against whom proceedings have been initiated, but not completed, because Mexican law does not permit the absence of defendants or the transfer of jurisdiction over them prior to sentencing. Similarly, as in analogous provisions of other extradition treaties to which the United States is a party, the Protocol does not apply to those being sought by the Requesting Party for service of a previously-imposed sentence, because the rationale for the mechanism—the prosecution of the extraditee while the case is still viable—is not implicated for those individuals who have already been convicted.

New Article 15(2) further states that the surrendered person “shall be kept in custody in the Requesting State, and shall be returned to the Requested State after conclusion of the proceedings, in accordance with conditions to be determined by agreement of the Parties.” It is anticipated that extradition authorities in Mexico and the United States will consult to develop case-specific agreements between the two governments, which will be transmitted through diplomatic channels and based on formal, written commitments by the pertinent federal and/or state officials with jurisdiction and the authority to make such commitments. The agreements will typically address arrangements for the transfer and maintenance of custody of the prisoners and their return to the Requested Party, as well as any extraordinary matters that may be relevant, such as the proper handling of individuals requiring medical treatment or the appropriate disposition of a prisoner who commits new crimes in the Requesting Party during the period of temporary surrender.

The negotiators agreed that the new temporary surrender mechanism established by the Protocol will be reserved for exceptional situations, in which the interests of justice cannot or may not otherwise be served. To further that understanding, the negotiators further agreed that each request for temporary surrender should be justified by evidence of the dangerousness of the requested person and the seriousness of the offense charged in the Requesting Party (as generally provided in the Requesting Party’s extradition request), as well as an explanation of the loss of evidence or witness testimony likely or certainly to result from deferred extradition.

The second provision added to Article 15 of the Treaty, new Article 15(3), states that a temporarily surrendered person who is acquitted in the Requesting Party shall receive credit in the Requested Party for the time spent in custody in the Requesting Party. This provision is included to ensure that, regardless of the laws or regulations generally applicable to persons in custody elsewhere, no individual will lose custodial credit for time spent in such status in a jurisdiction in which a conviction is not obtained.

ARTICLE 2

Paragraph 1 of Article 2, provides that the provisions of the Protocol are to be viewed as integral parts of the Treaty, and their interpretation governed by principles therein.

Paragraph 2 of the Article, which states that the requirements of the prisoner transfer treaty between Mexico and the United States⁴³⁷ do not apply to temporary surrenders under the Protocol, was included to make it clear that the consent of the individual being temporarily surrendered is not required. Under the Protocol, the person being surrendered will already have been found extraditable, a process not involving consent, and will be transferred to face prosecution. The prisoner transfer treaty, on the other hand, requires the consent of the prisoner and results in the service of a sentence in the receiving country.

Paragraph 3 contains standard treaty language providing that the Protocol shall be subject to ratification and that it will enter in force on the date of exchange of instruments of ratification between the Parties. It will terminate upon termination of the Treaty as provided in Article 23 of that instrument.

Technical Analysis of The Extradition Treaty Between The United States of America and the Republic of Poland signed July 10, 1996

On July 10, 1996, the United States signed a treaty on extradition with the Republic of Poland (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will replace the treaty now in force,⁴³⁸ and constitutes an important step forward in the United States’ efforts to win the cooperation of foreign nations in combating crime.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 *et seq.* No new implementing legislation will be needed. The Republic of Poland has its own internal legislation⁴³⁹ that will apply to the United States’ requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, as with the first article in every recent United States extradition treaty, formally obligates each Contracting State to extradite to the other Contracting State persons charged with, found guilty of, or convicted of an extraditable offense, subject to the provisions of the Treaty. The article refers to prosecution “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what constitutes an extraditable offense. The Treaty, similar to recent United States extradition treaties with Costa Rica, Ireland, Italy, Jamaica, Jordan, Sweden (Supplementary Convention), and Thailand, does not list the offenses for which extradition may be granted.

Paragraph 1 permits extradition for an offense punishable under the laws of both Contracting States by deprivation of liberty (*i.e.*, imprisonment or other form of detention) for a maximum period of more than one year or by a more severe penalty. As Polish law provides for maximum and minimum sentences, the term “maximum” was included to make clear that the Requested State is to look only to the upper limit of the potential penalty when determining whether an offense meets that requirement of being punishable by more than one year. By defining extraditable offenses in terms of “dual criminality” and the requirement of being a felony rather than listing each extraditable crime, the Treaty obviates the need to renegotiate or supplement it should the Contracting States pass laws dealing with a new type of criminal activity or if the list inadvertently fails to cover an important type of criminal activity punishable in both nations.

During the negotiations, the Polish delegation stated that key offenses such as drug trafficking, including operating a continuing criminal enterprise⁴⁴⁰, money laundering⁴⁴¹ and offenses under the RICO statutes⁴⁴², are considered extraditable under the Treaty.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting to commit, conspiring to commit, or otherwise participating in, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the Treaty be clear on this point. Poland has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by expressly making conspiracy an extraditable crime. Similarly, this paragraph makes the Polish offense of association to commit an offense an extraditable offense.

Paragraph 3 reflects the intention of the Contracting States to interpret the principles of this article broadly. Judges in foreign countries often are confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in United States federal courts. Because these judges have not found similar requirements in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, it will ensure that Polish authorities treat United States mail fraud charges in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property in the same manner as unlawful possession of stolen property. This paragraph also requires the Requested

State to disregard differences in the categorization of an offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to describe the offense under the laws of the Contracting States. A similar provision is included in all recent United States extradition treaties.

Paragraph 4 deals with the fact that federal crimes may involve acts committed wholly outside United States territory. American jurisprudence recognizes the jurisdiction of United States courts to hear criminal cases involving offenses committed outside the United States if the crime was intended to, or did, have effects in the United States, or if the legislative history of the statute shows clear congressional intent to assert such jurisdiction.⁴⁴³ In Poland, however, the government's ability to prosecute extraterritorial offenses is very different.⁴⁴⁴ Paragraph 4, therefore, reflects Poland's agreement to recognize United States jurisdiction to prosecute offenses committed outside the United States if Polish law permits it to prosecute similar offenses committed outside Poland in corresponding circumstances. If the law of the Requested States does not provide for such prosecution, paragraph 4 nevertheless permits the executive authority of the Requested State to decide, at its discretion, to grant the extradition. For the United States, this decision is made by the Secretary of State; for Poland the decision is made by the Minister of Justice/Attorney General. A similar provision appears in several recent United States treaties.⁴⁴⁵

The Contracting States agreed that paragraph 4 does not mean that the Requested State loses jurisdiction to prosecute an offense committed within its territory if the Requesting State transmits a request prior to the Requested State's prosecution. The Requested State could postpone extradition under provisions relating to temporary and deferred surrender and if prosecution in the Requested State occurs, extradition shall occur consistent with other provisions of the Treaty.

Paragraph 5 provides that if a request includes, in addition to an offense extraditable under the Treaty, an offense that would be extraditable but for the condition regarding the amount of punishment that may be imposed, the Requested State shall grant extradition for the latter offense. For example, if Poland agrees to extradite to the United States a fugitive wanted for prosecution on an offense punishable by more than a year, the United States may also obtain extradition for misdemeanor offenses, specifically offenses punishable by a year or less, as long as the offenses are also recognized as criminal offenses in Poland. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the Requesting State in that it permits all charges to be disposed of more quickly, thereby facilitating trials while evidence is fresh and permitting the possibility of concurrent sentences. Provisions addressing this issue are also found in recent United States extradition treaties with Australia, Costa Rica, Ireland, and Italy.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence

(often six months) remains to be served.⁴⁴⁶ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—FISCAL OFFENSES

This provision provides that the executive authority of the Requested State shall grant extradition when the offense for which extradition is requested is an offense connected with taxes, duties, international transfers of funds, and importation, exportation, and transit of goods. This is true even if the law of the Requested State does not require the same type of fee or tax or does not regulate fees, taxes, duties, transit of goods, and currency transactions in the same manner as the law of the Requesting State. A similar provision exists in other United States extradition treaties.

The Polish delegation stated that a fiscal provision was essential to ensure that extradition would be granted for fiscal offenses. This provision makes it clear that a Requested State must find a fiscal offense an extraditable offense even though the fiscal offenses are not identical under the laws of the United States and Poland. For example, a law requiring payment of a particular type of tax, such as an inheritance tax, may exist in the Requesting State and not in the Requested State; nevertheless, the Requested State would be obligated to find the failure to pay an inheritance tax in the Requesting State an extraditable offense.

ARTICLE 4—NATIONALITY

Article 4 provides that neither State shall be required to extradite its own nationals, but the Executive Authority of the United States may do so in its discretion. The United States does not deny extradition on the basis of the offender's citizenship,⁴⁴⁷ and our long-standing policy is to draw no distinction between citizens and others for extradition purposes.

The U.S. and Polish delegations discussed this provision at great length. In Poland, the extradition of nationals is barred by statutory law only (*not* by the constitution), and statutory law can be amended by treaty. Thus, this treaty would create a possibility not currently existing for Poland to extradite one of its nationals. The Polish delegation was unwilling to go beyond simply making the extradition of nationals discretionary.

According to the delegation, whether Poland will extradite a particular national will depend on the facts of the case and the political mood at the time a request for extradition is made.

The delegations also discussed the issue of dual nationality. The Polish delegation noted that one of the driving forces for the Polish delegation's wanting to make extradition of nationals possible was the concern that Poland would otherwise have to provide asylum for all dual nationals who have no connection with the country other than possessing its citizenship.

Paragraph 2 provides that if the Requested State refuses extradition solely on the basis of the nationality of the offender, that State must submit the case to its authorities for prosecution if asked by the Requesting State. Similar provisions are found in many United States extradition treaties.⁴⁴⁸

ARTICLE 5—POLITICAL AND MILITARY OFFENSES

Paragraph 1 prohibits extradition for political offenses. This is a standard provision in recent United States extradition treaties.

Paragraph 2 describes seven categories of offenses that, for the purposes of the Treaty, shall not be considered to be political offenses.

First, the political offense exception does not apply to a murder or any other offense against the person of a Head of State of the Contracting States or a member of the Head of State's family.

Second, the political offense exception does not apply to an offense for which both Contracting States are obligated pursuant to a multilateral international agreement either to extradite the person sought or to submit the case to their competent authorities for decision regarding prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁴⁴⁹

Third, as set forth in Article 5(2)(c), the parties agreed that the political offense exception does not apply to murder, manslaughter, malicious wounding or inflicting grievous bodily harm or other grievous injury to health.

Fourth, as set forth in Article 5(2)(d), the parties agreed that the political offense exception does not apply to offenses involving kidnapping, abduction, or unlawful detention, including hostage taking.

Fifth, as set forth in Article 5(2)(e), the parties agreed the political offense exception does not apply to the placement or use of an explosive, incendiary or destructive device capable of endangering life, of causing substantial bodily harm, or of causing substantial property damage. Articles 5(2)(c), (d) and (e) narrow the scope of the political offense exception to exclude terrorist-type offenses and ensure that extradition will be mandatory under the Treaty for such offenses.

The sixth exception set forth in Article 5(2)(f) ensures that attempts to commit, or participation in the commission of, any of the named offenses, as well as an association to commit these offenses as provided by the laws of Poland, or conspiracy to commit these offenses as provided by the laws of the United States, are not considered political offenses under the Treaty when they relate to an offense covered by Articles 5(2)(a)-(e).

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.⁴⁵⁰ The negotiators agreed that under paragraph 3 the executive authority may refuse extradition when a request is not made in good faith or when, in the executive's judgment, the fugitive will not be able to obtain a fair trial in the Requesting State. Under United States law and practice, the Secretary of State has the sole discretion to determine whether an extradition request is based on improper political motivation.⁴⁵¹

Paragraph 4 states that the executive authority of the Requested State shall refuse extradition for offenses under military law that are not punishable under ordinary criminal law.⁴⁵²

ARTICLE 6—CAPITAL PUNISHMENT

Paragraph 1 permits the Requested State to refuse extradition in cases in which the offense for which extradition is sought is punishable by death in the Requesting State, but is not punishable by death in the Requested State, unless the Requesting State provides assurances that the death penalty will not be imposed, or, if imposed, will not be carried out. Similar provisions are found in many recent United States extradition treaties.⁴⁵³

The Polish delegation insisted on the inclusion of this provision. Although a small number of offenses in Poland are punishable by death under the law of Poland, the Polish Parliament has issued a moratorium against carrying out any death sentence imposed. This moratorium reflects the current political trend in Poland, which is similar to several other emerging democratic Eastern European countries, towards reconsidering its position on capital punishment.

Paragraph 2 provides that when the Requesting State gives assurances in accordance with paragraph 1, the assurances shall be respected and the death penalty, if imposed, shall not be carried out.

ARTICLE 7—PRIOR PROSECUTION

This article, while prohibiting extradition if a person has been prosecuted in the Requested State for the same offense, permits extradition when the person sought is charged by each Contracting State with different offenses arising out of the same basic transaction.

Paragraph 1, which prohibits extradition if the person sought has been convicted or acquitted with final binding effect in the Requested State for the offense for which extradition is requested, is similar to language present in many United States extradition treaties. This provision applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State. It is not enough that the same facts were involved. Thus, if the person sought is accused by one Contracting State of illegally smuggling narcotics into that country, and is charged by the other Contracting State with unlawfully exporting the same shipment of drugs, an acquittal or conviction in one Contracting State does not insulate that person from extradition because different crimes are involved. The negotiators agreed extradition is not to be denied on the basis that a fugitive has been prosecuted in a third state for the same offense.

Paragraph 2 (a) and (b) make it clear that neither Contracting State may refuse to extradite a person sought on the basis that the Requested State's authorities declined to prosecute the person or instituted and later discontinued proceedings against the person. This provision was included because a decision of the Requested State to forego prosecution or to drop charges previously filed could be the result of a failure to obtain sufficient evidence or witnesses

for trial, whereas the Requesting State's prosecution might not suffer from the same impediments. This provision should enhance the ability of the Contracting States to extradite to the jurisdiction with the better chance of a successful prosecution.

ARTICLE 8—LAPSE OF TIME

This article states that extradition must be denied if, at the time the extradition request is received, the prosecution of the offense or the enforcement of the penalty is barred by lapse of time under the law of the Requesting State. Similar provisions appear in several United States extradition treaties. The reference to "enforcement of the penalty" reflects the fact that Poland, like many civil law countries, has a statute of limitations relating to such matters in addition to a statute of limitation on prosecutions. The article indicates that the Requested State should not deny the request if the statute of limitations expires after the Requested State receives the request.

ARTICLE 9—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets forth the documentary and evidentiary requirements for an extradition request. Similar articles are found in most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be made through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the person sought pursuant to Article 12. Provisional arrest requests need not be made through the diplomatic channel provided that the requirements of Article 12 are met.

Paragraph 2 specifies the information that must accompany each request for extradition under the Treaty. Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, paragraph 2(c) calls for "the text of the law describing the essential elements of the offense for which extradition is requested," which enables the Requested State to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Paragraph 2(e) facilitates the determination regarding the statute of limitations under Article 8 by requiring information both on the time limit for prosecution and on interruption or suspension of the time limit.

Paragraph 3 lists the additional information needed when the person is sought for trial in the Requesting State. Paragraph 3 (c) requires that if the person sought has not been convicted of the crime for which extradition is requested, the Requesting State must provide, in addition to a copy of the arrest warrant and charging document, "such information as would justify the committal for trial of the person if the offense had been committed in the Requested State." In Poland, as in many European nations, the law permits extradition without review of any evidence, provided the arrest warrant and formal documents are presented. Under U.S. law, there must be an examination of the facts to establish probable cause to believe that an offense was committed and that the fugitive committed it.⁴⁵⁴ This provision requires that the Request-

ing State submit such information as meets the requirements of the Requested State.

Paragraph 4 lists the information needed, in addition to the requirements of paragraph 2, when the person sought has already been found guilty of an offense in the Requesting State. It clarifies that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.⁴⁵⁵

Paragraph 4(a) requires that the Requesting State must provide a copy of a warrant or order of arrest, if any, issued by a judge or other competent authority.

Paragraph 4(b) requires a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been found guilty.

Paragraph 4(c) provides that the Requesting State must submit information establishing that the person sought is the person to whom the finding of guilt refers.

Paragraph 4(d) requires 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.

Paragraph 4(e) provides that if a person sought was found guilty in absentia, the documentation required includes both proof of conviction and the same documentation as in cases in which no conviction has been obtained. This provision is consistent with the long-standing United States policy of requiring such documentation in the extradition of persons convicted in absentia.

ARTICLE 10—ADMISSIBILITY OF DOCUMENTS

Article 10 pertains to the authentication procedures for the documents provided by the Requesting State so that the documents are received and admitted in the Requested State's extradition proceeding.

The article states that when the United States is the Requesting State, the documents in support of extradition must be admitted into evidence if they are authenticated by the U.S. Department of State. With a request from Poland, the documents are to be admitted into evidence in the U.S. extradition proceeding if they have been certified by the principal diplomatic or consular officer of the United States resident in Poland, as is provided under United States extradition law.⁴⁵⁶

Paragraph (c) provides that documents shall also be admitted into evidence if authenticated in any other manner accepted by the law of the Requested State. For example, there may be information in the Requested State itself that is relevant and probative to extradition, and the Requested State itself is free under (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence that is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the Treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the ex-

tradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 11—TRANSLATION

This article requires that all documents submitted by the Requesting State shall be translated into the language of the Requested State. Therefore, all documents submitted by the United States shall be translated into Polish, and all documents submitted by Poland shall be translated into English.

ARTICLE 12—PROVISIONAL ARREST

This article describes the process by which a person sought in one Contracting State may be arrested and detained in the other while the formal extradition documentation is prepared by the Requesting State.

Paragraph 1 provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the Republic of Poland. The provision also specifies that INTERPOL may be used to transmit such a request.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 requires that the Requested State notify the Requesting State without delay of the disposition of its application for provisional arrest and the reasons for any denial.

Paragraph 4 provides that the person who is provisionally arrested may be released from detention if the Requesting State does not submit a fully documented request for extradition to the executive authority of the Requested State within 60 days of the provisional arrest. When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Warsaw, Poland.⁴⁵⁷

Although the person sought may be released from custody if the documents are not received within the 60-day period or any extension thereof, the extradition proceedings against the fugitive need not be dismissed. The final paragraph in this article makes it clear that in such a case the person may be taken into custody again, and the extradition proceedings may commence, if the formal request and supporting documents are received at a later date.

ARTICLE 13—ADDITIONAL INFORMATION

This article states that if the Requested State considers the information furnished in support of the request for extradition insufficient under its law with respect to extradition, it may ask that the Requesting State submit supplementary information within a reasonable length of time as it specifies. This article is intended to permit the Requesting State to cure defects in the request and accompanying materials that are found by a court in the Requesting State or by the attorney acting on behalf of the Requesting State, and to permit the court, in appropriate cases, to grant a reasonable continuance to obtain, translate, and transmit additional materials.

A similar provision is found in other United States extradition treaties.⁴⁵⁸

ARTICLE 14—DECISION AND SURRENDER

This article provides that the Requested State promptly notify the Requesting State of its decision on the request for extradition. The delegations agreed the notification could be through informal channels, such as the respective Justice Ministries, and that formal notice in the form of a diplomatic note should follow. If the request is denied in whole or in part, the Requested State must provide explanation of the reasons for the denial. If extradition is granted, this article provides that authorities of the Contracting States shall agree on a time and place for the surrender of the person sought. The Requesting State must remove the person within such time as may be prescribed by the law of the Requested State or, if not prescribed by the law of the Requested State, within 30 days from the date on which the Requesting State is notified of the extradition decision. If surrender does not occur within this time period, the person may be discharged from custody, and the Requested State may subsequently refuse to extradite the person for the same offense. United States law requires that surrender occur within two calendar months of a finding that the person is extraditable,⁴⁵⁹ or of the conclusion of any litigation challenging that finding,⁴⁶⁰ whichever is later. The law in Poland does not specify a time by which a person must be removed.

Paragraph 6 provides that if circumstances beyond the control of a Contracting State prevent it from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting State before the expiration of the time limit and the Contracting States may agree upon a new date for the surrender.

ARTICLE 15—CONVICTIONS IN ABSENTIA

This article concerns the extradition of persons who have been convicted in absentia. Specifically, this article provides that if a Contracting State applies to the other State for extradition of a person convicted in absentia, the executive authority of the Requested State may refuse to surrender the person if it deems that the in absentia proceedings did not ensure the minimum right to defense to which the charged person is entitled. If, however, the Requesting State guarantees, in a manner deemed adequate, that the case against the person whose extradition is requested will be reopened with a guaranteed right of defense, the Requested State may grant extradition.

For Poland, a conviction in absentia means that the person has been both convicted and sentenced in absentia. For the United States, a conviction in absentia means only that the person has been found guilty in absentia, but not yet sentenced.

ARTICLE 16—TEMPORARY AND DEFERRED SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclu-

sion of the proceedings against the person and the full execution of any punishment imposed.

