

EXTRADITION TREATY WITH THE DOMINICAN REPUBLIC

JULY 13, 2016.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 114–10]

The Committee on Foreign Relations, to which was referred the Extradition Treaty Between the United States of America and the Dominican Republic, signed at Santo Domingo on January 12, 2015 (Treaty Doc. 114–10), having considered the same, reports favorably thereon with one declaration and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of advice and consent to ratification.

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I. PURPOSE

The purpose of the Extradition Treaty with the Dominican Republic (hereafter “the Treaty”) is to impose mutual obligations to extradite fugitives at the request of a party subject to conditions set forth in the Treaty.

II. SUMMARY AND DISCUSSION OF KEY PROVISIONS

The United States is currently a party to over 100 bilateral extradition treaties, including a treaty with the Dominican Republic which was signed on June 19, 1909 (hereafter the “1909 Treaty”).

The treaty before the Senate is designed to replace, and thereby modernize, the century-old extradition treaty with the Dominican Republic. It was signed on January 12, 2015 and submitted to the

Senate on February 10, 2016. In general, the Treaty follows a form used in several other bilateral extradition treaties approved by the Senate in recent years. It contains two important features which are not in the 1909 treaty. First, the Treaty contains a “dual criminality” clause which requires a party to extradite a fugitive whenever the offense is punishable under the laws of both parties by deprivation of liberty for a maximum period of more than one year. This provision replaces the list of offenses specifically identified in the 1909 treaty. This more flexible provision ensures that newly-enacted criminal offenses are covered by the Treaty, thereby obviating the need to amend it as offenses are criminalized by the Parties.

Second, the Treaty provides for extradition of nationals. Specifically, Article 3 states that extradition “shall not be refused based on the nationality of the person sought.” This contrasts with Article VIII of the 1909 treaty, which excepts the obligation by a party to extradite its nationals. Many countries of Latin America have, historically, refused to extradite nationals. The United States, by contrast, does extradite its nationals, and has long attempted to convince extradition partners to do likewise.

The Treaty contains several other provisions worth noting. Consistent with U.S. policy and practice in recent years, the Treaty narrows the political offense exception. The political offense exception (an exception of long-standing in U.S. extradition practice) under Article III of the 1909 Treaty bars extradition of an individual for offenses of a “political” nature and “acts connected with such crimes or offenses”. The new Treaty with the Dominican Republic retains the political offense exception in Article 4, but provides that certain crimes shall not be considered political offenses, including violent crimes such as murder, manslaughter, inflicting grievous bodily harm, or crimes of sexual assault, crimes such as kidnapping or hostage taking, crimes related to explosives or the use of radiological or chemical agents capable of endangering life or causing substantial bodily harm or property damage or offenses for which both parties have an obligation to extradite under a multilateral agreement. Nevertheless, the Executive Authority of each Party retains discretion under Article 4 to refuse extradition upon a determination that the extradition request is politically motivated. The Executive Authority may also refuse extradition for offenses under military law that are not offenses under criminal law.

The Treaty contains a provision related to the death penalty. Under Article 6, when extradition is sought for an offense punishable by death in the Requesting State and is not punishable by death in the Requested State, the Requested State may refuse extradition unless the Requesting State provides an assurance that the person sought for extradition will not be executed. This provision is found in many U.S. extradition treaties, as many treaty partners do not impose the death penalty under their laws, and object to its application to fugitives whom they extradite to the United States.

Finally, the Treaty, under Article 15(2) “Rule of Specialty”, provides that a person extradited under this Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition unless the competent authority of the Requested Party consents.

III. ENTRY INTO FORCE AND TERMINATION

Under Article 21, the Treaty enters into force upon the exchange of the instruments of ratification, replacing the 1909 Treaty which “shall cease to have any effect as between the Parties” with the exception of pending requests under the 1909 Treaty. Either party may terminate the treaty on written notice; termination will be effective six months after the date of such notice.

IV. COMMITTEE ACTION

The Committee reviewed the Treaty at a briefing on May 23, 2016, at which representatives of the Departments of State and Justice were present. The Committee considered the Treaty on June 23, 2016 and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the Treaty subject to the declaration set forth in the resolution of advice and consent to ratification.

V. COMMITTEE COMMENTS

The Committee recommends favorably the Treaty with the Dominican Republic. It modernizes a treaty that is over a century old, and provides a more flexible “dual criminality” provision which will incorporate a broader range of criminal offenses than is covered under the current treaty with the Dominican Republic.