Paragraph 1 provides for the temporary surrender of a person sought for prosecution in the Requesting State who is being proceeded against or serving a sentence in the Requested State. A person thus surrendered shall be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the probability of a successful prosecution. Such transfer may also be advantageous to the person sought in that it: (1) permits resolution of the charges sooner; (2) may make it possible for any sentence to be served in the Requesting State concurrently with the sentence in the Requested State, subject to the laws in each state; and (3) permits a defense against the charges while favorable evidence is fresh and more likely to be available. Such provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of any punishment that has been imposed.⁴⁶¹ The wording of the provision also allows the Requested State to postpone the surrender of a person facing prosecution or serving a sentence, even if all necessary extradition proceedings have been completed.

ARTICLE 17—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties in listing some of the factors that the executive authority of the Requested State must consider when reviewing requests from two or more countries for the extradition of the same person. For the United States, the Secretary of State decides to which country the person should be surrendered.⁴⁶²

ARTICLE 18—SEIZURE AND SURRENDER OF PROPERTY

This article permits the seizure by the Requested State of all items—articles, documents, and other evidence, and proceeds—connected with the offense for which extradition is requested to the extent permitted by the Requested State's internal law. The article also provides that these items may be surrendered to the Requesting State upon the granting of the extradition or even if extradition cannot be effected due to the death, disappearance or escape of the person sought.

Paragraph 2 states that the Requested State may condition its surrender of items upon satisfactory assurances that the items will be returned to the Requested State as soon as practicable. Paragraph 2 also permits the surrender of items to be deferred if they are needed as evidence in the Requested State.

Paragraph 3 makes the surrender of items expressly subject to due respect for the rights of third parties in such property.

ARTICLE 19—RULE OF SPECIALITY

This article deals with the principle known as the rule of speciality, a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or execution of a sentence on different charges that are not extraditable or properly documented in the request.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, prosecuted, sentenced, or punished in the Requesting State for: (1) the offense for which extradition was granted or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) an offense committed after the extradition; or (3) an offense for which the executive authority of the Requested State consents.⁴⁶³ The contracting parties agreed that the lesser included offense need not be a felony.

Paragraph 1(c) permits the Requested State to require the Requesting State seeking consent to prosecute for new charges to submit documents identified in Article 9 and a statement of the position of the person whose extradition is sought. Paragraph 1(c)(ii) permits the Requesting State to detain the person extradited for 90 days or for such longer period as the Requested State may authorize, while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third state for a crime committed prior to this extradition under this Treaty, without the consent of the Requested State.

Paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, prosecution, sentencing, or punishment of an extradited person for additional offenses or extradition to a third state if: (1) the extradited person leaves the Requesting State after extradition and voluntarily returns to it; or (2) the extradited person does not leave the Requesting State within 30 days of being free to do so.

ARTICLE 20—SIMPLIFIED EXTRADITION

Persons sought for extradition often elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State. This article provides that if (1) the extradition of a person sought is not obviously precluded by the laws of the Requested State and (2) the person sought irrevocably agrees in writing to his extradition after personally being advised by a judge or competent magistrate of his rights to formal extradition proceedings and the protection afforded by them that he would lose, the person may be returned to the Requesting State without further proceedings.

United States practice dictates that when a fugitive waives extradition and voluntarily returns to the Requesting State, the rule of speciality does not apply. The second sentence of this article,

therefore, states that the rule of speciality in article 19 will not apply to cases in which this article is utilized.

ARTICLE 21—TRANSIT

Paragraph 1 gives each Contracting State the power to authorize transit through its territory of a person being surrendered to the other Contracting State by a third state. A person in transit may be detained in custody during the transit period. Requests for transit are to contain a description of the person being transported and a brief statement of the facts of the case for which the person is sought. Requests for transit may be made through the diplomatic channel, directly between the United States Department of Justice and the Ministry of Justice of the Republic of Poland or through the facilities of INTERPOL. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Contracting States and is traveling by aircraft and no landing is scheduled in the territory of the other. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 22—REPRESENTATION AND EXPENSES

Paragraph 1 provides that the Requested State shall assist, appear in court for, and represent the interests of, the Requesting State in extradition request proceedings. Thus, the United States will provide complete representation for Poland, and Poland will provide complete representation for the United States.

Paragraph 2 states that the Requesting State shall bear the expenses of translation and transportation of the person sought, and that the Requested State shall pay all other expenses.

Paragraph 3 provides that neither Contracting State shall make a pecuniary claim against the other in connection with extradition proceedings. The negotiators for both Poland and the United States agreed that the term "extradition procedures" includes, but is not limited to, proceedings involving arrest, detention, examination or surrender of the person sought. In addition, the extradition procedures include any claim by the fugitive for damages, reimbursement of legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 23—CONSULTATION

Paragraph 1 of this article provides that the United States Department of Justice and the Ministry of Justice of the Republic of Poland may consult with each other, directly or through INTERPOL, regarding an individual extradition case or extradition procedures in general. A similar provision is found in other recent United States extradition treaties.⁴⁶⁴

Paragraph 2 provides that, upon the request of the Requested State, the Requesting State shall inform the Requested State of the

status of criminal proceedings against persons who have been extradited, and shall provide a copy of the final and binding decision if one has been issued in the case in question.

ARTICLE 24—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the last two decades, is expressly made retroactive to cover offenses that occurred before as well as after the Treaty enters into force. This Treaty provides further, however, that if an offense was committed before this Treaty enters into force and was not an offense under the laws of both Contracting States at the time of its commission, then the executive authority of the Requested State may use its discretion to grant extradition.

ARTICLE 25—EXECUTIVE AUTHORITIES

This article defines who the executive authority is for each of the Contracting States. This provision provides that the United States executive authority shall be the Secretary of State or a person designated by the Secretary of State and the Polish executive authority shall be the Minister of Justice/Attorney General or a person designated by the Minister of Justice/Attorney General. In Poland, the Public Prosecutor's office is a part of the Ministry of Justice; they are not two separate entities. Moreover, the Polish Minister of Justice/Attorney General is the title of one person, not two separate people.

ARTICLE 26—RATIFICATION AND ENTRY INTO FORCE

The first paragraph of this article contains standard treaty language providing for the exchange of instruments of ratification. Paragraph two specifies the day on which the Treaty will enter into force after the exchange.

Paragraph 3 provides that the 1927 Treaty and the Supplementary Extradition Treaty of 1935 will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1927 Treaty and the 1935 Supplementary Extradition Treaty. Nevertheless, Articles 2 (extraditable offenses), 3 (fiscal offenses), 5 (political and military offenses), 16 (temporary and deferred surrender), 19 (rule of speciality), and 20 (simplified extradition) of this Treaty will be available in such extradition proceedings. This paragraph also provides that Article 19 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 27—TERMINATION

This article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting State. Termination becomes effective six months after the date such notice is received.

Technical Analysis of the Third Supplementary Extradition Treaty Between the United States of America and the Kingdom of Spain signed March 1, 1996

On March 1, 1996, the United States and Spain signed the Third Supplementary Extradition Treaty, modifying the terms of the existing 1970 Treaty on Extradition, the Supplemental Treaty on Extradition of 1975, and the Second Supplementary Extradition Treaty of 1988. (Hereinafter the 1970 Treaty, with the Supplemental Treaty and the Second Supplementary Treaty, is referred to as “the Extradition Treaty”). The Third Supplementary Extradition Treaty is intended to improve the extradition relationship between the two countries by removing amnesties and the application of the statute of limitations as impediments to extradition and by facilitating future extraditions by application of a simplified procedure for extradition.

ARTICLE 1

Article 1 establishes a new Article II Bis to be added to the Extradition Treaty, which removes two impediments to extradition: expiration of the statute of limitations in either of the contracting parties and an amnesty promulgated in the Requested Party.

Article II Bis paragraph A provides that, all other requirements having been met, “extradition shall also be granted even if, in accordance with the laws of the Requested Party, the prosecution or the penalty would have been barred by the statute of limitations.” By this provision, the negotiators intended that the expiration of the statute of limitations of the Requested Party not be a basis for denial of extradition. New Article II Bis A further states that “[t]he Requested Party shall be bound by the statement of the Requesting Party that the statute of limitations of the Requesting Party does not bar the prosecution or the execution of the penalty.” This provision is intended to bind the contracting parties to accept, without further review or consideration, the statement of the Requesting Party that that state has made the appropriate analysis of its own statute of limitations and has determined that prosecution or imposition of the penalty are not barred by its domestic law. The negotiators agreed that an extradition request would not be made in cases where the statute of limitations had already expired in the potential Requesting State.

The first sentence in paragraph A is carefully worded to provide that extradition shall be granted “even if” the prosecution or the penalty would have been barred by the statute of limitations in the Requested Party. Negotiators opted for this language because under Spanish law, Spanish judicial authorities are obligated to consider the expiration of the Spanish statute of limitations in the context of an extradition hearing. By providing that the extradition shall be granted “even if” the Spanish statute of limitations has expired, this Article creates an obligation to extradite despite the possible conclusion by a court in the Requested Party that if the offense had been committed in the Requested Party, that state’s statute of limitations would have expired.

Article II Bis paragraph B provides that, “an amnesty promulgated in the Requested Party shall not constitute an obstacle to ex-

tradition.” This provision is intended to ensure that amnesties, which are sometimes promulgated in Spain, will not bar the extradition of fugitives sought by the United States and charged with committing the offense for which the amnesty has been promulgated in Spain. United States negotiators explained that amnesties are rare under United States law. Therefore, it is not anticipated that this provision will have wide application in the United States. On the other hand, it will work for the benefit of the United States in those instances in which Spain promulgates an amnesty applicable to the offense for which extradition is sought.

ARTICLE 2

Article 2 modifies Article V(A) of the Extradition Treaty by deleting the provision permitting denial of extradition as a result of expiration of the statute of limitations of either of the Contracting Parties, thereby bringing Article V(A) into accord with new Article II Bis.

ARTICLE 3

Article 3 modifies Article X(B)(3) of the Extradition Treaty, which defines the legal texts that should accompany the extradition request, by deleting the reference to providing legal texts on the subject of statutes of limitations. The modification in Article 3 now requires that the formal extradition documents include “the text of the applicable laws of the Requesting Party including the law defining the offense and the law establishing the punishment.” As Article V(A)(3) of the Extradition Treaty no longer permits denial of extradition due to expiration of the statute of limitations, the legal texts on limitations are no longer relevant, and consequently there is no need to include such texts as part of the formal extradition documentation.

To meet the requirement in Article II Bis(A) that the Requested Party be bound by the statement of the Requesting Party that the prosecution or imposition of the penalty is not barred under the laws of the Requesting Party, Article 3 adds a new paragraph 4 to Article X(B), requiring the formal extradition documentation to include “[a] statement that neither the prosecution nor the execution of the penalty are barred according to the legislation of the Requesting Party.”

ARTICLE 4

Article 4 creates a new Article XVI Bis, permitting the Requested Party to surrender an individual sought for extradition without the production of formal extradition documentation required under Article X of the Extradition Treaty, if the individual consents to such surrender before a judicial authority. The individual may also consent to a waiver of the Rule of Speciality applicable under Article XIII of the Extradition Treaty.

Article XVI Bis creates the possibility of a simplified extradition, which should in future expedite and facilitate the extradition of individuals. Rather than creating specific procedures for these cases, new Article XVI Bis provides that such cases shall be processed in accordance with the procedures of the Requested Party.

ARTICLE 5

Article 5 provides that the Supplementary Treaty will constitute an integral part of the Extradition Treaty, and establishes the conditions for entry into force. The Supplementary Treaty shall be subject to ratification, exchange of instruments of ratification and termination in accordance with the provisions of the Extradition Treaty. The Supplementary Treaty will enter into force 30 days after exchange of the instruments of ratification.

Technical Analysis of The Extradition Treaty Between The United States of America and the Trinidad and Tobago signed March 4, 1996

On March 4, 1996, the United States signed a treaty on extradition with the Trinidad and Tobago (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will replace the treaty now in force,⁴⁶⁵ and constitutes a major step forward in the United States’ efforts to win the cooperation of countries in the region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed. Trinidad and Tobago has its own internal law⁴⁶⁶ that will apply to United States’ requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article, like the first article in every recent United States extradition treaty, formally obligates each Contracting Party to extradite to the other Contracting Party persons charged with or convicted of an extraditable offense, subject to the provisions of the Treaty. The article refers to charges brought by authorities “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. The negotiators also agreed that the term “convicted” includes instances in which the person has been found guilty but the sentence has not yet been imposed.⁴⁶⁷ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what constitutes an extraditable offense. This Treaty, similar to the recent United States extradition treaties with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention) and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 permits extradition for any offense punishable under the laws of both Contracting Parties by deprivation of liberty (i.e., imprisonment or other form of detention) for more than one year, or by a more severe penalty such as capital punishment under the laws of the United States. This paragraph permits extradition under the laws of Trinidad and Tobago for any indictable offense. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both Contracting Parties pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover an important type of criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from the Trinidad and Tobago delegation that major United States offenses such as operating a continuing criminal enterprise⁴⁶⁸ are extraditable under the Treaty, and that offenses under the Racketeer Influenced and Corrupt Organizations (“RICO”) statutes⁴⁶⁹ are extraditable if the predicate offense is an extraditable offense. The Trinidad and Tobago delegation also stated that extradition is possible for offenses such as drug trafficking, terrorism, money laundering, tax fraud or tax evasion, crimes against environmental law, and antitrust violations punishable by both Contracting Parties.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition be granted for attempting or conspiring to commit, aiding or abetting, counseling, causing, or procuring, or otherwise being an accessory to an extraditable offense. As conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, it is especially important that the Treaty be clear on this point. Trinidad and Tobago has no general conspiracy statute similar to Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the dual criminality rule of paragraph 1 by expressly making inchoate crimes such as conspiracy extraditable offenses if the object of the inchoate offense is an extraditable offense pursuant to paragraph 1.

Paragraph 3 reflects the intention of the Contracting Parties to interpret the principles of this article broadly. Judges in foreign countries often are confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in United States federal courts. Because these judges know of no similar requirements in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, it will ensure that Trinidad and Tobago au-

thorities treat United States mail fraud charges⁴⁷⁰ in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property⁴⁷¹ in the same manner as unlawful possession of stolen property. This paragraph also requires the Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of the Contracting Parties. A similar provision is contained in all recent United States extradition treaties. Subsection (c) of this paragraph includes language from the UN Model Treaty on Extradition, Article 2(2)(b) and reflects the intention of both Parties to take tax, customs, and currency reporting offenses very seriously, and to interpret the treaty as broadly to effect extradition for such offenses.

Paragraph 4 deals with the fact that federal crimes may involve acts committed wholly outside United States territory. Our jurisprudence recognizes the jurisdiction of our courts to hear criminal cases involving offenses committed outside the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.⁴⁷² In Trinidad and Tobago, however, the government's ability to prosecute extraterritorial offenses is much more limited. Paragraph 4 reflects the Trinidad and Tobago government's agreement to recognize United States jurisdiction to prosecute offenses committed outside the United States if Trinidad and Tobago law would permit Trinidad and Tobago to prosecute similar offenses committed abroad in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense, it shall also be granted for any other offense for which all of the requirements for extradition are met, except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Trinidad and Tobago agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States may also obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors are also recognized as criminal offenses in Trinidad and Tobago. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the Requesting State in that it permits all charges to be disposed of more quickly, thereby facilitating trials while evidence is fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent United States extradition treaties with Australia, Ireland, Italy and Costa Rica.

Paragraph 6 states that extradition may not be refused in regards to fiscal matters on the basis that the Requested State does not impose the same kind of fiscal law. This language comes from the United Nations Model Treaty on Extradition, Article 2(3).

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.⁴⁷³ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals for trial and/or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship⁴⁷⁴ and neither does Trinidad and Tobago. Accordingly, this article provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 prohibits extradition for offenses of a political character. This is a standard provision in recent United States extradition treaties.

Paragraph 2 describes three categories of offenses that shall not be considered political offenses.

First, the political offense exception does not apply to murder or other willful crimes against the person of a Head of State of the Contracting Parties, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses for which both Contracting Parties have an obligation pursuant to a multilateral international agreement either to extradite the person sought or to submit the case to their competent authorities for prosecution, such as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁴⁷⁵

Paragraph 2(c) states that the political offense exception does not apply to conspiring or attempting to commit, or aiding or abetting the commission or attempted commission of, any of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State determines that the request is politically motivated.⁴⁷⁶ United States law and practice have been that the Secretary of State has the sole discretion to determine whether an extradition request is based on improper political motivation.⁴⁷⁷

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.⁴⁷⁸

ARTICLE 5—PRIOR PROSECUTION

This article permits extradition when the person sought is charged by each Contracting Party with different offenses arising out of the same basic transaction.

Paragraph 1, which prohibits extradition if the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested, is similar to language present in many United States extradition treaties.⁴⁷⁹ This provision applies only when the person sought has been convicted or acquitted in the Requested State of exactly the same crime that is charged in the Requesting State. It is not enough that the same facts were involved. Thus, if the person sought is accused by one Contracting Party of illegally smuggling narcotics into that country, and is charged by the other Contracting Party with unlawfully exporting the same shipment of drugs, an acquittal or conviction in one Contracting Party does not insulate that person from extradition because different crimes are involved.

Paragraph 2 makes it clear that neither Contracting Party may refuse to extradite a person sought on the basis that the Requested State's authorities declined to prosecute the person or instituted and later discontinued proceedings against the person. This provision was included because a decision of the Requested State to forego prosecution or to drop charges previously filed could be the result of a failure to obtain sufficient evidence or witnesses for trial, whereas the Requesting State's prosecution might not suffer from the same impediments. This provision should enhance the ability of the Contracting Parties to extradite to the jurisdiction with the better chance of a successful prosecution.

ARTICLE 6—LAPSE OF TIME

Article 6 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states.⁴⁸⁰ The U.S. and Trinidad delegations agreed that a claim that the statute of limitations has expired is best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 7—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets forth the documentary and evidentiary requirements for an extradition request. Similar articles are present in most recent United States extradition treaties.

Paragraph 1 requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the person sought pursuant to Article 9. Provisional arrest requests need not be initiated through the diplomatic channel provided that the requirements of Article 9 are met.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Paragraph 3 describes the additional information needed when the person is sought for trial in the Requesting State. Paragraph 4 describes the information needed, in addition to the requirements of paragraph 2, when the person sought has already been tried and found guilty in the Requesting State.

Most of the items listed in paragraph 2 enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, paragraph 2(c) calls for "the text

of the relevant provision of the laws of the Requesting State describing the offense or where necessary a statement of the provisions of law describing the essential elements of the offense for which extradition is requested," which enables the Requested State to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, paragraph 2(e) calls for "a statement of the provisions of law describing any time limit on prosecution or the execution of the punishment for the offense," even though the Treaty does not permit denial of extradition based on lapse of time. The United States and Trinidad delegations agreed that paragraph 2(e) should require this information so that the Requested State is fully informed about the charges brought in the Requesting State.

Paragraph 3 requires that if the fugitive has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide such evidence as would justify the issue of a warrant for arrest if the offense had been committed in the Requested State. This provision will alleviate one of the major practical problems with extradition from Trinidad. The Treaty currently in force permits extradition only if "... the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in the case the crime or offense had been committed in the territory of such High Contracting party, or to prove that the person is the identical person convicted by the courts of the High Contracting Party who makes the requisition ...". Trinidad's courts have interpreted this clause to require that a *prima facie* case against the defendant be shown before extradition will be granted.⁴⁸¹ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.⁴⁸² Trinidad's agreement to extradite under the new Treaty based on evidence that would justify the issue of an arrest warrant eliminates this imbalance in the burden of proof for extradition, and should significantly improve the United States' ability to extradite from Trinidad.

Paragraph 4 lists the information required to extradite a person who has been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions even absent a specific treaty provision.⁴⁸³ Subsection (d) states that if the person sought was found guilty in *absentia*, the documentation required for extradition includes both proof of conviction and the same documentation required in cases in which no conviction has been obtained. This is consistent with the long-standing United States policy of requiring such documentation in the extradition of persons convicted *in absentia*.

ARTICLE 8—ADMISSIBILITY OF DOCUMENTS

Article 8 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be authenti-

cated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Trinidad and Tobago resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current law in Trinidad.⁴⁸⁴ When the request is from Trinidad and Tobago, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Trinidad and Tobago, in accordance with United States extradition law.⁴⁸⁵

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one Contracting Party may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Trinidad and Tobago. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 sets forth the information that the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised without delay of the outcome of the request and the reasons for its denial, if any.

Paragraph 4 provides that a person who has been provisionally arrested may be released from detention if the Requesting State does not submit a fully documented request for extradition to the executive authority of the Requested State within 60 days of the provisional arrest. When the United States is the Requested State, the executive authority includes the Secretary of State and the United States Embassy in Port of Spain.⁴⁸⁶

Although the person sought may be released from custody if the documents are not received within the sixty day period or any extension thereof, the extradition proceedings against the fugitive need not be dismissed. Paragraph 5 makes it clear that the person may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide the reasons for the denial. If extradition is granted, this article provides that that authorities of the Contracting Parties shall agree on a time and place for surrender of the person sought. The Requesting State must remove the person within the time prescribed by the law of the Requested State or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite the person for the same offense. United States law requires that surrender occur within two calendar months of a finding that the person is extraditable,⁴⁸⁷ or of the conclusion of any litigation challenging that finding,⁴⁸⁸ whichever is later. The law in Trinidad and Tobago permits the person to apply to a judge for release if he has not been surrendered within two months of the first day on which he could have been extradited.⁴⁸⁹

ARTICLE 11—TEMPORARY AND DEFERRED SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. This article provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person and the full execution of any punishment imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to the Treaty will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of a successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it permits resolution of the charges sooner; (2) subject to the laws in each state, it makes it possible for any sentence to be served in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits defense against the charges while favorable evidence is fresh and more likely to be available. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of any punishment that has been imposed.⁴⁹⁰ The wording of the provision also allows the Requested State to postpone the surrender of a person facing prosecution or serving a sentence, even if all necessary extradition proceedings have been completed.

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties in listing some of the factors that the executive authority of the Requested State must consider when reviewing requests from two or more countries for the extradition of the same person. For the United States, the Secretary of State decides to which country the person should be surrendered;⁴⁹¹ for Trinidad and Tobago, the decision would be made by the Attorney General.⁴⁹²

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article permits the seizure by the Requested State of all property—articles, instruments, objects of value, documents or other evidence—connected with the offense for which extradition is requested, to the extent permitted by the Requested State's internal law. The article also provides that these objects may be surrendered to the Requesting State upon the granting of the extradition or even if extradition cannot be effected due to the death, disappearance or escape of the person sought.

Paragraph 2 states that the Requested State may condition its surrender of property upon satisfactory assurances that the property will be returned to the Requested State as soon as practicable. Paragraph 2 also permits the surrender of property to be deferred if it is needed as evidence in the Requested State.

Paragraphs 3 makes the surrender of property expressly subject to due respect for the rights of third parties in such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the rule of specialty, a standard principle of United States extradition law and practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of specialty prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or execution of a sentence on different charges that are not extraditable or properly documented in the request.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for: (1) the offense for which extradition was granted or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) an offense committed after the extradition; or (3) an offense for which the executive authority of the Requested State consents.⁴⁹³ Paragraph 1(c)(ii) permits the Contracting Party that is seeking consent to pursue new charges to detain the person extradited for 60 days or for such longer period as the Requested State may authorize while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third state, for a crime committed prior to his extradition under this Treaty, without the consent of the Requested State.

Paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial or punishment of an extradited person for additional offenses or extradition to a third state if: (1) the extradited person leaves the Requesting State after extradition and voluntarily returns to it; or (2) the extradited person does not leave the Requesting State within thirty days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings in order to expedite their return to the Requesting State. This article provides that when a fugitive consents to surrender to the Requesting State, the person may be returned to the Requesting State as expeditiously as possible without further proceedings. The negotiators anticipated that in such cases, there will be no need for the formal documentation described in Article 7, or further judicial or administrative proceedings of any kind.

If the United States is the Requested State and the person sought elects to return voluntarily to Trinidad and Tobago before the United States Secretary of State signs a surrender warrant, the United States would not view the process as an "extradition." Long-standing United States policy has been that the rule of speciality as described in Article 14 does not apply to such cases.⁴⁹⁴

ARTICLE 16—TRANSIT

Paragraph 1 gives each Contracting Party the power to authorize transit through its territory of persons being surrendered to the other Contracting Party by a third state. A person in transit may be detained in custody during the transit period. Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which transit is sought. The transit request may be submitted through diplomatic channels or directly between the United States Department of Justice and the Trinidad and Tobago Attorney General. The negotiators agreed that diplomatic channels will be employed as frequently as possible for requests of this nature. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Contracting Parties and is traveling by aircraft and no landing is scheduled in the territory of the other. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 17—REPRESENTATION AND EXPENSES

Paragraph 1 provides that the United States represents Trinidad and Tobago in connection with requests from Trinidad and Tobago for extradition before the courts in this country, and the Trinidad and Tobago Attorney General arranges for the representation of

the United States in connection with United States extradition requests to Trinidad and Tobago.

Paragraph 2 requires that the Requested State bear all expenses of extradition except those expenses relating to the ultimate transportation of the person surrendered to the Requesting State and the translation of documents, which are to be paid by the Requesting State. The negotiators recognized that cases may arise in which the Requesting State may wish to retain private counsel to assist in the presentation of the extradition request. It is anticipated that in such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither Contracting Party shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination or surrender of the person sought. This includes any claim by the person sought for damages, reimbursement of legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

This article provides that the United States and Trinidad and Tobago Departments of Justice may consult with each other with regard to an individual extradition case or extradition procedures in general. A similar provision is found in other recent United States extradition treaties.⁴⁹⁵

ARTICLE 19—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive and accordingly covers offenses that occurred before as well as after the Treaty enters into force.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article provides for the entry into force of the treaty when the parties have notified each other through an exchange of diplomatic notes that the requirements for entry into force under their respective laws have been completed. The instruments of ratification are to be exchanged at Washington D.C.

Paragraph 3 provides that the 1931 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1972 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This article contains standard treaty language describing the procedure for termination of the Treaty by either Contracting Party. Termination shall become effective six months after notice of termination is received.

Technical Analysis of the Extradition Treaty Between the United States of America and Saint Vincent and the Grenadines Signed August 15, 1996

On August 15, 1996, the United States signed a treaty on extradition with Saint Vincent and the Grenadines (hereinafter “the Treaty”), which is intended to replace the outdated treaty currently in force between the two countries⁴⁹⁶ with a modern agreement on the extradition of fugitives. The new extradition treaty is one of twelve treaties that the United States negotiated under the auspices of the Organization of Eastern Caribbean States to modernize our law enforcement relations in the Eastern Caribbean. It represents a major step forward in the United States’ efforts to strengthen cooperation with countries in this region in combating organized crime, transnational terrorism, and international drug trafficking.

It is anticipated that the treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed for the United States. Saint Vincent and the Grenadines has its own internal legislation on extradition,⁴⁹⁷ which it will apply to requests under the Treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.⁴⁹⁸ The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. This treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for

more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

During the negotiations, the United States delegation received assurances from the Saint Vincent and the Grenadines delegation that extradition would be possible for such high priority offenses as drug trafficking (including operating a continuing criminal enterprise, in violation of Title 21, United States Code, Section 848); offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968), provided that the predicate offense is an extraditable offense; money laundering; terrorism; tax evasion and tax fraud; crimes against environmental protection laws; and anti-trust violations punishable in both states by more than one year of imprisonment.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or otherwise being an accessory before or after the fact to, an extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Saint Vincent and the Grenadines has no general conspiracy statute like Title 18, United States Code, Section 371. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality principle. For example, Saint Vincent and the Grenadines authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.⁴⁹⁹ In Saint Vincent and the Grenadines, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Saint Vincent and the Grenadines's agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Saint Vincent and the Grenadines's law would permit it to prosecute similar offenses committed outside of it in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that extradition may be granted, but the executive authority of the Requested State has the discretion to deny the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Saint Vincent and the Grenadines agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Saint Vincent and the Grenadines. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served. This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement.⁵⁰⁰ Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,⁵⁰¹ and the Saint Vincent and the Grenadines' extradition law expressly for-

bids denial of extradition on the ground of nationality.⁵⁰² Therefore, Article 3 of the Treaty provides that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.⁵⁰³

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses which are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁵⁰⁴

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Paragraph 3 provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.⁵⁰⁵ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.⁵⁰⁶

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request involves offenses under military law which would not be offenses under ordinary criminal law.⁵⁰⁷

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.⁵⁰⁸ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's au-

thorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. This provision should enhance the ability to extradite to the jurisdiction which has the better chance of a successful prosecution.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for provisional arrest under Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 are met.

Paragraph 2 outlines the information that must accompany every request for extradition under the Treaty. Most of the items listed in this paragraph enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c)(i) calls for "information as to the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2. Some of the items listed in paragraph 2, however, are required strictly for informational purposes. Thus, Article 6(2)(c)(iii) calls for "information as to the provisions of law describing any time limit on the prosecution," even though Article 8 of the Treaty expressly states that extradition may not be denied due to lapse of time for prosecution. The United States and Saint Vincent and the Grenadines delegations agreed that Article 6(2)(c)(iii) should require this information so that the Requested State would be fully informed about the charges in the Requesting State.

Paragraph 3 describes the additional information required when the person is sought for trial in the Requesting State. Paragraph 3(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide "such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is requested." This provision will alleviate one of the major practical problems with extradition from Saint Vincent and the Grenadines. The Treaty currently in force permits extradition only if "... the evidence be found sufficient, according to the law of the Requested Party ... to justify the commitment for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party ..."⁵⁰⁹ Saint Vincent and the Grenadines' courts have interpreted this clause to require that a *prima facie* case against the defendant

be shown before extradition will be granted.⁵¹⁰ By contrast, U.S. law permits extradition if there is probable cause to believe that an extraditable offense was committed and the offender committed it.⁵¹¹ Saint Vincent and the Grenadines' agreement to extradite under the new Treaty based on a "reasonable basis" eliminates this imbalance in the burden of proof for extradition, and should dramatically improve the United States' ability to extradite from Saint Vincent and the Grenadines.

Paragraph 4 lists the information required to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even absent a specific treaty provision.⁵¹²

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

Article 7 governs the authentication procedures for documents prepared for use in extradition cases.

The article states that when the United States is the Requesting State, the documents in support of extradition must be authenticated by an officer of the United States Department of State and certified by the principal diplomatic or consular officer of Saint Vincent and the Grenadines resident in the United States. This is intended to replace the cumbersome and complicated procedures for authenticating extradition documents applicable under the current treaty.⁵¹³ When the request is from Saint Vincent and the Grenadines, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Barbados accredited to Saint Vincent and the Grenadines, in accordance with United States extradition law.⁵¹⁴

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or mission in the authentication process.

ARTICLE 8—LAPSE OF TIME

Article 8 states that the decision to deny an extradition request must be made without regard to provisions of the law regarding lapse of time in either the requesting or requested states.⁵¹⁵ The United States and St. Vincent and the Grenadines delegations agreed that a claim that the statute of limitations has expired is

best resolved by the courts of the Requesting State after the fugitive has been extradited.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the requesting state.⁵¹⁶

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and the Attorney General in Saint Vincent and the Grenadines. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the provisional arrest be terminated if the Requesting State does not file a fully documented request for extradition within forty-five days of the date on which the person was arrested. This period may be extended for up to an additional fifteen days.⁵¹⁷ When the United States is the Requested State, it is sufficient for purposes of this paragraph if the documents are received by the Secretary of State or the U.S. Embassy in Bridgetown, Barbados.⁵¹⁸

Paragraph 5 makes it clear that in such a case the person may be taken into custody again and the extradition proceedings may commence if the formal request is subsequently presented.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article provides that the two States shall agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law permits the person to request release if he has not been surrendered within two calendar months of having been found extraditable,⁵¹⁹ or of the conclusion of any litigation challenging that finding,⁵²⁰ whichever is later. The law in Saint Vincent and the Grenadines permits the person to apply to a judge for release if he has not been surrendered within sixty days of the day on which he could have been surrendered after conclusion of the litigation or thirty days after the warrant of surrender was issued.⁵²¹

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence on other charges in the Requested State. Article 11 provides a means for the Requested State

to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Paragraph 1 provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being prosecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Paragraph 2 provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment which has been imposed.⁵²² The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence in that State, even if all necessary extradition proceedings have been completed.⁵²³

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

This article reflects the practice of many recent United States extradition treaties and lists some of the factors which the executive authority of the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision;⁵²⁴ for Saint Vincent and the Grenadines, the decision would be made by the Governor-General.⁵²⁵

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.⁵²⁶ The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to ensure that the property is returned as soon as practicable. This paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State.

Paragraph 3 makes the surrender of property expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the Treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.⁵²⁷ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.⁵²⁸

Finally, paragraph 3 removes the restrictions of paragraphs 1 and 2 on detention, trial, or punishment of an extraditee for additional offenses, or extradition to a third State, (1) if the extraditee leaves and returns to the Requesting State, or (2) if the extraditee does not leave the Requesting State within ten days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State, the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.⁵²⁹

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State.⁵³⁰

ARTICLE 16—TRANSIT

Paragraph 1 gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.⁵³¹ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Attorney General in Saint Vincent and the Grenadines, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Paragraph 2 provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also permits the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

Saint Vincent and the Grenadines does not appear to have specific legislation on this matter, and the Saint Vincent and the Grenadines delegation stated that its Government would seek implementing legislation for this article in due course.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Saint Vincent and the Grenadines in connection with a request from Saint Vincent and the Grenadines for extradition before the courts in this country, and the Saint Vincent and the Grenadines Attorney General will arrange for the representation of the United States in connection with United States extradition requests to Saint Vincent and the Grenadines.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State. The negotiators agreed that in some cases the Requested State might wish to retain private counsel to assist it in the presentation of the extradition request. The Attorney General of St. Vincent and the Grenadines has a very small staff, and might need to enlist outside counsel to aid in handling a complex, contested international extradition proceeding. It is anticipated that in such cases the fees of private counsel retained by the Requested State would be paid by the Requested State. The negotiators also recognized that cases might arise in which the Requesting State would wish to retain its own private counsel to advise it on extradition matters or even assist in presenting the case, if the Requested State agrees. In such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Attorney General's Chambers in Saint Vincent and the Grenadines may consult with each other with regard to an individual extradition case or on extradition procedures in general. A similar provision is found in other recent U.S. extradition treaties.⁵³²

The article also states that consultations shall include issues involving training and technical assistance. At the request of St. Vincent and the Grenadines, the United States delegation promised to recommend training and technical assistance to better educate and equip prosecutors and legal officials in St. Vincent and the Grenadines to implement this treaty.

During the negotiations, the St. Vincent and the Grenadines delegation expressed concern that the United States might invoke the Treaty much more often than St. Vincent and the Grenadines, resulting in an imbalance in the financial obligations occasioned by extradition proceedings. While no specific Treaty language was adopted, the United States agreed that consultations between the Parties under Article 18 could address extraordinary expenses arising from the execution of individual extradition requests or requests in general.

ARTICLE 19—APPLICATION

This Treaty, like most other United States extradition treaties negotiated in the past two decades, is expressly made retroactive, and accordingly covers offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

This article contains standard treaty language providing for the exchange of instruments of ratification at Washington D.C. The Treaty is to enter into force immediately upon the exchange.

Paragraph 3 provides that the 1972 Treaty will cease to have any effect upon the entry into force of the Treaty, but extradition requests pending when the Treaty enters into force will nevertheless be processed to conclusion under the 1972 Treaty. Nonetheless, Article 15 (waiver of extradition) of this Treaty will apply in such proceedings, and Article 14 (rule of speciality) also applies to persons found extraditable under the prior Treaty.

ARTICLE 21—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either State. Termination

nation shall become effective six months after notice of termination is received.

Technical Analysis Of The Treaty On Extradition Between the United States of America and Zimbabwe Signed July 25, 1997

On July 25, 1997, the United States signed a treaty on extradition with the Republic of Zimbabwe (hereinafter “the Treaty”). In recent years, the United States has signed similar treaties with many other countries, as part of a highly successful effort to modernize our law enforcement relations. The new extradition treaty will be the first treaty negotiated between the United States and Zimbabwe since Zimbabwe became an independent nation,⁵³³ and it is the first modern extradition treaty that the United States has negotiated with a sub-Saharan African country in over fifty years. It constitutes a major step forward in the United States’ efforts to win the cooperation of countries in the region in combating organized crime, terrorism, and drug trafficking.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

It is anticipated that the Treaty will be implemented in the United States pursuant to the procedural framework provided by Title 18, United States Code, Section 3184 et seq. No new implementing legislation will be needed for the United States. Zimbabwe has its own internal legislation on extradition,⁵³⁴ which will apply to United States’ requests under the treaty.

The following technical analysis of the Treaty was prepared by the Office of International Affairs, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, based upon the negotiating notes. The technical analysis includes a discussion of U.S. law and relevant practice as of the date of its preparation, which are, of course, subject to change. Foreign law discussions reflect the current state of that law, to the best of the drafters’ knowledge.

ARTICLE 1—OBLIGATION TO EXTRADITE

The first article of the Treaty, like the first article in every recent United States extradition treaty, formally obligates each Party to extradite to the other persons sought for prosecution or convicted of an extraditable offense, subject to the provisions of the remainder of the Treaty. The article refers to charges “in” the Requesting State rather than “of” the Requesting State, since the obligation to extradite, in cases arising from the United States, would include state and local prosecutions as well as federal cases. It was agreed that the term “convicted” includes instances in which the person has been found guilty but a sentence has not yet been imposed.⁵³⁵

The negotiators intended to make it clear that the Treaty applies to persons adjudged guilty who flee prior to sentencing.

ARTICLE 2—EXTRADITABLE OFFENSES

This article contains the basic guidelines for determining what offenses are extraditable. This Treaty, like most recent United States extradition treaties, including those with Jamaica, Jordan, Italy, Ireland, Thailand, Sweden (Supplementary Convention), and Costa Rica, does not list the offenses for which extradition may be granted. Instead, paragraph 1 of the article permits extradition for any offense punishable under the laws of both countries by deprivation of liberty (i.e., imprisonment, or other form of detention), for more than one year, or by a more severe penalty such as capital punishment. Defining extraditable offenses in terms of “dual criminality” rather than attempting to list each extraditable crime obviates the need to renegotiate the Treaty or supplement it if both countries pass laws dealing with a new type of criminal activity, or if the list inadvertently fails to cover a criminal activity punishable in both countries.

Zimbabwe does not have a written criminal code, and almost all crimes there are defined by common law. This creates difficulty in identifying and defining offenses for dual criminality purposes. During the negotiations, the United States delegation received assurances from the Zimbabwe delegation that most U.S. offenses would be extraditable, including drug trafficking, including operating a continuing criminal enterprise (Title 21, United States Code, Section 848), and that offenses under the racketeering statutes (Title 18, United States Code, Section 1961-1968) would be extraditable if the predicate offense would be an extraditable offense. Zimbabwe also stated that extradition would be possible for such high priority offenses as terrorism, money laundering, tax fraud or tax evasion, and crimes against environmental protection laws if punishable in both states by one year of imprisonment or more.

Paragraph 2 follows the practice of recent extradition treaties in providing that extradition should also be granted for attempting or conspiring to commit, aiding or abetting, counseling or procuring the commission of, or being an accessory before or after the fact to any extraditable offense. Conspiracy charges are frequently used in United States criminal cases, particularly those involving complex transnational criminal activity, so it is especially important that the treaty be clear on this point. Therefore, paragraph 2 creates an exception to the “dual criminality” rule of paragraph 1 by making conspiracy an extraditable crime if the offense which was the object of the conspiracy is an extraditable offense.

Paragraph 3 reflects the intention of both countries to interpret the principles of this article broadly. Judges in foreign countries are often confused by the fact that many United States federal statutes require proof of certain elements (such as use of the mails or interstate transportation) solely to establish jurisdiction in the United States federal courts. Because these foreign judges know of no similar requirement in their own criminal law, they occasionally have denied the extradition of fugitives sought by the United States on federal charges on this basis. This paragraph requires that such elements be disregarded in applying the dual criminality

principle. For example, Zimbabwe authorities must treat United States mail fraud charges (Title 18, United States Code, Section 1341) in the same manner as fraud charges under state laws, and view the federal crime of interstate transportation of stolen property (Title 18, United States Code, Section 2314) in the same manner as unlawful possession of stolen property. This paragraph also requires a Requested State to disregard differences in the categorization of the offense in determining whether dual criminality exists, and to overlook mere differences in the terminology used to define the offense under the laws of each country. A similar provision is contained in all recent United States extradition treaties.

Article 2(3)(c) was included in the treaty because Zimbabwe authorities take tax, customs, and currency reporting offenses very seriously, and are firmly committed to extradition for such crimes.⁵³⁶ The Government of Zimbabwe is particularly concerned about its currency control statutes. Zimbabwe has a small currency base, and prescribes significant criminal penalties for the unlawful movement of currency in and out of the country.⁵³⁷ U.S. law does not regulate the amount of money that can be taken into or out of the country, although there are strict requirements for reporting such transactions if they involve more than \$10,000.⁵³⁸ Thus, there may be instances in which conduct that is a serious economic crime in Zimbabwe might not be an offense in the U.S., and extradition would not be possible. Article 2(3)(c) reflects the firm commitment of the U.S. to construe the treaty broadly and to effect extradition whenever possible.

Paragraph 4 deals with the fact that many federal crimes involve acts committed wholly outside United States territory. Our jurisprudence recognizes jurisdiction in our courts to prosecute offenses committed outside of the United States if the crime was intended to, or did, have effects in this country, or if the legislative history of the statute shows clear Congressional intent to assert such jurisdiction.⁵³⁹ In Zimbabwe, however, the Government's ability to prosecute extraterritorial offenses is much more limited. Therefore, Article 2(4) reflects Zimbabwe's agreement to recognize United States jurisdiction to prosecute offenses committed outside of the United States if Zimbabwe law would permit it to prosecute similar offenses committed outside of Zimbabwe in corresponding circumstances. If the Requested State's laws do not so provide, the final sentence of the paragraph states that the executive authority of the Requested State has the discretion to grant the request.