Following negotiation of the Rome Statute on the International Criminal Court in 1998, the Committee has recommended, in the consideration of extradition treaties, that the Senate include in its resolutions of advice and consent an understanding stating that the Rule of Specialty would bar the retransfer of a fugitive to the International Criminal Court without the consent of the United States as the United States has not ratified the Rome Statute.

As noted above, the terms of Article 15 Rule of Specialty under Dominican Republic Treaty clearly bars onward extradition unless the Requested state consents to the onward extradition or surrender. Furthermore, in his transmittal message of the Treaty to the Senate, the President reinforces this important protection by stating:

Similarly, the Article 15(2) provides that a person extradited under the Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition, unless the competent authority of the Requested Party consents. This provision would preclude the Dominican Republic from transferring to a third State or an international tribunal a fugitive that the United States surrendered to the Dominican Republic, unless the United States consents.

VI. EXPLANATION OF EXTRADITION TREATY WITH THE DOMINICAN REPUBLIC

What follows is a technical analysis of the Treaty prepared by the Departments of State and Justice.

Technical Analysis of the Extradition Treaty Between the Government of the United States of America and the Government of the Dominican Republic

The Extradition Treaty between the Government of the United States and the Government of the Dominican Republic (“Treaty”) replaces an outdated extradition treaty between the countries signed in 1909.

The following is an article-by-article description of the provisions of the Treaty:

ARTICLE 1—OBLIGATION TO EXTRADITE

Article 1 obligates each Party to extradite to the other persons sought by the Requesting Party for prosecution or for imposition or service of a sentence for an extraditable offense

ARTICLE 2—EXTRADITABLE OFFENSES

Article 2 defines extraditable offenses. Under Article 2(1), an offense is extraditable if it is punishable under the laws of both Parties by deprivation of liberty for a period of more than one year or by a more severe penalty. This formulation is consistent with the modern “dual criminality” approach. The new Treaty eliminates the requirement, found in the 1909 Extradition Treaty, that the offense be among those listed in the treaty. The dual criminality formulation obviates the need to renegotiate or supplement the Treaty as additional offenses become punishable under the laws of both Parties and ensures a comprehensive coverage of criminal conduct for which extradition may be sought.

Article 2(2) further defines an extraditable offense to include an attempt or a conspiracy to commit, or participation in the commission of, an extraditable offense, if the offense of attempt, conspiracy, or participation is punishable under the laws of both Parties by deprivation of liberty for a period of more than one year or by a more severe penalty. Under the broad term of “participation,” the Treaty covers such offenses as aiding, abetting, counseling, or procuring the commission of an offense, as well as being an accessory to an offense, at whatever stage of development of the criminal conduct and regardless of the alleged offender’s degree of involvement.

Additionally, Article 2(3) identifies a number of situations in which an offense will be extraditable despite potential differences in the criminal laws of both Parties. For instance, an offense shall be extraditable whether or not the laws of the Requesting and Requested Parties place the acts constituting the offense within the same category of offenses or describe the offense by the same terminology. In addition, an offense involving tax fraud or tax evasion, custom duties, or import/export controls shall be extraditable regardless of whether the Requested Party provides for the same sort of taxes, duties, or controls. This provision also makes explicit that an offense is extraditable where United States federal law requires the showing of certain matters merely for the purpose of establishing U.S. federal jurisdiction, including interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce; this clarifies an important issue for the United States in requesting extradition for certain federal crimes.

Article 2(4) addresses issues of territorial jurisdiction and specifies that an offense shall be extraditable regardless of where the act or acts constituting the offense was committed.

Article 2(5) prescribes that, if extradition is granted for an extraditable offense, it shall be granted for any other offense specified in the request even if the latter offense is punishable by a maximum of one year's deprivation of liberty or less, provided that all other requirements for extradition are met. Article 2(6) provides that, where the extradition request is for service of a sentence of imprisonment, extradition may be denied if, at the time of the request, the remainder of the sentence to be served is less than six months.

ARTICLE 3—NATIONALITY

Article 3 establishes that extradition shall not be refused based on the nationality of the person sought.

ARTICLE 4—POLITICAL AND MILITARY OFFENSES

As is customary in extradition treaties, Article 4 governs political and military offenses as a basis for the denial of extradition. Article 4(1) states generally that extradition shall not be granted if the offense for which extradition is requested is a political offense.