Paragraph 5 states that when extradition has been granted for an extraditable offense it shall also be granted for any other offense for which all of the requirements for extradition have been met except for the requirement that the offense be punishable by more than one year of imprisonment. For example, if Zimbabwe agrees to extradite to the United States a fugitive wanted for prosecution on a felony charge, the United States will also be permitted to obtain extradition for any misdemeanor offenses that have been charged, as long as those misdemeanors would also be recognized as criminal offenses in Zimbabwe. Thus, the Treaty incorporates recent United States extradition practice by permitting extradition for misdemeanors committed by a fugitive when the fugitive's extradition is granted for a more serious extraditable offense. This

practice is generally desirable from the standpoint of both the fugitive and the prosecuting country in that it permits all charges against the fugitive to be disposed of more quickly, thereby facilitating trials while evidence is still fresh and permitting the possibility of concurrent sentences. Similar provisions are found in recent extradition treaties with countries such as Australia, Ireland, Italy, and Costa Rica.

Some U.S. extradition treaties provide that persons who have been convicted and sentenced for an extraditable offense may be extradited only if at least a certain specified portion of the sentence (often six months) remains to be served.⁵⁴⁰ This Treaty, like most U.S. extradition treaties in the past two decades, contains no such requirement. Thus, any concerns about whether a particular case justifies the time and expense of invoking the machinery of international extradition should be resolved between the Parties through the exercise of wisdom and restraint rather than through arbitrary limits imposed in the Treaty itself.

ARTICLE 3—NATIONALITY

Some countries refuse to extradite their own nationals to other countries for trial or punishment, or are prohibited from doing so by their statutes or constitution. The United States does not deny extradition on the basis of the offender's citizenship,⁵⁴¹ and neither does Zimbabwe.⁵⁴² Article 3 of the Treaty states that extradition is not to be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

Paragraph 1 of this article prohibits extradition for a political offense. This is a standard provision in United States extradition treaties.⁵⁴³

Paragraph 2 describes three categories of offenses which shall not be considered to be political offenses.

First, the political offense exception does not apply where there is a murder or other willful crime against the person of a Head of State of the Contracting States, or a member of the Head of State's family.

Second, the political offense exception does not apply to offenses that are included in a multilateral treaty, convention, or international agreement that requires the parties to either extradite the person sought or submit the matter for prosecution, such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁵⁴⁴

Third, the political offense exception does not apply to conspiring or attempting to commit, or to aiding and abetting the commission or attempted commission of the foregoing offenses.

Article 4(3) provides that extradition shall not be granted if the executive authority of the Requested State finds that the request was politically motivated.⁵⁴⁵ This is consistent with the long-standing law and practice of the United States, under which the Secretary of State alone has the discretion to determine whether an extradition request is based on improper political motivation.⁵⁴⁶

The final paragraph of the article states that the executive authority of the Requested State may refuse extradition if the request

involves offenses under military law which would not be offenses under ordinary criminal law.⁵⁴⁷

ARTICLE 5—PRIOR PROSECUTION

This article will permit extradition in situations in which the fugitive is charged in each country with different offenses arising out of the same basic transaction.

The first paragraph prohibits extradition if the offender has been convicted or acquitted in the Requested State for the offense for which extradition is requested, and is similar to language present in many United States extradition treaties.⁵⁴⁸ The parties agreed that this provision applies only if the offender is convicted or acquitted in the Requested State of exactly the same crime he is charged with in the Requesting State. It would not be enough that the same facts were involved. Thus, if an offender is accused in one State of illegally smuggling narcotics into the country, and is charged in the other State of unlawfully exporting the same shipment of drugs out of that State, an acquittal or conviction in one state would not insulate the person from extradition to the other, since different crimes are involved.

Paragraph 2 makes it clear that neither State can refuse to extradite an offender on the ground that the Requested State's authorities declined to prosecute the offender, or instituted criminal proceedings against the offender and thereafter elected to discontinue the proceedings. This provision was included because a decision of the Requested State to forego prosecution, or to drop charges already filed, could result from failure to obtain sufficient evidence or witnesses available for trial, whereas the Requesting State might not suffer from the same impediments. Both delegations agreed that if the dismissal of charges takes place after the person has been placed in "jeopardy" under the laws of the Requesting State, the case would be governed by Paragraph 1.

ARTICLE 6—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

This article sets out the documentary and evidentiary requirements for an extradition request, and is generally similar to corresponding articles in the United States' most recent extradition treaties.

The first paragraph of the article requires that each formal request for extradition be submitted through the diplomatic channel. A formal extradition request may be preceded by a request for the provisional arrest of the fugitive pursuant to Article 9, and provisional arrest requests need not be initiated through diplomatic channels if the requirements of Article 9 are met.

Article 6(2) outlines the information which must accompany every request for extradition under the Treaty. Most of the items enable the Requested State to determine quickly whether extradition is appropriate under the Treaty. For example, Article 6(2)(c) calls for "a statement of the provisions of the law describing the essential elements of the offense for which extradition is requested," enabling the requested state to determine easily whether the request satisfies the requirement for dual criminality under Article 2.

Article 6(3) describes the additional information needed when the person is sought for trial in the Requesting State. Article 6(3)(c) requires that if the fugitive is a person who has not yet been convicted of the crime for which extradition is requested, the Requesting State must provide “such information as would justify the committal for trial of the person if the offense had been committed in the Requested State or such information as would justify the committal for extradition of the person in accordance with the laws of the Requested State.”⁵⁴⁹ Under United States law, persons are committed to custody for extradition upon the same showing required for committal for trial: sufficient evidence to establish probable cause to believe that the crime for which extradition was requested has been committed and that the person sought committed it. Therefore, when Zimbabwe is the Requesting State, this paragraph requires the submission of submission of evidence to establish probable cause. However, Zimbabwe’s delegation stated that Zimbabwe’s current extradition law draws a distinction between the extradition of a Zimbabwe national and the extradition of a non-national. The law requires that a request for the extradition of a Zimbabwe national be supported by a *prima facie* case of guilt, but does not require such a showing when the request is for a non-national.⁵⁵⁰ The United States delegation was assured by the Zimbabwe delegation that when the United States requests extradition of a non-Zimbabwean national, Article 6(3)(c) of the Treaty will be satisfied if the request is supported by probable cause, which can be shown by hearsay evidence. However, if the request is for a Zimbabwe national, the United States would have to make out a *prima facie* case of such evidence as would justify committal for trial in Zimbabwe. Of course, if Zimbabwe’s law changes to permit extradition on probable cause for both nationals and non-nationals of Zimbabwe, the provision is drafted flexibly so that the United States would be able to take advantage of that change.

Article 6(4) lists the information needed to extradite a person who has already been convicted of an offense in the Requesting State. This paragraph makes it clear that once a conviction has been obtained, no showing of probable cause is required. In essence, the fact of conviction speaks for itself, a position taken in recent United States court decisions, even absent a specific treaty provision.⁵⁵¹

ARTICLE 7—ADMISSIBILITY OF DOCUMENTS

This article states that evidence in support of an extradition request shall be authenticated in one of three methods.

Subparagraph (a) of this Article states that United States extradition requests to Zimbabwe shall be authenticated by a judge, magistrate, or other competent official in the United States and stamped with the official seal of an authority comparable to the Minister of Justice or other competent authority. The delegations agreed that these provisions, inspired by Section 32 of Zimbabwe Extradition Act 1982, would be satisfied if the documents are authenticated by the “competent officials” in the Department of Justice’s Office of International Affairs, and bear the official seal of the Department of Justice. The negotiators also agreed that affidavits from witnesses in support of a United States extradition request

would be admissible if the oath were administered by a notary public in the United States.

Subparagraph (b) describes the procedure for authenticating Zimbabwe requests to the United States. When the request is from Zimbabwe, the documents must be certified by the principal diplomatic or consular officer of the United States resident in Zimbabwe, in accordance with United States extradition law.⁵⁵²

The third subparagraph of the article permits documents to be admitted into evidence if they are authenticated in any other manner acceptable by the law of the Requested State. For example, there may be information in the Requested State itself which is relevant and probative to extradition, and the Requested State is free under subsection (c) to utilize that information if the information satisfies the ordinary rules of evidence in that state. This ensures that evidence which is acceptable under the evidentiary rules of the Requested State may be used in extradition proceedings even if it is not otherwise authenticated pursuant to the treaty. This paragraph also should ensure that relevant evidence, which would normally satisfy the evidentiary rules of the requested country, is not excluded at the extradition hearing simply because of an inadvertent error or omission in the authentication process.

ARTICLE 8—TRANSLATION

We understand that there are three languages commonly used in the Republic of Zimbabwe: English, Shona, and Ndebele. Article 8 of the Treaty requires that all extradition documents be translated into English.

ARTICLE 9—PROVISIONAL ARREST

This article describes the process by which a person in one country may be arrested and detained while the formal extradition papers are being prepared by the Requesting State.⁵⁵³

Paragraph 1 expressly provides that a request for provisional arrest may be made through the diplomatic channel or directly between the United States Department of Justice and Ministry of Home Affairs in Zimbabwe. The provision also indicates that INTERPOL may be used to transmit such a request.

Paragraph 2 states the information which the Requesting State must provide in support of such a request.

Paragraph 3 states that the Requesting State must be advised promptly of the outcome of its application and the reason for any denial.

Paragraph 4 provides that the fugitive may be released from detention if the Requesting State does not file a fully documented request for extradition with the executive authority of the Requested State within sixty days of the date on which the person was arrested under to the Treaty. When the United States is the Requested State, the “executive authority” would include the Secretary of State or the U.S. Embassy in Harare, Zimbabwe.⁵⁵⁴

Although the person sought may be released from custody if the documents are not received within the sixty-day period or any extension thereof, the extradition proceedings against the fugitive need not be dismissed. Article 9(5) makes it clear that the person

may be taken into custody again and the extradition proceedings may commence if the formal request is presented subsequently.

One difficulty discussed by the negotiators is that under Zimbabwe law, the person provisionally arrested for extradition may seek release from custody after 28 days.⁵⁵⁵ The delegations agreed that 28 days was too short a period for provisional arrest given factors such as the distance between the two countries, and that a 60-day period is appropriate and reasonable. In order to reconcile the terms of the treaty with the current provisions of Zimbabwe law, the delegations reached the understanding that when the United States is the requesting State, the Government of Zimbabwe will request that its court order the person arrested to remain in custody for the full 60 days, but it is recognized that in unusual cases the courts may consider setting bail for the person arrested after 28 days have passed and the documents have not been received. If the court is inclined to take this step, the Ministry of Justice will urge the court to set a high enough bail that the fugitive will remain in custody or at least be unlikely to flee the jurisdiction. It is also understood that if the United States believes that this presents an unacceptable risk of the fugitive's flight, the United States is free to withdraw its first provisional arrest request and submit a new one, and the 28 day time period will commence again. Where Zimbabwe is the requesting State, the fugitive should be held in custody for 60 days pending receipt of the documents, and there is no special understanding regarding release on bail.

ARTICLE 10—DECISION AND SURRENDER

This article requires that the Requested State promptly notify the Requesting State through diplomatic channels of its decision on the extradition request. If extradition is denied in whole or in part, the Requested State must provide an explanation of the reasons for the denial. If extradition is granted, the article requires that the two States agree on a time and place for surrender of the person. The Requesting State must remove the fugitive within the time prescribed by the law of the Requested State, or the person may be discharged from custody, and the Requested State may subsequently refuse to extradite for the same offense. United States law permits a person to request release if he has not been surrendered within two calendar months of having been found extraditable,⁵⁵⁶ or of the conclusion of all litigation challenging that finding,⁵⁵⁷ whichever comes later. In Zimbabwe, that period is decided by the Minister of Home Affairs, in his discretion.⁵⁵⁸

ARTICLE 11—DEFERRED AND TEMPORARY SURRENDER

Occasionally, a person sought for extradition may already be facing prosecution or serving a sentence already on other charges in the Requested State. Article 11 provides a means for the Requested State to defer extradition in such circumstances until the conclusion of the proceedings against the person sought and the service of any punishment that may have been imposed.

Article 11(1) provides for the temporary surrender of a person wanted for prosecution in the Requesting State who is being pros-

ecuted or is serving a sentence in the Requested State. A person temporarily transferred pursuant to this provision will be returned to the Requested State at the conclusion of the proceedings in the Requesting State. Such temporary surrender furthers the interests of justice in that it permits trial of the person sought while evidence and witnesses are more likely to be available, thereby increasing the likelihood of successful prosecution. Such transfer may also be advantageous to the person sought in that: (1) it allows him to resolve the charges sooner; (2) subject to the laws in each state, it may make it possible for him to serve any sentence in the Requesting State concurrently with the sentence in the Requested State; and (3) it permits him to defend against the charges while favorable evidence is fresh and more likely to be available to him. Similar provisions are found in many recent extradition treaties.

Article 11(2) provides that the executive authority of the Requested State may postpone the extradition proceedings against a person who is serving a sentence in the Requested State until the full execution of the punishment that has been imposed.⁵⁵⁹ The provision's wording makes it clear that the Requested State may also postpone the surrender of a person facing prosecution or serving a sentence even if all necessary extradition proceedings have been completed.⁵⁶⁰

ARTICLE 12—REQUESTS FOR EXTRADITION MADE BY MORE THAN ONE STATE

This article reflects the practice of many recent United States extradition treaties and lists factors which the Requested State must consider in determining to which country a person should be surrendered when reviewing requests from two or more States for the extradition of the same person. For the United States, the Secretary of State would make this decision;⁵⁶¹ for Zimbabwe, the decision would be made by the Minister of Home Affairs.⁵⁶²

ARTICLE 13—SEIZURE AND SURRENDER OF PROPERTY

This article provides that to the extent permitted by its laws the requested state may seize and surrender all property—articles, instruments, objects of value, documents, or other evidence—relating to the offense for which extradition is requested.⁵⁶³ The article also provides that these objects shall be surrendered to the Requesting State upon the granting of the extradition, or even if extradition cannot be effected due to the death, disappearance, or escape of the fugitive.

Paragraph 2 states that the Requested State may condition its surrender of property in such a way as to ensure that the rights of third parties are protected and that the property is returned as soon as practicable. The paragraph also permits the Requested State to defer surrender altogether if the property is needed as evidence in the Requested State. During the negotiations the delegation of Zimbabwe noted that the transfer of property under this Article would be subject to the Requested State's laws and regulations on asset forfeiture and currency control.

Paragraph 3 makes the obligation to surrender property under this provision expressly subject to due respect for the rights of third parties to such property.

ARTICLE 14—RULE OF SPECIALITY

This article covers the principle known as the rule of speciality, which is a standard aspect of United States extradition practice. Designed to ensure that a fugitive surrendered for one offense is not tried for other crimes, the rule of speciality prevents a request for extradition from being used as a subterfuge to obtain custody of a person for trial or service of sentence on different charges which may not be extraditable under the treaty or properly documented at the time that the request is granted.

This article codifies the current formulation of the rule by providing that a person extradited under the Treaty may only be detained, tried, or punished in the Requesting State for (1) the offense for which extradition was granted, or a differently denominated offense based on the same facts, provided the offense is extraditable or is a lesser included offense; (2) for offenses committed after the extradition; and (3) for other offenses for which the executive authority of the Requested State consents.⁵⁶⁴ Article 14(1)(c)(ii) permits the State which is seeking consent to pursue new charges to detain the defendant for 90 days or more while the Requested State makes its determination on the application.

Paragraph 2 prohibits the Requesting State from surrendering the person to a third State for a crime committed prior to his extradition under this Treaty, without the consent of the State from which extradition was first obtained.⁵⁶⁵

Finally, Paragraph 3 removes the restrictions of paragraphs 1 and 2 on the detention, trial, or punishment of an extraditee for additional offenses, or extradition a third State, (1) if the extraditee leaves and returns voluntarily to the Requesting State, or (2) if the extraditee does not leave the Requesting State within fifteen days of being free to do so.

ARTICLE 15—WAIVER OF EXTRADITION

Persons sought for extradition frequently elect to waive their right to extradition proceedings to expedite their return to the Requesting State. This article provides that when a fugitive consents to return to the Requesting State the person may be returned to the Requesting State without further proceedings. The Parties anticipate that in such cases there would be no need for the formal documents described in Article 6 or further judicial proceedings of any kind.

If a person sought from the United States returns to the Requesting State before the Secretary of State signs a surrender warrant, the United States would not view the return pursuant to a waiver of proceedings under this article as an “extradition.” United States practice has long been that the rule of speciality does not apply when a fugitive waives extradition and voluntarily returns to the Requested State. The negotiators agreed that the rule of speciality in Article 14 will not apply in such cases.

ARTICLE 16—TRANSIT

Article 16(1) gives each State the power to authorize transit through its territory of persons being surrendered to the other country by third countries.⁵⁶⁶ Requests for transit are to contain a description of the person whose transit is proposed and a brief statement of the facts of the case with respect to which he is being surrendered to the Requesting State. The paragraph permits the request to be transmitted either through the diplomatic channel, or directly between the United States Department of Justice and the Ministry of Home Affairs in Zimbabwe, or via INTERPOL channels. The negotiators agreed that the diplomatic channels will be employed as much as possible for requests of this nature. A person may be detained in custody during the period of transit.

Article 16(2) provides that no advance authorization is needed if the person in custody is in transit to one of the Parties and is traveling by aircraft and no landing is scheduled in the territory of the other Party. Should an unscheduled landing occur, a request for transit may be required at that time, and the Requested State may grant such a request. It also provides for the transit State to detain a fugitive until a request for transit is received and executed, so long as the request is received within 96 hours of the unscheduled landing.

ARTICLE 17—REPRESENTATION AND EXPENSES

The first paragraph of this article provides that the United States will represent Zimbabwe in connection with a request from Zimbabwe for extradition before the courts in this country, and that Zimbabwe will arrange for the representation of the United States in connection with United States extradition requests to Zimbabwe.

Paragraph 2 provides that the Requested State will bear all expenses of extradition except those expenses relating to the ultimate transportation of a fugitive to the Requesting State and the translation of documents, which expenses are to be paid by the Requesting State.⁵⁶⁷ The negotiators recognized that cases may arise in which it may be necessary for the Requesting State to retain private counsel to assist in the presentation of the extradition request. It is anticipated that in such cases the fees of private counsel retained by the Requesting State must be paid by the Requesting State.

Paragraph 3 provides that neither State shall make a pecuniary claim against the other in connection with extradition proceedings, including arrest, detention, examination, or surrender of the fugitive. This includes any claim by the fugitive for damages, reimbursement, or legal fees, or other expenses occasioned by the execution of the extradition request.

ARTICLE 18—CONSULTATION

Article 18 of the treaty provides that the United States Department of Justice and the Zimbabwe Ministry of Home Affairs may consult with each other, directly or through INTERPOL, with regard to an individual extradition case or on extradition procedures

in general. Similar provision is found in other recent U.S. extradition treaties.⁵⁶⁸

ARTICLE 19—APPLICATION

This Treaty, like most United States extradition treaties negotiated in the past two decades, is expressly made retroactive to cover offenses that occurred before the Treaty entered into force, provided that they were offenses under the laws of both States at the time that they were committed.

ARTICLE 20—RATIFICATION AND ENTRY INTO FORCE

Article 20 contains standard treaty language providing for the exchange of instruments of ratification and that the Treaty will enter into force immediately upon the exchange.

ARTICLE 21—TERMINATION

This Article contains standard treaty language describing the procedure for termination of the Treaty by either State upon six months' notice.

VIII. TEXTS OF RESOLUTIONS OF RATIFICATION

Treaty with Luxembourg:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg, signed at Washington on October 1, 1996 (Treaty Doc. 105–10), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 17 concerning the Rule of Specialty would preclude the surrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such surrender; and the United States shall not consent to the transfer of any person extradited to Luxembourg by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolu-

tion of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with France:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty between the United States of America and France, which includes an Agreed Minute, signed at Paris on April 23, 1996 (Treaty Doc. 105–13), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) **UNDERSTANDING.**—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Articles 19 and 20 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to France by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATION.**—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the

United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Poland:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the United States of America and the Republic of Poland, signed at Washington on July 10, 1996 (Treaty Doc. 105–14), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate’s advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 19 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Poland by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Protocol with Spain:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Third Supplementary Extradition Treaty Between the United States of America and the Kingdom of Spain, signed at Madrid on March 12, 1996 (Treaty Doc. 105–15), subject to the declaration of subsection (a), and the proviso of subsection (b).

(a) **DECLARATION.**—The Senate’s advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Cyprus:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Cyprus, signed at Washington on June 17, 1996 (Treaty Doc. 105–16), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) **UNDERSTANDING.**—The Senate’s advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 16 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Cyprus by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATION.**—The Senate’s advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the

Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Argentina:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the United States of America and the Argentine Republic, signed at Buenos Aires on June 10, 1997 (Treaty Doc. 105–18), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 16 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Argentina by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Antigua and Barbuda:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Antigua and Barbuda, signed at St. John's on June 3, 1996 (Treaty Doc. 105–19), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Antigua and Barbuda by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Dominica:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Dominica, signed at Roseau on October 10, 1996 (Treaty Doc. 105–19), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Dominica by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Grenada:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Grenada, signed at St. George's on May 30, 1996 (Treaty Doc. 105-19), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United

States shall not consent to the transfer of any person extradited Grenada by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATION.**—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Saint Lucia:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Saint Lucia, signed at Castries on April 18, 1996 (Treaty Doc. 105–19), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) **UNDERSTANDING.**—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Saint Lucia by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATION.**—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Saint Kitts and Nevis:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Saint Kitts and Nevis, signed at Basseterre on September 18, 1996 (Treaty Doc. 105–19), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) **UNDERSTANDING.**—The Senate’s advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Saint Kitts and Nevis by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATION.**—The Senate’s advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Saint Vincent and the Grenadines:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Saint Vincent and the Grenadines, signed at Kingstown on August 15, 1996 (Treaty Doc. 105–19), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Saint Vincent by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Barbados:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Barbados, signed at Bridgetown on February 28, 1996 (Treaty Doc. 105–20), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate’s advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Barbados by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate’s advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Trinidad and Tobago:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of Trinidad and Tobago, signed at Port of Spain on March 4, 1996 (Treaty Doc. 105–21), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Trinidad and Tobago by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with India:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of India, signed at Washington on June 25, 1997 (Treaty Doc. 105–30), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) UNDERSTANDING.—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 17 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United

States shall not consent to the transfer of any person extradited to India by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATION.**—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Zimbabwe:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Zimbabwe, signed at Harare on July 25, 1997 (Treaty Doc. 105–33), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) **UNDERSTANDING.**—The Senate's advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 14 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Zimbabwe by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) **DECLARATIONS.**—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Protocol with Mexico:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol to the Extradition Treaty Between the United States of America and the United Mexican States of May 4, 1978, signed at Washington on November 13, 1997 (Treaty Doc. 105–46), subject to the declaration of subsection (a), and the proviso of subsection (b).

(a) **DECLARATION.**—The Senate’s advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) **PROVISO.**—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

Treaty with Austria:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Austria, signed at Washington on January 8, 1998 (Treaty Doc. 105–50), subject to the understanding of subsection (a), the declaration of subsection (b), and the proviso of subsection (c).

(a) **UNDERSTANDING.**—The Senate’s advice and consent is subject to the following understanding, which shall be included in the instrument of ratification:

PROHIBITION ON EXTRADITION TO THE INTERNATIONAL CRIMINAL COURT.—The United States understands that the protections contained in Article 19 concerning the Rule of Specialty would preclude the resurrender of any person from the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the United States consents to such resurrender; and the United States shall not consent to the transfer of any person extradited to Austria by the United States to the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing that Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding on the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification to be signed by the President:

SUPREMACY OF THE CONSTITUTION.—Nothing in the Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

NOTES

¹Extradition between the U.S. and Antigua and Barbuda is currently governed by the U.S.-U.K. Extradition Treaty (hereinafter "the 1972 Treaty"), signed June 8, 1972, entered into force January 21, 1977 (28 UST 227, TIAS 8468), which continued in force after Antigua and Barbuda became an independent nation November 1, 1981.

²Antigua and Barbuda Extradition Act, 1993, of 17th June 1993 (hereinafter "Extradition Act 1993"). The key sections of the Extradition Act which are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Antiguan delegation stated that in Antigua and Barbuda, treaties do not take priority over statutes. Antigua and Barbuda's delegation assured the United States delegation, however, that the terms of this Treaty would be given full effect, since, under Section 6(1), Extradition Act 1993, Antigua's Minister of Justice may embody the terms of this Treaty in an Order published in the Gazette and direct that Antigua and Barbuda's extradition law apply "as between Antigua and Barbuda and [the United States] subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order."

³See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

⁴Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

⁵See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁶See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

⁷Section 8(1), Extradition Act 1993, provides that extradition shall be denied if the crime is an offense "of a political character." The Antigua and Barbuda delegation assured the United States that this is identical to the political offense defense. Similar provisions appear in all recent U.S. extradition treaties.

⁸Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁹There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

¹⁰See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

¹¹An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

¹²Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

¹³Extradition Act 1993, Section 11(7).

¹⁴See Extradition Act 1980, Section 17(1).

¹⁵Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

¹⁶See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), aff'd, 925 F.2d 615 (2nd Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

¹⁷See Article VII(5) of the 1972 Treaty.

¹⁸This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

¹⁹This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

²⁰Similar provisions appear in all recent U.S. extradition treaties. The topic of provisional arrest is dealt with in the Extradition Act 1993, Section 10(3).

²¹Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

²²Title 18, United States Code, Section 3188.

²³*Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed. 2d 30 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F. 2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

²⁴Extradition Act 1993, Section 18.

²⁵Under United States law and practice, the Secretary of State would make this decision. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

²⁶*Cheng Na-Yuet v. Hueston*, 734 F. Supp 988 (S.D. Fla. 1990), aff'd, 932 F.2d 977 (11th Cir. 1991).

²⁷Similar provisions are found in all recent U.S. extradition treaties.

²⁸In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

²⁹Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

³⁰See Extradition Act 1993, Section 16

³¹A similar provision is in all recent U.S. extradition treaties.

³²See Article 20, U.S.-Jordan Extradition Treaty, *supra* note 17; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

³³Signed January 21, 1972, entered into force September 15, 1972 (23 UST 3501; TIAS 7510).
³⁴Although this provision is intended to enable extradition from the United States to Argentina of a person who is the subject of an Argentine warrant of arrest and whose appearance in Argentina is sought as a necessary step for subjecting such person to criminal prosecution, it is not intended to enable extradition of a person whose appearance has been ordered for the sole purpose of giving testimony.

³⁵See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

³⁶See, e.g., U.S. extradition treaties with The Bahamas, Bolivia, Ireland, Jamaica, Jordan, the Philippines, and Thailand.

³⁷Like the U.S. concept of conspiracy, the crime of illicit association involves the confederation of persons for a criminal purpose; however, while a conspiracy under U.S. law may involve as few as two persons, Argentine law requires at least three persons to form an illicit association.

³⁸See, e.g., United States extradition treaties with the Bahamas, Bolivia, Ireland, Jamaica, Jordan, and Thailand. See also *Collins v. Loisel*, 259 U.S. 309 (1922) ("the law does not require that the name by which the crime is described in the two countries shall be the same; nor that the scope of liability shall be coextensive, or, in other respects, the same in the two countries. It is enough if the particular act charged is criminal in both jurisdictions.")

³⁹Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction Over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982). Like U.S. law, Argentine law recognizes the effects principle of jurisdiction. See Article 1, Argentine Penal Code.

⁴⁰A similar provision is contained in other recent U.S. treaties (e.g., extradition treaties with Bolivia and Jordan).

⁴¹The Argentine delegation insisted that the term "territory" be defined with respect to the Requesting State, for they wished to ensure that "the Requesting State's territory", for the purposes of this Article, would encompass the territorial airspace and territorial waters of that State. Such a provision exists in the 1972 treaty. In the new Treaty, the formula agreed upon—"all places subject to [the Requesting] State's criminal jurisdiction"—was deemed by the negotiators to capture the intended meaning in a less wordy and cumbersome fashion than the equivalent provision in the 1972 treaty.

⁴²See, e.g., U.S. extradition treaties with Bolivia and Jordan.

⁴³See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and nationals of other countries in extradition matters has been underscored by Congress in legislation. Title 18, United States Code, Section 3196 authorizes the Secretary of State to extradite United States citizens pursuant to a treaty which permits but does not expressly require surrender of citizens, as long as the other requirements of the treaty have been met.

⁴⁴This Article states that "the extradition and surrender" of the person sought shall not be refused on the basis of nationality. As noted above, under the 1972 treaty, Argentine courts have granted "extradition" of Argentine citizens, but, in the absence of an affirmative obligation to surrender them, has proceeded to allow the person to request trial in Argentina. The phrase "extradition and surrender" is designed to ensure that the Requested State actually turns over custody of its citizens to the Requesting State when extradition has been granted.

⁴⁵Provisions barring extradition for political offenses are included in every U.S. extradition treaty. The provision in this article is typical in that it does not attempt to define what constitutes a political offense (although paragraph 2 of this article sets forth certain offenses that are not political offenses). As a result, the requested country must determine, based solely on its domestic law, whether a given extradition request should be denied on this basis. Because the Treaty does not provide otherwise, the judiciary decides whether the political offense exception will bar extradition in a particular case. *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir. 1981).

⁴⁶See, e.g., U.S. extradition treaties with The Bahamas, Bolivia, Mexico, and the Philippines.

⁴⁷Done at New York, December 14, 1973; entered into force February 20, 1977 (28 UST 1975; TIAS 8532; 1035 UNTS 167).

⁴⁸Done at New York December 17, 1979; entered into force June 3, 1983 (TIAS 11081).

⁴⁹Done at the Hague December 16, 1970; entered into force October 14, 1971 (22 UST 1641; TIAS 7192).

⁵⁰Examples of such offenses are desertion and disobedience of orders. See *Matter of Suarez-Mason*, 694 F. Supp. 676, 703 (N.D.Cal. 1988).

⁵¹See, e.g., U.S. extradition treaties with The Bahamas, Bolivia, Ireland, Italy, Jamaica, the Netherlands, the Philippines, and Thailand.

⁵²The express use of the phrase "convicted or acquitted" in this paragraph prevents the Requested State from refusing extradition on the basis that it has unilaterally immunized the fugitive from prosecution by pardon or granting of clemency. Moreover, nothing in this provision enables the Requested State to bar extradition on the grounds that the person sought has been convicted or acquitted in a third State.

⁵³See, e.g., U.S. extradition treaties with The Bahamas, Bolivia, Jordan, and the Philippines.

⁵⁴The term "offense" in this provision means the crime, not "the act" for which extradition is requested. A single set of facts may result in several different offenses being charged in different jurisdictions, and prosecution for one such offense should not bar extradition for another. future reinstitution.⁵⁵ This provision should enhance the ability to extradite criminals to the jurisdiction which has the better chance of a successful prosecution.

⁵⁵This provision is intended to make clear that extradition shall not be precluded by the mere fact that the fugitive is being proceeded against in the Requested State. If the Requested State is prosecuting the fugitive for the same offense for which extradition is requested, the Requested State should, pursuant to Article 13 of this Treaty, defer its decision on extradition until the proceedings are over. Then, the Requested State can decide whether to deny extradition because of conviction or acquittal, or grant extradition if the charges were resolved in a manner that does not implicate double jeopardy (such as dismissal without prejudice). Otherwise, a Requested State could charge the fugitive with the same offense that is the subject of the extradition request, then deny the extradition request due to a pending prosecution in the Requested State, and finally dismiss its domestic case—allowing the fugitive to escape prosecution altogether.

⁵⁶*See, e.g.*, recent United States extradition treaties with The Bahamas, Bolivia, Germany, Ireland, Italy, Jamaica, Jordan, and Thailand.

⁵⁷*See, e.g.*, extradition treaties with The Bahamas, Bolivia, Jamaica, Jordan, and Thailand.
⁵⁸As noted in the analysis of Article 1 above, under Argentine criminal procedure, a formal indictment may not be filed in Argentina until the fugitive is brought before an Argentine court. In recognition of those instances in which Argentina might seek the extradition of a person for whom an indictment has not yet been filed, the negotiating delegations agreed to include the phrase, “if any.”

⁵⁹Courts considering foreign extradition requests in accordance with Title 18, United States Code, Section 3184, have long required probable cause for international extradition. *Ex Parte Bryant*, 167 U.S. 104, 105 (1897); *Restatement (Third) of the Foreign Relations Law of the United States* § 476, comment b (1987).

⁶⁰Many other U.S. extradition treaties include language requiring information that would justify the “committal for trial” of the person sought, rather than his or her “detention”. Under U.S. jurisprudence, the terms “committal for trial” and “detention” are interchangeable in this context, in as much as they both require a finding of probable cause. The Argentine delegation advised, however, that their courts could interpret the term “committal for trial” to require a much higher standard of proof, *i.e.*, a *prima facie* showing of guilt. Accordingly, the delegations agreed to include “detention” rather than “committal for trial” to ensure that the courts of both the United States and Argentina will apply a similar standard of proof in extradition cases.

⁶¹Under U.S. practice, a judgment of conviction is not ordinarily entered until after a person is sentenced. Accordingly, in cases where a person has been found guilty but not yet sentenced, this provision allows the requesting state to provide, in lieu of the judgment of conviction, a statement from a judicial authority that the person has been found guilty.

⁶²*See, e.g., Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff’d*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D.Vt. 1979).

⁶³This provision is consistent with requirements imposed by United States law. For the United States the “appropriate” diplomatic or consular officer would be the “principal” diplomatic or consular officer of the U.S. Embassy in Argentina. *See* Title 18, United States Code, Section 3190. Since Argentine law does not require that the diplomatic or consular officer be the “principal” one, the term “appropriate” was included. This will render less onerous for U.S. officials the task of preparing extradition requests to Argentina.

⁶⁴Current United States law provides that such surrender should occur within two calendar months from the finding that the offender is extraditable, or from the conclusion of any litigation challenging that finding, whichever is later. *See* Title 18, United States Code, Section 3188. *See also Jimenez v. United States District Court*, 84 S.Ct. 14 (1963) (decided by Goldberg, J., in chambers); *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); and *In Re United States*, 713 F.2d 105 (5th Cir. 1983); and *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

Argentine law requires that the Requesting State take custody of the person sought within 30 calendar days of the formal notification by the Argentine Government to the Requesting State that the person is available for transfer of custody. *See* Art. 30, Law No. 24,767 (Criminal Procedure Code) (1997). The 30-day period may be extended for an additional 10 days upon request by the Requesting State. *See id.*

⁶⁵*See, e.g.*, U.S. extradition treaties with The Bahamas, Bolivia, and the Philippines.

⁶⁶Under United States law and practice, the Secretary of State would make the decision to temporarily surrender the fugitive or to defer the surrender. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D.Mass. 1990), *aff’d*, 931 F.2d 169 (1st Cir. 1991).

⁶⁷This provision was included at the request of Argentina, whose negotiating delegation wished to ensure that the postponement of the surrender of Argentine fugitives by the United States would not jeopardize Argentina’s ability to prosecute those fugitives upon their eventual surrender to Argentina. Under United States law, in contrast, the statute of limitations is suspended upon the filing of an indictment or other charging document. *See, e.g.*, Title 18, United States Code, section 3282. Because, in any case in which the United States requests extradition of a fugitive from Argentina, the fugitive will have already been charged and the statute of limitations suspended, this provision will not have any legal effect for the United States above and beyond that which is already provided by U.S. law.

⁶⁸Under U.S. law, the appropriate authority within the executive branch is the Secretary of State. *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D.Fla. 1990), *aff’d*, 932 F.2d 977 (11th Cir. 1991).

⁶⁹Allowing the Requesting State to proceed on a “differently denominated or less serious offense” provides both the prosecution and defense with a measure of post-extradition flexibility to resolve the charges. For example, it allows the defendant to plead to or be convicted at trial of a lesser included offense, or it allows the prosecution to supersede the original charges with different charges that, because of a change in circumstances, may be more readily provable, so long as they are based on the same facts as the offenses for which extradition was granted. Proceeding on differently denominated or lesser included offenses does not offend the purpose of the rule of speciality, since the Requested State will have already considered the facts upon

which both the original and the new charges are based and determined that the acts constituting the offenses are extraditable.

⁷⁰From its inception, the rule of speciality has applied only to those illegal acts committed prior to extradition. It does not provide the defendant with any immunity for offenses committed after his or her surrender to the Requesting State.

⁷¹The consent exception to the rule of specialty recognizes that, as a Party to the Treaty, the Requested State has a right to waive certain of its benefits or privileges under the Treaty. In the United States, the Secretary of State has the authority to consent. See *Berenguer v. Vance*, 473 F.Supp. 1195, 1199 (D.D.C. 1979).

⁷²This provision prohibiting re-extradition is intended to prevent the State to which a person is extradited from subsequently extraditing the person to a third state to which the Requested State would not have agreed to extradite. This provision thus enables the Requested State to retain a measure of control over the ultimate destination of the person surrendered. A similar provision is contained in all recent U.S. extradition treaties.

⁷³The policy behind paragraph 3 is that an extraditee should not be allowed to benefit from the rule of specialty indefinitely and remain in or return to the Requesting State with impunity. Under this paragraph, if the extraditee chooses to return to or remain in the Requesting State, he or she effectively relinquishes the benefits of the rule. Generally, the United States prefers that the time period afforded to the fugitive to leave the Requesting State be as short as practicable in order to avoid law enforcement and public frustration over having such a person at large in the community.

⁷⁴Waiver of extradition benefits the fugitive in that it allows him to return forthwith to resolve the charges against him in the Requesting State and to spend as little time as possible in custody in the Requested State. It also saves the judicial and law enforcement authorities of the Requested State the significant expense associated with a prolonged extradition process.

⁷⁵A similar provision is in all recent U.S. extradition treaties.

⁷⁶The Parties' representation of each other in extradition proceedings ensures that the Parties abide by their obligation under the Treaty to secure the return of every extraditable criminal to the Requesting State. By participating in the extradition proceedings, the Parties also have the opportunity to shape extradition law and practice in a way that is beneficial to both themselves and their treaty partners. In accordance with established practice, the Department of Justice will represent Argentina in extradition proceedings in the United States. Likewise, Argentine federal prosecutors will represent the United States in such proceedings in Argentina. In fact, the United States and Argentina already provide representation to each other in extradition cases under the 1972 Treaty, and, with this provision, the Parties intend to continue the current practice.

⁷⁷This is a standard provision in all modern U.S. extradition treaties.

⁷⁸See, e.g., U.S. extradition treaties with Bolivia, Jordan, and the Philippines.

⁷⁹See, e.g., U.S. extradition treaties with The Bahamas, Bolivia, Ireland, Italy, Jamaica, and Thailand.

⁸⁰U.S. Const., art. I, § 9, cl. 3.

⁸¹See *In re De Giacomo*, 7 F.Cas. 366 (C.C.N.Y. 1874); See also 4 Moore, *A Digest of International Law* 268 (1906).

⁸²The 1972 treaty does not contain an express provision authorizing the waiver of extradition, and the application of Article 17 of this Treaty to pending proceedings under the 1972 treaty will allow fugitives to utilize Article 17 to facilitate their return to the Requesting State.

⁸³The application of Article 16 of this Treaty to persons extradited under the prior treaty will allow the parties to take advantage of improved provisions in Article 16, such as the ability to detain a person while a request for consent is being considered.

⁸⁴Extradition between the U.S. and Austria is governed by the Convention for the Extradition of Fugitives from Justice, with exchange of notes concerning the Death Penalty (hereinafter the "1930 Convention"), signed at Vienna January 31, 1930 (46 Stat. 2779; TS 822; 5 Bevans 358) (entered into force Sept. 11, 1930), and the Supplementary Convention on Extradition signed at Vienna May 19, 1934, (49 Stat. 2710; TS 873; 5 Bevans 378) (entered into force Sept. 5, 1934).

⁸⁵"Federal Law of December 4, 1979, Regarding Extradition and Judicial Assistance in Criminal Matters," Bundesgesetzblatt No. 529/1979 (hereinafter "Austrian Extradition Law"). Section 1 of the law states that "The provisions of this Federal Law shall be applicable only to the extent that international agreements do not provide otherwise." Thus, in case of conflict between the treaty and Austrian statutory law, the treaty controls.

⁸⁶See Stanbrook and Stanbrook, *Extradition: The Law and Practice* 25-26 (1979).

⁸⁷See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁸⁸See 18 U.S.C. § 1341.

⁸⁹See 18 U.S.C. § 2314.

⁹⁰Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 *J. Crim. L. & Criminology* 1109 (1982).

⁹¹Palmer, *The Austrian Law of Extradition and Mutual Assistance* 64-65, Library of Congress Law Library (1983).

⁹²The English text of the Treaty as originally signed incorrectly read, "Extradition shall be granted. . ." By way of an exchange of notes between the Parties, "may" has been substituted in this paragraph and reflects the true intent of the negotiators.

⁹³U.S.-Costa Rica Extradition Treaty, Dec. 4, 1982, art. 3; Cf. U.S.-Bolivia Extradition Treaty, June 29, 1995, art. II(3)(b); U.S.-Ireland Extradition Treaty, July 13, 1983, art. III(1) (TIAS 10813).

⁹⁴Our policy of drawing no distinction between United States nationals and others in extradition matters is underscored by Title 18, United States Code, Section 3196, which authorizes the Secretary of State to extradite United States citizens pursuant to a treaty that permits but

does not expressly require surrender of citizens as long as the other requirements of the treaty have been met. 18 U.S.C. § 3196.

⁹⁵Section 12, Austrian Extradition Law.

⁹⁶*See, e.g.*, Article 3, U.S.-Hungary Extradition Treaty, December 1, 1994; Article 8, U.S.-Costa Rica Extradition Treaty, December 4, 1982.

⁹⁷*Cf.* Section 14, Austrian Extradition Law.