Article 4(2) describes five categories of offenses that shall not be considered to be political offenses. This list of exceptions were included in the extradition treaty between the United States and Chile (signed 2013) and is slightly broader than similar lists that appear in other, modern treaties, including those with Hungary (signed 1994), Poland (signed 1997), the United Kingdom (signed 2003), Bulgaria (signed 2007) and Romania (signed 2007). In addition to offenses that involve the possession, placement, use or threatened use of an explosive, incendiary or destructive device, the exception at Article 4(2)(d) also includes biological, chemical or radiological agents when such agent is capable of endangering life or causing substantial bodily harm or substantial property damage. Further, Article 4(2)(e) makes clear that aiding or abetting another person to commit, attempt to commit or participate in the commission of such offenses also is excluded from the political offense exception. This slight expansion of the political offense exception is in keeping with a major priority of the United States to ensure that an overbroad definition of political offense not impede the ability to extradite terrorists.

Notwithstanding Article 4(2), Article 4(3) provides that extradition shall not be granted if the competent authority of the Requested Party determines that the request was politically motivated.

Under Article 4(4) the executive authority of the Requested Party may refuse extradition for offenses under military law that are not offenses under ordinary criminal law. Desertion would be an example of such an offense.

ARTICLE 5—PRIOR PROSECUTION AND LAPSE OF TIME

Article 5 addresses denial of extradition in instances in which an individual has previously been prosecuted for the offense for which extradition is requested, as well as denial for lapse of time.

Article 5(1) precludes extradition of a person who has been convicted or acquitted in the Requested Party for the offense for which extradition is requested. Under Article 5(2), a person shall not be considered to have been convicted or acquitted when the authorities of the Requested Party: (a) have decided not to proceed against the person sought for the acts for which extradition is requested; (b) have decided to discontinue any criminal proceedings against the person for those acts; or (c) are still investigating or proceeding against the person sought for those acts. Article 5(3) provides that only the laws of the Requesting Party regarding lapse of time shall be considered for purposes of deciding whether or not to grant extradition. In this regard, the Requested Party is bound by the statement of the Requesting Party that the statute of limitations has not run.

ARTICLE 6—PUNISHMENT

Article 6 addresses punishment. When an offense for which extradition is sought is punishable by death under the laws of the Requesting Party but not under the laws of the Requested Party, under Article 6(1) the Requested Party may refuse extradition of the person sought unless the Requesting Party provides assurances that the death penalty shall not be imposed or, if for procedural reasons the Requesting Party cannot provide that assurance, if imposed, the death penalty shall not be carried out. If the Requesting Party provides such an assurance, the Requested Party shall grant extradition and the Requesting Party shall comply with the assurance. Except in instances in which the death penalty applies, Article 6(2) precludes the Parties from refusing extradition on the basis that the term of imprisonment for the offense is greater in the Requesting Party than in the Requested Party. This provision was included to ensure that extradition was not limited in cases in which the offense was eligible for life imprisonment as a maximum offense in one Party but not the other.

ARTICLE 7—EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

Article 7 specifies the procedures and documents required to support a request for extradition. Article 7(1) prescribes that all extradition requests be submitted through the diplomatic channel. Among several other requirements, Article 7(3)(c) establishes that extradition requests must be supported by such information as would provide a reasonable basis to believe that the person sought committed the offense(s) for which extradition is requested. Notably, this language mirrors the probable cause standard applied in U.S. criminal law. Article 7(6) permits the submission of additional information to enable the Requested Party to decide on the extradition request.

ARTICLE 8—ADMISSIBILITY OF DOCUMENTS

Article 8 sets out the procedures for the certification and admissibility of documents in extradition proceedings.

ARTICLE 9—TRANSLATION

Article 9 requires that all documents that the Requesting Party submits pursuant to the Treaty be accompanied by an official

translation into the language of the Requested Party, unless otherwise agreed in exceptional circumstances.