⁹⁸Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁹⁹There are similar provisions in many recent treaties. *See* Article III(3), U.S.-Jamaica Extradition Treaty, June 14, 1983; Article 5(4), U.S.-Spain Extradition Treaty, May 29, 1970, (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, U.S.-Netherlands Extradition Treaty, June 24, 1980 (TIAS 10733).

¹⁰⁰*See Eain v. Wilkes*, 641 F.2d 504, 513-18 (7th Cir.), *cert. denied*, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

¹⁰¹An example of such a crime is desertion. *Matter of Suarez-Mason*, 694 F. Supp. 676, 703 (N.D. Cal. 1988).

¹⁰²*See* Section 16(1), Austrian Extradition Law.

¹⁰³Many recent U.S. treaties provide that extradition shall not be denied on the ground that the Requested State declined to prosecute or discontinued proceedings against the person sought. Austria would not agree to such a provision because Section 16(1) of Austrian Extradition Law requires denial of extradition in such cases. The discretionary wording of this article was designed to avoid impeding the United States' ability to grant extradition in such cases.

¹⁰⁴*See, e.g.*, Article 4(1)(ii), U.S.-Canada Extradition Treaty, signed December 3, 1971, entered into force March 22, 1976 (3 UST 2826, TIAS 8237). It is settled law in the United States that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215 (D. Conn. 1977). By contrast, Austrian law requires that extradition be denied if the statute of limitations or other provisions on lapse of time have expired in either the requesting or the requested state. Section 18, Austrian Extradition Law. Thus, Article 7 represents a reasonable compromise between the two positions.

¹⁰⁵Article 85, Austrian Federal Constitution.

¹⁰⁶Section 20, Austrian Extradition Law.

¹⁰⁷*See, e.g.*, Article 7, U.S.-Hungary Extradition Treaty, December 1, 1994; Article 6, U.S.-Netherlands Extradition Treaty, June 24, 1980 (TIAS 10733); Article 6, U.S.-Ireland Extradition Treaty, July 13, 1983 (TIAS 10813).

¹⁰⁸Article 8(6), U.S.-Cyprus Extradition Treaty, signed June 17, 1996.

¹⁰⁹Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States § 476 comment b (1987).

¹¹⁰*See Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

¹¹¹*See, e.g.*, Article 10, U.S.-Costa Rica Extradition Treaty, Dec. 4, 1982; Article 11, U.S.-Italy Extradition Treaty, Oct. 13, 1983 (TIAS 10837); Article I(2), U.S.-Jamaica Extradition Treaty, June 14, 1983.

¹¹²*United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

¹¹³18 U.S.C. § 3188.

¹¹⁴*See Jimenez v. U.S. District Court*, 84 S. Ct. 14 (1963) (decided by Goldberg, J., in chambers); *see also Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

¹¹⁵Section 29(3), Austrian Extradition Law.

¹¹⁶Under United States law and practice, the Secretary of State makes this decision. *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

¹¹⁷Section 12(2), Austrian Extradition Law, permits Austria to return one of its citizens who was temporarily surrendered to it by the United States.

¹¹⁸*Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

¹¹⁹Section 24, Austrian Extradition Law.

¹²⁰While the text of the second sentence of Article 18(1) standing alone appears to be mandatory, the negotiators intended and understood the sentence to be read with the first sentence and therefore to be discretionary, since there are circumstances (e.g., a related prosecution in the Requested State) where the Requested State might view it as appropriate to decline surrender of such items to the Requesting State, or delay or condition such surrender.

¹²¹Section 6, Austrian Extradition Law, states that this provision shall not preclude the handing over, transportation, and delivery of property in connection with the extradition, so that this provision will give Austria reciprocal benefits when it requests extradition from the United States.

¹²²In the United States, the Secretary of State has the authority to consent to a waiver of the rule of specialty. *See Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). It is unclear who in the executive authority in Austria will give consent. *See generally* Palmer, *supra* note 10, at 69-71. This was intended to preserve intact each Party's right to arrest the extradited person for deportation at the conclusion of the sentence, or to file charges against the extradited person solely to toll the statute of limitations.

¹²³If the United States is the Requested State and the person sought elects to return voluntarily to the Republic of Austria before the United States Secretary of State signs a surrender warrant, the process would be deemed to be a voluntary return rather than an "extradition."

¹²⁴Section 32, Austrian Extradition Law.

¹²⁵*See, e.g.*, Article 19, U.S.-Belgium Extradition Treaty, Apr. 9, 1987.

¹²⁶Extradition between the U.S. and Barbados is currently governed by the Treaty for the Mutual Extradition of Criminals between the United States and Great Britain (hereinafter "the

1931 Treaty”), signed at London December 22, 1931, entered into force June 24, 1935, (47 Stat. 2122; TS 849), which continued in force after Barbados became an independent nation on November 30, 1966.

¹²⁷ Extradition Act 1980, of 2nd June 1980 (hereinafter “Extradition Act 1980”). The key sections of the Extradition Act which are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Barbados delegation stated that in Barbados treaties do not take priority over statutes, recognized that their extradition would have to be amended to avoid conflict with the Treaty, and promised to take such steps as are necessary to effectively carry out the obligations in this Treaty.

¹²⁸ See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

¹²⁹ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

¹³⁰ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

¹³¹ See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

¹³² Section 7(1)(a), Extradition Act 1980, provides that extradition shall be denied if the crime is an offense “of a political character.” The Barbados delegation assured the United States that this is identical to the political offense defense. Similar provisions appear in all recent U.S. extradition treaties.

¹³³ Done at Vienna December 20, 1988, entered into force November 11, 1990.

¹³⁴ There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

¹³⁵ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), aff’d 931 F.2d 169 (1st Cir. 1991).

¹³⁶ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

¹³⁷ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

¹³⁸ Barbados law permits requests to be made either by a U.S. consular officer stationed in Barbados, a request to the Attorney General through Barbados’ diplomatic representatives stationed in the United States, or “by such other person or by such other means as may be settled by arrangement . . .” Extradition Act 1980, Section 23.

¹³⁹ See Extradition Act 1980, Section 17(1).

¹⁴⁰ Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

¹⁴¹ See, e.g., *Spatola v. United States*, 741 F.Supp. 362, 374 (E.D.N.Y. 1990), aff’d, 925 F.2d 615 (2nd Cir. 1991); *United States v. Clark*, 470 F.Supp. 976 (D. Vt. 1979).

¹⁴² See Section 15, Extradition Act 1980.

¹⁴³ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

¹⁴⁴ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

¹⁴⁵ Similar provisions appear in all recent U.S. extradition treaties. The topic of provisional arrest is dealt with in Barbados Extradition Act 1980, Section 23.

¹⁴⁶ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

¹⁴⁷ Title 18, United States Code, Section 3188.

¹⁴⁸ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed 2d 30 (1963)(decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

¹⁴⁹ Barbados Extradition Act 1980, Section 32.

¹⁵⁰ Under United States law and practice, the Secretary of State would make this decision. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), aff’d 931 F.2d 169 (1st Cir. 1991). ¹⁵¹ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), aff’d, 932 F.2d 977 (11th Cir. 1991).

¹⁵² Extradition Act 1980, Section 25.

¹⁵³ Similar provisions are found in all recent U.S. extradition treaties, and in the Extradition Act 1980, Section 30.

¹⁵⁴ In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). For Barbados, it is the Attorney General. Cf. Extradition Act 1980, Section 7(2)(b)(iii).

¹⁵⁵ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

¹⁵⁶ A similar provision is in all recent U.S. extradition treaties.

¹⁵⁷ This provision supersedes the contrary provision in Title 18, United States Code, Section 3195. Barbados law requires that all expenses be paid by the Requesting State unless otherwise

provided by treaty (Extradition Act 1980, Section 31), so this express treaty provision would take precedence.

¹⁵⁸See Article 20, U.S.-Jordan Extradition Treaty, *supra*, note 17; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 11, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

¹⁵⁹Extradition between the U.S. and Cyprus is currently governed by the Treaty for the Mutual Extradition of Criminals between the United States and Great Britain, signed at London December 22, 1931, entered into force June 24, 1935, 47 Stat. 2122; TS 849, 12 Bevans 482; 163 LNTS 59, which continued in force after Cyprus became an independent nation on August 16, 1960.

¹⁶⁰Republic of Cyprus Law No. 97 of 1970 (hereinafter "the Extradition of Fugitive Offenders Law 1970"). The key sections of the Extradition of Fugitive Offenders Law 1970 that are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis.

¹⁶¹See Stanbrook and Stanbrook, *Extradition: The Law and Practice* 25-26 (1979).

¹⁶²See 18 U.S.C. § 1341.

¹⁶³See 18 U.S.C. § 2314.

¹⁶⁴Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 J. Crim. L. & Criminology 1109 (1982).

¹⁶⁵See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

¹⁶⁶See generally Shearer, *Extradition in International Law* 110-14 (1970); 6 Whiteman, *Digest of International Law* 871-76 (1968). Our policy of drawing no distinction between United States nationals and others in extradition matters is underscored by Title 18, United States Code, Section 3196, which authorizes the Secretary of State to extradite United States citizens pursuant to a treaty that permits but does not expressly require surrender of citizens as long as the other requirements of the treaty have been met.

¹⁶⁷Section 6(1), Extradition of Fugitive Offenders Law 1970.

¹⁶⁸"This constitutional provision (the reason for which will be clear to anyone familiar with the communal problems on the island) was interpreted in 1961 by the Supreme Court of Cyprus as preventing even the surrender of a Cypriot to Great Britain . . ." Shearer, *Extradition in International Law* 102 (1971). See also Stanbrook, *Extradition: the Law and Practice* 39 (1980). Cyprus has never extradited one of its citizens to the United States or to any other nation.

¹⁶⁹Cyprus has jurisdiction to prosecute its citizens for crimes committed outside its territory if the offense is one punishable in Cyprus with death or imprisonment exceeding two years and is also punishable by the law of the country where it was committed and for any offense committed while the citizen is in the service of Cyprus. Article 5 of the Cyprus Criminal Code, Chapter 154, as amended. In fact, the Cyprus delegation assured the U.S. that few crimes for which extradition would be sought have a penalty of less than two years in Cyprus. Thus, virtually all offenses that are extraditable under the treaty could form the basis for a domestic prosecution in Cyprus.

¹⁷⁰See, e.g., Article 3, U.S.-Hungary Extradition Treaty, signed at Budapest December 1, 1994; Article 8, U.S.-Costa Rica Extradition Treaty, signed December 4, 1982; U.S.-Mexico Extradition Treaty, signed May 4, 1978.

¹⁷¹Similar provisions appear in all recent U.S. extradition treaties. Section 6(1)(a), Extradition of Fugitive Offenders Law 1970, provides that extradition shall be denied if the crime is an offense "of a political character." The Cyprus delegation assured the United States that this is identical to the political offense defense.

¹⁷²Section 6(5) of the Extradition of Fugitive Offenders Law 1970 states that a crime cannot be an offense of a political character if it involves an attempt on the life or person of "the head of the Commonwealth" or involves conspiring, attempting, or participating in a crime listed in the Schedule to the Law, or impeding the arrest or prosecution of others guilty of such crimes.

¹⁷³Done at Vienna, December 20, 1988, entered into force November 11, 1990.

¹⁷⁴There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force Jul 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

¹⁷⁵See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Koshotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), aff'd, 931 F.2d 169 (1st Cir. 1991).

¹⁷⁶An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

¹⁷⁷It also resembles Section 6(2) of the Extradition of Fugitive Offenders Law 1970, which prohibits extradition of a person "if it appears . . . that if charged with the offence in the Republic [of Cyprus] he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction."

¹⁷⁸See, e.g., Article 7, U.S.-Hungary Extradition Treaty, *supra* note 11; Article 7, U.S.-Netherlands Extradition Treaty, *supra* note 19; Article 6, U.S.-Ireland Extradition Treaty, *supra* note 21.

¹⁷⁹Section 11(4), Extradition of Fugitive Offenders Law 1970.

¹⁸⁰This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman*

v. *United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

¹⁸¹Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. See Restatement (Third) of the Foreign Relations Law of the United States, section 476, comment b (1987).

¹⁸²Courts applying Title 18, United States Code, Section 3184 long have required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States § 476 comment b (1987).

¹⁸³See *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

¹⁸⁴See, e.g., Article 10, U.S.-Costa Rica Extradition Treaty, *supra* note 12; Article 11, U.S.-Italy Extradition Treaty, signed Oct. 13, 1983. However, the Cyprus Treaty differs from these two in that it does not provide specifically for the release of the person sought if the additional information is not supplied within the specified deadline.

¹⁸⁵Article 8 of the treaty states: "The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of His Britannic Majesty respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed."

¹⁸⁶Section 13, Extradition of Fugitive Offenders Law 1970.

¹⁸⁷Title 18, United States Code, Section 3190.

¹⁸⁸*Cf. United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

¹⁸⁹18 U.S.C. § 3188.

¹⁹⁰See *Jimenez v. U.S. District Court*, 84 S. Ct. 14, 11 L. Ed. 2d 30 (1963) (decided by Goldberg, J., in chambers); see also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

¹⁹¹Section 12, Extradition of Fugitive Offenders Law 1970.

¹⁹²Under United States law and practice, the Secretary of State makes this decision. *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

¹⁹³*Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

¹⁹⁴Section 11(5), Extradition of Fugitive Offenders Law 1970.

¹⁹⁵In the United States, the Secretary of State has the authority to consent to a waiver of the rule of specialty. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). In Cyprus, it is the Minister of Justice. Section 6(3)(c), Extradition of Fugitive Offenders Law 1970.

¹⁹⁶*Cf.* Article 16, U.S.-Netherlands Extradition Treaty, *supra* note 21.

¹⁹⁷See, e.g., Article 20, U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995, July 29, 1995; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

¹⁹⁸Extradition between the U.S. and Dominica is currently governed by the U.S.-U.K. Extradition Treaty (hereinafter "the 1972 Treaty"), signed June 8, 1972, entered into force January 21, 1977 (28 UST 227, TIAS 8468), which continued in force after Dominica became an independent nation on November 3, 1978.

¹⁹⁹Chapter 12:04, Laws of Dominica, Extradition Act 1981. The key sections of the Extradition Act 1981 which are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Dominica delegation stated that in general in Dominica treaties do not take priority over statutes, and that the courts are bound by the Act, though the Government is bound by the Treaty. The application of Dominica's extradition law, however, is "subject to any limitations, conditions, exceptions, or qualifications as are necessary to give effect to [the] treaty. . ." Section 39(2), Extradition Act 1981, so Dominica's delegation assured the United States that the terms of this Treaty would be given full effect.

²⁰⁰See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

²⁰¹Restatement (Third) of the Foreign Relations Law of the United States §s 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

²⁰²See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

²⁰³See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

²⁰⁴Section 7(1), Extradition Act 1981, provides that extradition shall be denied if the crime is an offense "of a political character." The Dominica delegation assured the United States that this is identical to the political offense defense. Similar provisions appear in all recent U.S. extradition treaties.

²⁰⁵Done at Vienna December 20, 1988, entered into force November 11, 1990.

²⁰⁶There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, and entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

²⁰⁷ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), *cert. denied*, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), *aff'd* 931 F.2d 169 (1st Cir. 1991).

²⁰⁸ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

²⁰⁹ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

²¹⁰ Article IX(1), 1972 Treaty.

²¹¹ See Extradition Act 1980, Section 17(1).

²¹² Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

²¹³ See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

²¹⁴ See Article VII(5) of the 1972 Treaty.

²¹⁵ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

²¹⁶ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

²¹⁷ Similar provisions appear in all recent U.S. extradition treaties.

²¹⁸ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

²¹⁹ Title 18, United States Code, Section 3188.

²²⁰ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed. 2d 30 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

²²¹ Section 32, Extradition Act 1981.

²²² Under United States law and practice, the Secretary of State would make this decision. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), *aff'd* 931 F.2d 169 (1st Cir. 1991).

²²³ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

²²⁴ Section 24, Extradition Act 1981.

²²⁵ Similar provisions are found in all recent U.S. extradition treaties.

²²⁶ In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). For Dominica, it is the Attorney General. See Section 7(2)(b)(3), Extradition Act 1981.

²²⁷ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

²²⁸ A similar provision is in all recent U.S. extradition treaties.

²²⁹ See Article 20, U.S.-Jordan Extradition Treaty, *supra* note 12; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

²³⁰ The Extradition Treaty signed at Paris January 6, 1909, entered into force July 27, 1911, (37 Stat. 1526; TS 561; 7 Bevans 872). The Supplementary Extradition Convention signed at Paris February 12, 1970, entered into force April 3, 1971 (22 UST 407; TIAS 7075; 791 UNTS 273).

²³¹ Loi réglant les conditions, la procédure, et les effets de l'extradition, décret du 11 mars 1927 (hereinafter "Extradition Law 1927"). This Technical Analysis discusses key sections of the Extradition Law 1927 that are germane to the interpretation and implementation of the Treaty.

²³² See Stanbrook and Stanbrook, *Extradition: The Law and Practice* 25-26 (1979).

²³³ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

²³⁴ Shearer, *Extradition in International Law* 74 (1971); Article 23, Extradition Law 1927.

²³⁵ See 18 U.S.C. § 1341.

²³⁶ See 18 U.S.C. § 2314.

²³⁷ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 J. Crim. L. & Criminology 1109 (1982).

²³⁸ French jurisprudence divides offenses into three categories: crimes (major felonies), délits (lesser felonies), and contraventions (petty offenses). See Kock, *Criminal Proceedings in France*, 9 American Journal of Int'l Law 253 (1960). France asserts an extraterritorial criminal jurisdiction over its nationals for major felonies committed anywhere in the world, and for lesser felonies if punishable at the place where committed. France also asserts criminal jurisdiction over aliens located in France whose acts, though committed outside of France, endanger the safety or financial credit of the French state. Delaume, *Jurisdiction over Crimes Committed Abroad: French and American Law* 21 Geo. Wash. Crim. Rev. 173 (1952). France also asserts jurisdiction over aliens who commit offenses against French nationals outside of France.

²³⁹ See generally Shearer, *Extradition in International Law* 110-14 (1971); 6 Whiteman, *Digest of International Law* 871-76 (1968). Our policy of drawing no distinction between United States and other nationals in extradition matters is underscored by Title 18, United States Code, Section 3196. This authorizes the Secretary of State to extradite United States citizens pursuant to a treaty that permits but does not expressly require surrender of citizens as long as the other requirements of the treaty have been met.

²⁴⁰ See Act 5(1), Extradition Law 1927. See 6 Whiteman *Digest of International Law* 871 (1968). Indeed, France is one of the originators and staunchest defenders of the practice of not extraditing nationals. Shearer, *Extradition in International Law* 95, 96, 104 (1971).

²⁴¹ See, e.g., Article 8, U.S.-Costa Rica Extradition Treaty, Dec. 4, 1982; Article 9, U.S.-Mexico Extradition Treaty, May 4, 1978 (31 UST 5059, TIAS 9656).

²⁴² For a detailed description of French jurisprudence, see Carbonneau, *French Judicial Perspectives on the Extradition of Transnational Terrorists and the Political Offense Exception* (1981); Goldie, *The Political Offense Exception and Extradition Between Democratic States*, 13 Ohio N.U. L. Rev. 53 (1986); Comment, *The Political Offense Exemption to Extradition; Protecting the Right of Rebellion in an Era of International Political Violence*, 66 Or. L. Rev. 405 (1987); Comment, *Revolutionaries Beware: The Erosion of the Political Offense Exception under the 1986 United States-United Kingdom Supplementary Extradition Treaty*, 136 U. Pa. L. Rev. 1515 (1988); Comment, *The Political Offense Exception: An Historical Analysis and Model for the Future*, 64 Tul. L. Rev. 1195 (1990); Taulbee, *Political Crimes, Human Rights, and Contemporary International Practice*, 4 Emory Int'l L. Rev. 43 (1990).

²⁴³ Done at Vienna December 20, 1988, entered into force November 11, 1990.

²⁴⁴ This paragraph includes offenses covered by the Convention for the Protection of Internationally Protected Persons, Including Diplomatic Agents, done at New York December 14, 1973, (28 UST 1975, TIAS 8532, 1035 UNTS 167). France is not a party to this Convention.

²⁴⁵ This paragraph includes offenses under the Convention on the Taking of Hostages, done at New York December 17, 1979, (TIAS 11081). France is not a party to this convention.

²⁴⁶ These factors are drawn directly from Art. 13(1) of the European Convention on the Suppression of Terrorism.

²⁴⁷ Article IV(c), U.S.-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force December 15, 1984 (TIAS 10813).

²⁴⁸ The long-standing U.S. law and practice have been that the Secretary of State alone has the discretion to determine whether an extradition request is based on improper motivation. *Eain v. Wilkes*, 641 F.2d 504, 513-18(7th Cir.), cert. denied, 454 U.S. 894 (1981); *Koshotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

²⁴⁹ Article 5, U.S.-Germany Extradition Treaty, signed at Bonn June 20, 1978, entered into force August 29, 1980 (TIAS 9785).

²⁵⁰ An example of such a crime is desertion. See, e.g., *In re Suarez-Mason*, 694 F. Supp. 676, 703 (N.D. Cal. 1988).

²⁵¹ The French delegation wanted the provision to read "unless the Requesting State provides sufficient assurances ..." in order to maximize the Requested State's discretion. After extensive discussion, the French delegation agreed to drop the term "sufficient," but reserved France's right to decide on a case-by-case basis whether to accept assurances offered to it.

²⁵² See, e.g., Article 7, U.S.-Hungary Extradition Treaty, December 1, 1994; Article 6, U.S.-Ireland Extradition Treaty, July 13, 1983 (TIAS 10813); Article 7, U.S.-Netherlands Extradition Treaty, June 24, 1980 (TIAS 10733).

²⁵³ This is consistent with some other U.S. extradition treaties that require denial of the request if the statute of limitations would have run in the Requested State had the offense been committed in that state. See, e.g., Article 4, U.S.-Japan Extradition Treaty, signed March 3, 1978, and entered into force March 26, 1980 (31 UST 892, TIAS 9625); Article 6, U.S.-Netherlands Extradition Treaty, *supra* note 29. The Treaty provides slightly more flexibility for the United States than the current Supplementary Extradition Convention, which bars extradition if the statute of limitations has expired in either the Requesting or Requested State. It is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition at all unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215 (D. Conn. 1977).

²⁵⁴ The statute of limitations in France is currently ten years for major felonies (crimes) and three years for lesser felonies (délits). Note, *Statute of Limitations: Penetrable Barrier to Prosecution*, 102 U. Pa. L. Rev. 630 (1954); Note, 50 Prescription of Crime, Scottish L. Rev. at 261 (1934).

²⁵⁵ Courts applying Title 18, United States Code, Section 3184 long have required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States § 476 comment b (1987).

²⁵⁶ Shearer, *supra* note 5, at 157-165.

²⁵⁷ See *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

²⁵⁸ This provision is consistent with requirements imposed by U.S. Law. See Title 18, United States Code, Section 3190.

²⁵⁹ Cf. *Clark*, *supra* note 34.

²⁶⁰ See, e.g., Article 10, U.S.-Costa Rica Extradition Treaty, December 4, 1982; Article 11, U.S.-Italy Extradition Treaty, October 13, 1983 (TIAS 10837).

²⁶¹ U.S. law currently permits a person to request release if he has not been surrendered within two calendar months of having been found extraditable, or of the conclusion of any litigation challenging that finding, whichever is later. See 18 U.S.C. § 3188; *Jimenez v. U.S. District Court*, 84 S. Ct. 14 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

²⁶² See Article 18, Extradition Act 1927.

²⁶³ Under United States law and practice, the Secretary of State makes this decision. *Koshotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

²⁶⁴ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

²⁶⁵ Article 6, Extradition Act 1927.

²⁶⁶ See, e.g., See Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997.

²⁶⁷ Extradition between the U.S. and Grenada is currently governed by the Treaty for the Mutual Extradition of Criminals between the United States and Great Britain (hereinafter the "1931 Treaty"), signed at London December 22, 1931, entered into force June 24, 1935, 47 Stat. 2122; TS 849, which continued in force after Grenada became an independent nation on February 7, 1974.

²⁶⁸ Extradition Act 1870, 33 & 34 Vict., c. 52 (hereinafter "Extradition Act 1870"). This British statute governed extradition at the time Grenada became independent from the United Kingdom in 1974, and continues to be the law in effect on this topic. The key sections of the Extradition Act 1870 that are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Grenada delegation stated that in Grenada treaties do not take priority over statutes, recognized that their extradition law would have to be amended to avoid conflict with the Treaty, and promised to take such steps as are necessary to effectively carry out the obligations in this Treaty.

²⁶⁹ See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

²⁷⁰ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

²⁷¹ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

²⁷² See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

²⁷³ Section 3(1), Extradition Act 1870, provides that extradition shall be denied if the crime is an offense "of a political character." The Grenada delegation assured the United States that this is identical to the political offense defense. Similar provisions appear in all recent U.S. extradition treaties.

²⁷⁴ Done at Vienna December 20, 1988, entered into force November 11, 1990.

²⁷⁵ There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

²⁷⁶ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

²⁷⁷ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

²⁷⁸ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

²⁷⁹ Article 9, 1931 Treaty.

²⁸⁰ See Extradition Act 1980, Section 17(1).

²⁸¹ Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

²⁸² See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), aff'd, 925 F.2d 615 (2nd Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

²⁸³ See Sections 14-15, Extradition Act 1870.

²⁸⁴ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

²⁸⁵ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

²⁸⁶ Similar provisions appear in all recent U.S. extradition treaties.

²⁸⁷ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

²⁸⁸ Title 18, United States Code, Section 3188.

²⁸⁹ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed. 2d 30 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

²⁹⁰ Extradition Act 1870, Section 12.

²⁹¹ Under United States law and practice, the Secretary of State would make this decision. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991). ²⁹² *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), aff'd, 932 F.2d 977 (11th Cir. 1991).

²⁹³ Similar provisions are found in all recent U.S. extradition treaties.

²⁹⁴ In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

²⁹⁵ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

²⁹⁶ Cf. Article 16, US-Netherlands Treaty, *supra* note 13.

²⁹⁷ A similar provision is in all recent U.S. extradition treaties.

²⁹⁸ See Article 20, U.S.-Jordan Extradition Treaty, *supra* note 16; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13,

1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

²⁹⁹ See 47 Stat. 2122; TS 849; 12 Bevans 482; 163 LNTS 59.

³⁰⁰ See Extradition Act, 1962, as amended by the Extradition (Amendment) Act, 1993 § 3184 (hereinafter the Indian Extradition Act).

³⁰¹ See, e.g., Article 2 of the Indian Extradition Act, providing that an "extradition offense" in relation to another Contracting State is "an offense provided for in the extradition treaty with that State."

³⁰² See Stanbrook and Stanbrook, *Extradition: The Law and Practice* 25-26 (1979).

³⁰³ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

³⁰⁴ Indian Penal Code of 1860 §§ 3,4.

³⁰⁵ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

³⁰⁶ See generally Shearer, *Extradition in International Law* 110-14 (1970); 6 Whiteman, *Digest of International Law* 871-76 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18 U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

³⁰⁷ See Commentary to Chapter I(1)(1), Indian Extradition Act.

³⁰⁸ Section 31(a) of the Indian Extradition Act provides that extradition shall be denied if the offense for which a fugitive is sought is "of a political character."

³⁰⁹ Done at the Hague December 16, 1970, entered into force October 14, 1971 (22 UST 1641, TIAS 7192).

³¹⁰ Done at Montreal September 23, 1971, entered into force January 26, 1973 (24 UST 564, TIAS 7570).

³¹¹ Done at New York December 14, 1973, entered into force February 20, 1977 (28 UST 1975, TIAS 8532, 1035 UNTS 167).

³¹² Done at New York December 17, 1979, entered into force June 3, 1983 (TIAS 11081).

³¹³ Done at New York March 30, 1961, entered into force December 13, 1964, for the United States June 24, 1967 (18 UST 1407, TIAS 6298, 520 UNTS 204).

³¹⁴ Done at Geneva March 25, 1972, entered into force August 8, 1975 (26 UST 1439, TIAS 8118, 976 UNTS 3).

³¹⁵ Done at Vienna December 20, 1988, entered into force November 11, 1990.

³¹⁶ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-03 (N.D. Cal. 1988).

³¹⁷ There are similar provisions in many U.S. extradition treaties. See, e.g., Article III(3) U.S.-Jamaica Extradition Treaty, signed June 14, 1983. Article 5(4) U.S.-Spain Extradition Treaty, signed May 29, 1970; Article 4 U.S.-Netherlands Extradition Treaty, signed June 24, 1980.

³¹⁸ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied 454 U.S. 894 (1981); *Koskotos v. Roche*, 744 F. Supp. 904, 916 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991). See also 18 U.S.C. § 3186.

³¹⁹ Indian Extradition Act, § 31 (a).

³²⁰ See, e.g., Article 5, U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995, entered into force July 29, 1995.

³²¹ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

³²² Other United States extradition treaties contain similar provisions. See, e.g., Article 4(1)(II), U.S.-Canada Extradition Treaty, signed at Washington Dec. 3, 1971, entered into force March 22, 1976 (UST 983, TIAS 8273); Article 5, U.S.-Switzerland Extradition Treaty, signed Nov. 11, 1990.

³²³ See, e.g., Article 7, U.S.-Netherlands Extradition Treaty, signed at the Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); Article 6, U.S.-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force December 15, 1984 (TIAS 10813).

³²⁴ Such a document must be issued by a competent authority.

³²⁵ Courts applying 18 U.S.C. § 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States § 476, comment b (1987).

³²⁶ See Indian Extradition Act § 7(4).

³²⁷ See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), aff'd, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

³²⁸ See Indian Extradition Act § 10.

³²⁹ See 18 U.S.C. § 3190.

³³⁰ Similar provisions appear in all recent U.S. extradition treaties.

³³¹ See *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

³³² Title 18, U.S. Code, Section 3188 provides that any U.S. court, upon application, may discharge from custody a person so committed.

³³³ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed 2d 30 (1963) (decided by Goldberg, J., in chambers). See *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); see also *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

³³⁴ Indian Extradition Act, Section 24.

³³⁵ This is a discretionary provision exercisable by the Requested State only; it does not create any right which a fugitive might exercise.

³³⁶ Under United States law and practice, the Secretary of State makes this decision. *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

³³⁷ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

³³⁸ Indian Extradition Act § 30.

³³⁹ Similar provisions are found in all recent U.S. extradition treaties.

³⁴⁰ In the United States, the Secretary of State has the authority to consent to a waiver of the rule of speciality. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

³⁴¹ This provision is consistent with provisions in all recent U.S. extradition treaties.

³⁴² A similar provision exists in many recent U.S. extradition treaties.

³⁴³ See, e.g., Article 19, U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995, entered into force July 29, 1995 (Treaty Doc. No. 102-17). See also 18 U.S.C. §3195.

³⁴⁴ See Article 20, U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995 (Treaty Doc. No. 102-17); article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987 (Treaty Doc. No. 102-17).

³⁴⁵ On the date the Treaty was signed, the parties expressed their understanding in an exchange of letters, which have been provided to the Senate for its information, that

“... as a general matter, upon extradition, a person shall be proceeded against or punished under the ordinary criminal laws of the Requesting State, and shall be subject to prosecution or punishment in accordance with the Requesting State’s ordinary rules of criminal procedure. If either party is considering prosecution or punishment upon extradition based on other laws or other rules of criminal procedures, the Requesting State shall request consultations and shall make such a request only upon the agreement of the Requested State.”

This understanding was developed during the negotiations after discussions of India’s Terrorist and Disruptive (Prevention) Act (TADA), which was in force when the negotiations commenced in 1994 and has been used in connection with the detention and prosecution of persons charged with terrorist offenses. Although TADA lapsed on May 23, 1995, it has continuing effect with respect to cases under investigation and trial on such date. TADA limits defendants’ rights in ways that have been the subject of criticism from non-governmental human rights groups and the State Department’s annual human rights report. This Understanding reflects the Parties’ agreement that if either party is considering prosecution or punishment upon extradition based on laws or rules of criminal procedures such as those in TADA, the Requesting State shall request consultations and shall make such a request only upon the agreement of the Requested State.

³⁴⁶ Extradition between the U.S. and St. Christopher and Nevis is governed by the U.S.-U.K. Extradition Treaty (hereinafter “the 1972 Treaty”), signed June 8, 1972, entered into force January 21, 1977 (28 UST 227, TIAS 8468), which continued in force after St. Christopher and Nevis became an independent nation on September 19, 1983.

³⁴⁷ Extradition Act, 1870, 33 & 34 Vict., c. 52 (hereinafter the “Extradition Act 1870”). This British statute governed extradition at the time St. Christopher and Nevis became independent from the United Kingdom, and continues to be the law in effect on this topic. The key sections of the Extradition Act 1870 which are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The St. Christopher and Nevis delegation stated that in St. Christopher and Nevis treaties do not take priority over statutes, and that the courts are bound by the Act, though the Government is bound by the Treaty. The United States delegation was assured that the terms of this Treaty would be given full effect, since under Section 2 of the Extradition Act 1870, the government of St. Christopher and Nevis may embody the terms of this Treaty in an Order in Council that will “render the operation of [the Extradition Act 1870] subject to such conditions, exceptions, and qualifications as may be deemed expedient” to implement the Treaty.

³⁴⁸ See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

³⁴⁹ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

³⁵⁰ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

³⁵¹ See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

³⁵² Section 3(1), Extradition Act 1870, provides that extradition shall be denied if the crime is an offense “of a political character.” The St. Christopher and Nevis delegation assured the United States that this is identical to the political offense defense. Similar provisions appear in all recent U.S. extradition treaties.

³⁵³ Done at Vienna December 20, 1988, entered into force November 11, 1990.

³⁵⁴ There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, and entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS

10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

³⁵⁵ See *Eain v. Wilkes*, 641 F.2d 504, 513-518 (7th Cir.) cert. denied 454 U.S. 894 (1981); *Koskotos v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

³⁵⁶ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 703-703 (N.D. Cal. 1988).

³⁵⁷ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

³⁵⁸ Article IX(1), 1972 Treaty. A similar requirement is found in Section 10 of the Extradition Act 1870.

³⁵⁹ See Extradition Act 1980, Section 17(1).

³⁶⁰ Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

³⁶¹ See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), aff'd, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

³⁶² See, Article VII(5) of the 1972 Treaty.

³⁶³ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

³⁶⁴ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

³⁶⁵ Similar provisions appear in all recent U.S. extradition treaties.

³⁶⁶ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

³⁶⁷ Title 18, United States Code, Section 3188.

³⁶⁸ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed. 2d 30 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

³⁶⁹ Extradition Act 1870, Section 12.

³⁷⁰ Under United States law and practice, the Secretary of State would make this decision. *Koskotos v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

³⁷¹ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), aff'd, 932 F.2d 977 (11th Cir. 1991).

³⁷² Similar provisions are found in all recent U.S. extradition treaties.

³⁷³ In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

³⁷⁴ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

³⁷⁵ Cf. Article 16, US-Netherlands Treaty, *supra* note 9.

³⁷⁶ A similar provision is in all recent U.S. extradition treaties.

³⁷⁷ See Article 20, U.S.-Jordan Extradition Treaty, *supra* note 12; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

³⁷⁸ Extradition between the U.S. and Saint Lucia is governed by the U.S.-U.K. Extradition Treaty (hereinafter "the 1972 Treaty"), signed June 8, 1972, entered into force January 21, 1977 (28 UST 227, TIAS 8468), which continued in force after Saint Lucia became an independent nation on February 23, 1979.

³⁷⁹ "An Act Relating to Fugitives in Saint Lucia from the criminal Law of other States and to fugitives from the Criminal Law of Saint Lucia in other States" of July 28, 1986 (hereinafter "the Extradition Act 1986"). The key sections of the Extradition Act which are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Saint Lucia delegation stated that in general in Saint Lucia treaties do not take priority over statutes, and that the courts are bound by the Act, though the Government is bound by the Treaty. However, the application of Saint Lucia's extradition law is "subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to [the applicable extradition] Treaty," Section 38(2), Extradition Act 1986, so Saint Lucia's delegation assured the United States delegation that the terms of the Treaty would be given full effect.

³⁸⁰ See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

³⁸¹ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

³⁸² See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

³⁸³ See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

³⁸⁴ Similar provisions appear in almost all recent U.S. extradition treaties. Section 6 of Saint Lucia's Extradition Act 1986 requires that extradition be denied if the crime is "an offense of a political character," but the delegations agreed that the two terms are equivalent.

³⁸⁵ Done at Vienna December 20, 1988, entered into force November 11, 1990.

³⁸⁶ There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force July 7, 1991;

Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

³⁸⁷ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied 454 U.S. 894 (1981); *Koskotos v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

³⁸⁸ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

³⁸⁹ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995, entered into force July 29, 1995.

³⁹⁰ Article IX(1), 1972 Treaty. A similar requirement is found in Section 16(1)(b), Extradition Act 1986.

³⁹¹ See Extradition Act 1980, Section 17(1).

³⁹² Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

³⁹³ See, e.g., *Spatola v. United States*, 741 F.Supp. 362, 374 (E.D.N.Y. 1990), aff'd, 925 F.2d 615 (2nd Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

³⁹⁴ Article VII(5), 1972 Treaty.

³⁹⁵ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

³⁹⁶ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

³⁹⁷ Similar provisions appear in all recent U.S. extradition treaties.

³⁹⁸ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

³⁹⁹ Title 18, United States Code, Section 3188.

⁴⁰⁰ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed 2d 30 (1963)(decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F. 2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

⁴⁰¹ Section 31, Extradition Act 1986.

⁴⁰² Under United States law and practice, the Secretary of State would make this decision. *Koskotos v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), aff'd 931 F.2d 169 (1st Cir. 1991).

⁴⁰³ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), aff'd, 931 F.2d 977 (11th Cir. 1991).

⁴⁰⁴ Section 24, Extradition Act 1986.

⁴⁰⁵ Similar provisions are found in all recent U.S. extradition treaties.

⁴⁰⁶ In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). For Saint Lucia, it is the Attorney-General. See Section 6(2)(b)(iii), Extradition Act 1986.

⁴⁰⁷ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

⁴⁰⁸ Cf. Article 16, US-Netherlands Treaty, *supra* note 14.

⁴⁰⁹ A similar provision is in all recent U.S. extradition treaties.

⁴¹⁰ See Article 20, U.S.-Jordan Extradition Treaty, *supra* note 15; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

⁴¹¹ Extradition between the United States and Luxembourg is governed by the Treaty on Extradition signed by the two nations at Berlin on October 29, 1883, and the Supplementary Extradition Convention signed at Luxembourg on April 24, 1935.

⁴¹² See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁴¹³ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 J. Crim. L. & Criminology 1109 (1982).

⁴¹⁴ See, e.g., Article 4, U.S.-Japan Extradition Treaty, signed March 3, 1978, entered into force March 26, 1980 (31 UST 892, TIAS 9625); Article 6, U.S.-Netherlands Extradition Treaty, signed June 24, 1980, entered into force September 15, 1983 (TIAS 10733).

⁴¹⁵ United States policy of drawing no distinction between United States nationals and others in extradition matters is underscored by Title 18, United States Code, Section 3196, which authorizes the Secretary of State to extradite United States citizens pursuant to a treaty that permits but does not expressly require surrender of citizens as long as the other provisions of the treaty have been met.

⁴¹⁶ See, e.g., Article 8, U.S.-Costa Rica Extradition Treaty, signed December 4, 1982, entered into force October 11, 1991; Article 3, U.S.-Hungary Extradition Treaty, signed Dec. 1, 1994; U.S.-Mexico Extradition Treaty, signed May 4, 1978, entered into force January 25, 1980 (31 UST 5059, TIAS 9656).

⁴¹⁷ Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁴¹⁸ There are similar provisions in many recent treaties. See Article 4(c), U.S.-Ireland Extradition Treaty, signed July 13, 1983, entered into force December 15, 1984 (TIAS 10813); Article 3(3), U.S.-Jamaica Extradition Treaty, signed June 14, 1983, entered into force July 7, 1991; Article 4, U.S.-Netherlands Extradition Treaty, signed June 24, 1980, entered into force September 15, 1983 (TIAS 10733); Article 5(4), U.S.-Spain Extradition Treaty, signed May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245).

⁴¹⁹See *Eain v. Wilkes*, 641 F.2d 504, 513-18 (7th Cir.), *cert. denied*, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990) *aff'd*, 931 F.2d 169 (1st Cir. 1991).

⁴²⁰An example of such a crime is desertion. *Matter of Suarez-Mason*, 694 F. Supp. 676, 703 (N.D. Cal. 1988).

⁴²¹See, e.g., Article 7, U.S.-Hungary Extradition Treaty, signed December 1, 1994; Article 6, U.S.-Ireland Extradition Treaty, signed July 13, 1983, entered into force December 15, 1984, (TIAS 10813); Article 7, U.S.-Netherlands Extradition Treaty, signed June 24, 1980, entered into force September 15, 1983 (TIAS 10733).

⁴²²U.S.-Netherlands Extradition Treaty, signed June 24, 1980, entered into force September 15, 1983 (TIAS 10733); U.S.-Belgium Extradition Treaty, signed April 27, 1987, entered into force September 2, 1997.

⁴²³Article 6, U.S.-Argentina Extradition Treaty, signed January 21, 1972, entered into force September 15, 1972 (23 UST 3501, TIAS 7510); Article 5, U.S.-Canada Extradition Treaty, signed December 3, 1971, entered into force March 22, 1976 (27 UST 983, TIAS 8237); Article 6, U.S.-Uruguay Extradition Treaty, signed April 3, 1973, entered into force April 11, 1984, (TIAS 10850).

⁴²⁴Courts applying Title 18, United States Code, Section 3184, long have required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States, § 476, comment b (1987).

⁴²⁵See *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. VT. 1979).

⁴²⁶See, e.g., Article 10, U.S.-Costa Rica Extradition Treaty, signed December 4, 1982, entered into force October 11, 1991; Article 11, U.S.-Italy Extradition Treaty, signed October 13, 1983, entered into force September 24, 1984 (TIAS 10837).

⁴²⁷Title 18, United States Code, Section 3190.

⁴²⁸*Cf. United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

⁴²⁹18 U.S.C. § 3188.

⁴³⁰See *Jimenez v. U.S. District Court*, 84 S. Ct. 14 (1963) (decided by Goldberg, J., in chambers); see also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

⁴³¹Under United States law and practice, the Secretary of State makes this decision. *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

⁴³²*Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

⁴³³In the United States, the Secretary of State has the authority to consent to a waiver of the rule of specialty. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

⁴³⁴See, e.g., Article 19, U.S.-Belgium Extradition Treaty, signed April 9, 1987; Article 21, U.S.-Hungary Extradition Treaty, December 1, 1994.

⁴³⁵31 U.S.T. 5059; TIAS 9656.

⁴³⁶For instance, clauses similar to this Protocol's provisions on temporary surrender are found in Art. 15, U.S.-Switzerland Extradition Treaty, signed Nov. 14, 1990, entered into force Sept. 10, 1997; Art. 12, U.S.-Belgium Treaty, signed April 27, 1987, entered into force Sept. 1, 1997; Art. 13, U.S.-Malaysia Treaty, signed August 3, 1995, entered into force June 2, 1997; Art. 14, U.S.-Hungary Treaty, signed Dec. 1, 1994, entered into force March 18, 1997; Art. 11, U.S.-Philippines Treaty, signed Nov. 13, 1994, entered into force Nov. 22, 1996; Art. 11, U.S.-Bolivia Treaty, signed June 27, 1995, entered into force Nov. 21, 1996; Art. 13, U.S.-Jordan Treaty, signed March 28, 1995, entered into force July 29, 1995; and Art. 12, U.S.-Bahamas, signed March 9, 1990, entered into force Sept. 22, 1994.

⁴³⁷1976 Treaty on the Execution of Penal Sentences, signed at Mexico November 25, 1976; 28 UST 7399, TIAS 8718.

⁴³⁸Extradition between the United States and the Republic of Poland is currently governed by the Extradition Treaty and Accompanying Protocol signed by the two nations at Warsaw on November 22, 1927, and the Supplementary Extradition Treaty signed at Warsaw on April 5, 1935.

⁴³⁹The 1969 Polish Code of Criminal Proceedings, Part XII, Articles 523-538. In addition, Article 118 of the Polish Criminal Code of 1969 states: "A Polish citizen may not be extradited to another state," and Article 110 of the same states: "An alien may not be extradited to another state if he enjoys the right to asylum."

⁴⁴⁰See Title 21, United States Code, Section 848.

⁴⁴¹See generally Title 18 and Title 31 of the United States Code.

⁴⁴²See Title 18, United States Code, Sections 1961-68.

⁴⁴³Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 J. Crim. L. & Criminology 1109 (1982).

⁴⁴⁴For example, Poland can prosecute its citizens for offenses committed outside Poland.

⁴⁴⁵See, e.g., Article III, Protocol Amending U.S.-Australia Extradition Treaty, signed Sept. 4, 1990; Article 1, Protocol Amending U.S.-Canada Extradition Treaty, signed Jan. 11, 1988; Article 2, U.S.-Hungary Extradition Treaty, signed Dec. 1, 1994.

⁴⁴⁶See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁴⁴⁷United States policy of drawing no distinction between United States nationals and others in extradition matters is underscored by Title 18, United States Code, Section 3196, which authorizes the Secretary of State to extradite United States citizens pursuant to a treaty that permits but does not expressly require surrender of citizens as long as the other provisions of the treaty have been met.

⁴⁴⁸See, e.g., Article 8, U.S.-Costa Rica Extradition Treaty, signed December 4, 1982, entered into force October 11, 1991; Article 9, U.S.-Mexico Extradition Treaty, signed May 4, 1978, en-

tered into force January 25, 1980; and Article 3, U.S.-Hungary Extradition Treaty, signed Dec. 1, 1994.

⁴⁴⁹Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁴⁵⁰There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force Jul 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

⁴⁵¹See *Eain v. Wilkes*, 641 F. 2d 504, 513-18 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990) *aff'd*, 931 F.2d 169 (1st Cir. 1991).

⁴⁵²An example of such a crime is desertion. *Matter of Suarez-Mason*, 694 F. Supp. 676, 703 (N.D. Cal. 1988).

⁴⁵³See, e.g., Article 7, U.S.-Hungary Extradition Treaty, signed Dec. 1, 1994; Article 6, U.S.-Ireland Extradition Treaty, signed July 13, 1983; Article 7, U.S.-Netherlands Extradition Treaty, signed June 24, 1980.

⁴⁵⁴Courts applying Title 18, United States Code, Section 3184, long have required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States, § 476, comment b (1987).

⁴⁵⁵See *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F. 2d 615 (2d Cir. 1991); *U.S. v. Clark*, 470 F. Supp. 976 (D. VT. 1979).

⁴⁵⁶This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

⁴⁵⁷*Cf. United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

⁴⁵⁸See, e.g., Article 10, U.S.-Colombia Extradition Treaty, signed September 14, 1979, entered into force March 4, 1982; Article 10, U.S.-Costa Rica Extradition Treaty, signed December 4, 1982, entered into force October 11, 1991; Article 11, U.S.-Italy Extradition Treaty, signed October 13, 1983, entered into force September 24, 1984.

⁴⁵⁹18 U.S.C. § 3188.

⁴⁶⁰See *Jimenez v. U.S. District Court*, 84 S. Ct. 14 (1963) (decided by Goldberg, J., in chambers); see also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

⁴⁶¹Under United States law and practice, the Secretary of State makes this decision. *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

⁴⁶²*Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

⁴⁶³In the United States, the Secretary of State has the authority to consent to a waiver of the rule of specialty. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

⁴⁶⁴See Article 20, U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995, entered into force July 29, 1995; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

⁴⁶⁵Extradition between the U.S. and Trinidad and Tobago is governed by the Treaty for the Mutual Extradition of Criminals between the United States and Great Britain (hereinafter the "1931 Treaty"), signed at London December 22, 1931, entered into force June 24, 1935, 47 Stat. 2122; TS 849, which continued in force after Trinidad became an independent nation on August 31, 1962.

⁴⁶⁶Republic of Trinidad and Tobago, Act No. 36 of 1985, Extradition (Commonwealth and Foreign Territories) Act hereinafter "the Extradition Act 1985"). The key sections of the Extradition Act 1985 that are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Trinidad delegation stated that in Trinidad treaties do not take priority over statutes, recognized that their extradition law would have to be amended to avoid conflict with the Treaty, and promised to take such steps as are necessary to effectively carry out the obligations in this Treaty.

⁴⁶⁷See Stanbrook and Stanbrook, *Extradition: The Law and Practice* 25-26 (1979).

⁴⁶⁸See, e.g., 21 U.S.C. § 848.

⁴⁶⁹See 18 U.S.C. §§ 1961-68.

⁴⁷⁰See 18 U.S.C. § 1341.

⁴⁷¹See 18 U.S.C. § 2314.

⁴⁷²Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); Blakesley, *United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

⁴⁷³See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁴⁷⁴See generally Shearer, *Extradition in International Law* 110-14 (1970); 6 Whiteman, *Digest of International Law* 871-76 (1968). Our policy of drawing no distinction between United States nationals and others in extradition matters is underscored by Title 18, United States Code, Section 3196, which authorizes the Secretary of State to extradite United States citizens pursuant to a treaty that permits but does not expressly require surrender of citizens as long as the other requirements of the treaty have been met. 18 U.S.C. § 3196.

⁴⁷⁵Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁴⁷⁶There are similar provisions in many recent U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into

force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

⁴⁷⁷ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

⁴⁷⁸ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

⁴⁷⁹ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

⁴⁸⁰ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

⁴⁸¹ See Extradition Act 1980, Section 17(1).

⁴⁸² Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

⁴⁸³ See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2d Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D.Vt. 1979).

⁴⁸⁴ See Section 15, Extradition Act 1985.

⁴⁸⁵ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

⁴⁸⁶ *Clark*, 470 F. Supp. at 976.

⁴⁸⁷ 18 U.S.C. § 3188.

⁴⁸⁸ See *Jimenez v. U.S. District Court*, 84 S. Ct. 14 (1963) (decided by Goldberg, J., in chambers); see also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

⁴⁸⁹ Extradition Act 1985, Section 17.

⁴⁹⁰ Under United States law and practice, the Secretary of State makes this decision. *Koskotas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990), *aff'd*, 931 F.2d 169 (1st Cir. 1991).

⁴⁹¹ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

⁴⁹² Extradition Law of 1985, Section 16(5).

⁴⁹³ In the United States, the Secretary of State has the authority to consent to a waiver of the rule of specialty. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979).

⁴⁹⁴ Cf. Article 16, US-Netherlands Extradition Treaty, signed at the Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733).

⁴⁹⁵ See Article 20, U.S.-Jordan Extradition Treaty, done at Washington, March 28, 1995, entered into force July 29, 1995; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

⁴⁹⁶ Extradition between the U.S. and St. Vincent and the Grenadines is governed by the U.S.-U.K. Extradition Treaty (hereinafter "the 1972 Treaty"), signed June 8, 1972, entered into force January 21, 1977 (28 UST 227, TIAS 8468), which continued in force after St. Vincent and the Grenadines became an independent nation on October 27, 1979.

⁴⁹⁷ "An Act to Make Provision for the return from Saint Vincent and the Grenadines of persons found therein who are accused or, or have been convicted of, offenses in other countries and whose return is requested by such other countries and for matters relating thereto," of December 27, 1989 (hereinafter "the Fugitive Offenders Act 1989"). The key sections of the Fugitive Offenders Act 1989 that are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The St. Vincent delegation stated that in general in St. Vincent and the Grenadines treaties do not take priority over statutes, and that its courts are bound by the Act, though the Government is bound by the Treaty. The application of St. Vincent's extradition law, however, is "subject to any limitations, conditions, exception or qualifications as are necessary to give effect to [the] treaty. . ." Section 39(2), Extradition Act 1981, so St. Vincent's delegation assured the United States delegation that the terms of the Treaty would be given full effect.

⁴⁹⁸ See Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

⁴⁹⁹ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); *Blakesley, United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

⁵⁰⁰ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁵⁰¹ See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, Digest of International Law 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

⁵⁰² Section 20, Fugitive Offenders Act 1989.

⁵⁰³ Similar provisions appear in almost all recent U.S. extradition treaties. Section 7(1)(a) of the Fugitive Offenders Act 1989 requires that extradition be denied if the crime is "an offense of a political character," but the delegations agreed that the two terms are equivalent.

⁵⁰⁴ Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁵⁰⁵ There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

⁵⁰⁶ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), *aff'd* 931 F.2d 169 (1st Cir. 1991).

⁵⁰⁷ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

⁵⁰⁸ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington, March 28, 1995, entered into force July 29, 1995.

⁵⁰⁹ Article IX(1), 1972 Treaty. A similar requirement is found in Section 12(4), Fugitive Offenders Act 1989.

⁵¹⁰ See Extradition Act 1980, Section 17(1).

⁵¹¹ Courts applying Title 18, United States Code, Section 3184 have long required probable cause for international extradition. Restatement (Third) of the Foreign Relations Law of the United States Section 476, comment b.

⁵¹² See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2nd Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

⁵¹³ See Article VII(5) of the 1972 Treaty.

⁵¹⁴ This provision is consistent with requirements imposed by U.S. law. See Title 18, United States Code, Section 3190.

⁵¹⁵ This is consistent with settled law in the United States, which holds that lapse of time is not a defense to extradition unless the treaty specifically provides to the contrary. *Freedman v. United States*, 437 F. Supp. 1252, 1263 (D. Ga. 1977); *United States v. Galanis*, 429 F. Supp. 1215, 1224 (D. Conn. 1977).

⁵¹⁶ Similar provisions appear in all recent U.S. extradition treaties. The topic of provisional arrest is dealt with in section 11, Fugitive Offenders Act 1989.

⁵¹⁷ This is intended to provide more specificity than Section 11 of the Fugitive Offenders Act 1989, which states that when a magistrate in Saint Vincent and the Grenadines has ordered a provisional arrest the magistrate may fix a reasonable period (of which the court shall give notice to the Governor-General) after which [the fugitive] will be discharged. . . ."

⁵¹⁸ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

⁵¹⁹ Title 18, United States Code, Section 3188.

⁵²⁰ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed. 2d 30 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

⁵²¹ Section 17, Fugitive Offenders Act 1989.

⁵²² Thus, the treaty is consistent with Section 18(1) of the Fugitive Offenders Act 1989 and provides more flexibility than the Article VI of the 1972 Treaty, which states that extradition "shall not be granted" in these circumstances.

⁵²³ Under United States law and practice, the Secretary of State would make this decision. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), *aff'd* 931 F.2d 169 (1st Cir. 1991).

⁵²⁴ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

⁵²⁵ Section 25, Fugitive Offenders Act 1989.

⁵²⁶ Similar provisions are found in all recent U.S. extradition treaties.

⁵²⁷ In the United States, the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). For Saint Vincent and the Grenadines, it is the Governor-General, pursuant to Section 7(3), Fugitive Offenders Act 1989.

⁵²⁸ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

⁵²⁹ A similar provision is found in Section 13, Fugitive Offenders Act 1989.

⁵³⁰ Cf. Article 16, US-Netherlands Treaty, *supra* note 11.

⁵³¹ A similar provision is in all recent U.S. extradition treaties.

⁵³² See Article 20, U.S.-Jordan Extradition Treaty, *supra* note 14; Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997; Article 24, U.S.-Switzerland Extradition Treaty, signed at Bern Nov. 14, 1990, entered into force September 10, 1997; Article 18, U.S.-Philippines Extradition Treaty, signed at Manila Nov. 13, 1994, entered into force November 22, 1996; Article 21, U.S.-Hungary Extradition Treaty, signed at Budapest Dec. 1, 1994, entered into force March 18, 1997.

⁵³³ Extradition between the U.S. and Zimbabwe was governed by the Treaty for the Mutual Extradition of Criminals between the United States and Great Britain, signed at London December 22, 1931, entered into force June 24, 1935, 47 Stat. 2122, TS 849, from 1935 until April 18, 1980, when Zimbabwe declared its independence from the United Kingdom.

⁵³⁴ Zimbabwe Extradition Act 1982 (hereinafter "the Extradition Act 1982"), as amended by the Extradition Amendment Act 1990 and the Extradition Amendment (No. 2) Act, 1990. The key sections of the Extradition Act 1982 that are germane to the interpretation and implementation of the Treaty are discussed in more detail in this Technical Analysis. The Zimbabwe delegation told the United States that in case of conflict between the treaty and internal Zimbabwe law Zimbabwe courts would apply the law. There are only minor differences between the Treaty and the Extradition Act 1982, however, and it is expected that Zimbabwe officials will take the necessary legal steps to direct, under Sections 3 and 13 of the Extradition Act 1982, that the Treaty have the force of law in Zimbabwe.

⁵³⁵ See, Stanbrook and Stanbrook, *Extradition: The Law and Practice*, 25-26 (1979).

⁵³⁶ See Section 2, Extradition Amendment (No. 2) of 1990.

⁵³⁷ Other types of economic activity that may have criminal ramifications, such as violations of the Sherman Antitrust Act, may not be considered criminal under Zimbabwe's laws, which has no counterpart legislation. Also, Zimbabwe's securities markets are not yet regulated by Government, so violations of our Securities and Exchange Act or other securities regulations may not have specific counterpart offenses under Zimbabwe law. However, extradition may be granted nevertheless if the substantive conduct alleged to have been committed would amount to fraud or other prohibited conduct under Zimbabwe law.

⁵³⁸ See Title 31, U.S. Code, Sections 321, 5311-5314, 5316-5322.

⁵³⁹ Restatement (Third) of the Foreign Relations Law of the United States § 402 (1987); *Blakesley, United States Jurisdiction over Extraterritorial Crime*, 73 Journal of Criminal Law and Criminology 1109 (1982).

⁵⁴⁰ See Article 2, U.S.-Bolivia Extradition Treaty, signed at La Paz June 27, 1995, entered into force November 21, 1996.

⁵⁴¹ See generally Shearer, *Extradition in International Law* 110-114 (1970); 6 Whiteman, *Digest of International Law* 871-876 (1968). Our policy of drawing no distinction between nationals of the United States and those of other countries in extradition matters is underscored by Title 18, U.S. Code, Section 3196, which authorizes the Secretary of State to extradite U.S. citizens pursuant to treaties that permit (but do not require) surrender of citizens, if other requirements of the Treaty have been met.

⁵⁴² See Section 3(2)(b), Extradition Act 1982.

⁵⁴³ Similar provisions appear in all recent U.S. extradition treaties. Section 15(b), Extradition Act 1982, provides that extradition shall be denied if the crime is "an offense of a political character." The Zimbabwe delegation assured the United States that this is identical to the political offense defense.

⁵⁴⁴ Done at Vienna December 20, 1988, entered into force November 11, 1990.

⁵⁴⁵ There are similar provisions in many U.S. extradition treaties. See Article III(3), US-Jamaica Extradition Treaty, signed at Kingston June 14, 1983, and entered into force July 7, 1991; Article 5(4), US-Spain Extradition Treaty, signed at Madrid May 29, 1970, entered into force June 16, 1971 (22 UST 737, TIAS 7136, 796 UNTS 245); Article 4, US-Netherlands Extradition Treaty, signed at The Hague June 24, 1980, entered into force September 15, 1983 (TIAS 10733); and Article IV(c), US-Ireland Extradition Treaty, signed at Washington July 13, 1983, entered into force Dec. 15, 1984 (TIAS 10813).

⁵⁴⁶ See *Eain v. Wilkes*, 641 F.2d 504, 513 (7th Cir.), cert. denied 454 U.S. 894 (1981); *Koskotas v. Roche*, 740 F. Supp. 904, 916 (D. Mass. 1990), *aff'd* 931 F.2d 169 (1st Cir. 1991).

⁵⁴⁷ An example of such a crime is desertion. *Matter of Extradition of Suarez-Mason*, 694 F. Supp. 676, 702-703 (N.D. Cal. 1988).

⁵⁴⁸ Similar provisions appear in many treaties, including Article 5 of the U.S.-Jordan Extradition Treaty, signed at Washington March 28, 1995, entered into force July 29, 1995.

⁵⁴⁹ This language is similar to Article 8(3)(b) of the United States' extradition treaty with the Bahamas.

⁵⁵⁰ Extradition Act 1982, Section 4(2)(c); see also Section 17(1)(c).

⁵⁵¹ See, e.g., *Spatola v. United States*, 741 F. Supp. 362, 374 (E.D.N.Y. 1990), *aff'd*, 925 F.2d 615 (2nd Cir. 1991); *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

⁵⁵² Title 18, United States Code, Section 3190.

⁵⁵³ Similar provisions appear in all recent U.S. extradition treaties. The topic of provisional arrest is dealt with in Sections 12 and 25 of Zimbabwe's Extradition Act 1982.

⁵⁵⁴ Cf. *United States v. Clark*, 470 F. Supp. 976 (D. Vt. 1979).

⁵⁵⁵ Extradition Act of 1982, Section 12(6).

⁵⁵⁶ Title 18, United States Code, Section 3188.

⁵⁵⁷ *Jimenez v. United States District Court*, 84 S. Ct. 14, 11 L.Ed 2d 30 (1963) (decided by Goldberg, J., in chambers). See also *Liberto v. Emery*, 724 F.2d 23 (2d Cir. 1983); *In Re United States*, 713 F.2d 105 (5th Cir. 1983); *Barrett v. United States*, 590 F.2d 624 (6th Cir. 1978).

⁵⁵⁸ Section 9(2), Extradition Act 1982. The fugitive may be released if the foreign authorities do not take custody within 15 days of the date set by the Minister.

⁵⁵⁹ Under United States law and practice, the Secretary of State would make this decision. *Koskotas v. Roche*, 740 F. Supp. 904, 920 (D. Mass. 1990), *aff'd* 931 F.2d 169 (1st Cir. 1991).

⁵⁶⁰ Thus, this provision is consistent with Section 28, Extradition Act of 1982.

⁵⁶¹ *Cheng Na-Yuet v. Hueston*, 734 F. Supp. 988 (S.D. Fla. 1990), *aff'd*, 932 F.2d 977 (11th Cir. 1991).

⁵⁶² Extradition Act of 1982, Section 29.

⁵⁶³ Similar provisions are found in all recent U.S. extradition treaties, and in the Extradition Act 1982, Sections 30-31.

⁵⁶⁴ In the U.S., the Secretary of State has the authority to grant such consent. See *Berenguer v. Vance*, 473 F. Supp. 1195, 1199 (D.D.C. 1979). In Zimbabwe, the Minister of Home Affairs has such authority.

⁵⁶⁵ Thus, the provision is consistent with the provisions of all recent U.S. extradition treaties.

⁵⁶⁶ A similar provision is in all recent U.S. extradition treaties, and is authorized by Section 23, Extradition Act 1982.

⁵⁶⁷ This provision supersedes the contrary provision in Title 18, United States Code, Section 3195.

⁵⁶⁸ See, e.g., Article 19, U.S.-Belgium Extradition Treaty, signed at Brussels April 27, 1987, entered into force September 1, 1997.