ARTICLE 10—PROVISIONAL ARREST

Article 10 provides that the Requesting Party may request the provisional arrest of fugitives and sets forth the procedures for making such a request pending presentation of the formal extradition request. Article 10(2) specifies the information that must accompany a provisional arrest request. Article 10(3) provides that the Requesting Party shall be notified without delay of the date of a provisional arrest or the reasons why the Requested Party cannot proceed with the request. Article 10(4) permits the release of the person provisionally arrested if the executive authority of the Requested Party does not receive the extradition request and supporting documents within 60 days of the date on which the person was provisionally arrested. This paragraph also specifies that receipt of the extradition request and supporting documents by the embassy of the Requested Party in the territory of the Requesting Party constitutes receipt by the executive authority of the Requested Party. Thus, such receipt by the embassy of the Requested Party constitutes timely receipt for purposes of complying with the time limitation for submission of the extradition request and supporting documents. Article 10(5) makes clear that the release of a person pursuant to Article 10(4) does not impede the person's rearrest and extradition if the Requested Party receives the extradition request and supporting documents at a later date.

ARTICLE 11—DECISION AND SURRENDER

Article 11 requires the Requested Party to promptly notify the Requesting Party of its decision on an extradition request. Under Article 11(2), if the Requested Party denies extradition, it must provide an explanation of the reasons for the denial. Article 11(3) provides for the person's surrender, while Article 11(4) addresses the person's discharge from custody if the person is not removed from the territory of the Requested Party within 60 days from the time that the person is made available for surrender or within the time prescribed by the law of that Party, whichever is longer. If the person is discharged from custody, the Requested Party retains the discretion to subsequently refuse extradition for the same offense.

ARTICLE 12—DEFERRAL OF EXTRADITION PROCEEDINGS AND DEFERRED OR TEMPORARY SURRENDER

Article 12 addresses deferred and temporary surrender of the person sought. Under Article 12(1), if the person sought is being proceeded against in the Requested Party, the Requested Party may defer the extradition proceedings until its own proceedings have been concluded. Under Article 12(2) when extradition proceedings have been concluded and extradition has been authorized, but the person sought is being criminally proceeded against or is serving a sentence in the Requested Party, the Requested Party may either defer the surrender of the person sought or temporarily surrender the person to the Requesting Party for the purpose of prosecution. Article 12(3) provides that the person may be detained until the surrender, while Article 12(4) requires the Requesting

Party to keep the person temporarily surrendered in custody while in the territory of the Requesting Party and to return the person to the Requested Party at the conclusion of the proceedings. The person's return to the Requested Party shall not require any further extradition request or proceedings.

ARTICLE 13—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

Pursuant to Article 13, if the Requested Party receives extradition requests for the same person from the Requesting Party and from any other States or State, either for the same offense or for different offenses, the executive authority of the Requested Party shall determine to which State, if any, it will surrender that person. Additionally, this Article sets forth a non-exclusive list of factors to be considered by the Requested Party in making its decision.

ARTICLE 14—SEIZURE AND SURRENDER OF ITEMS

Article 14 provides that, subject to certain conditions, the Requested Party may seize and surrender to the Requesting Party all items that are connected with the offense for which extradition is sought or that may be required as evidence in the Requesting Party.

ARTICLE 15—RULE OF SPECIALTY

Article 15 sets forth the rule of specialty, which prohibits a person extradited under the Treaty from being detained, tried, or punished in the Requesting Party, except for any offense for which extradition was granted, or for a differently denominated offense carrying the same or lesser penalty that is based on the same acts or omissions as the offense for which extradition was granted, provided such offense is extraditable or is a lesser included offense. The rule of specialty does not bar detention, trial or punishment of the extradited person if the offense is committed after the extradition of the person, or if the competent authority of the Requested Party consents. Similarly, Article 15(2) provides that a person extradited under the Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition, unless the competent authority of the Requested Party consents. This provision would preclude the Dominican Republic from transferring to a third State or an international tribunal a fugitive that the United States surrendered to the Dominican Republic, unless the United States consents. The competent authority for the United States for purposes of the article is the executive authority. Article 15(4) provides that the rule of specialty provisions in this article do not apply if the person sought waives extradition under Article 16(a).

ARTICLE 16—WAIVER AND SIMPLIFIED EXTRADITION

Article 16 allows the Parties to expedite the transfer of the person whose extradition is sought to the Requesting Party. If the person waives extradition, a judicial officer may direct the person's transfer to the Requesting Party without further proceedings. If the person consents to extradition or to a simplified extradition pro-

ceeding, the Requested Party may surrender the person as expeditiously as possible.

ARTICLE 17—TRANSIT

Article 17 governs the transportation through the territory of one Party of a person being extradited between the other Party and a third State. It also specifies the procedures for requesting such transit and makes clear that a person who is being transported pursuant to this article may be detained during the period of transit.

ARTICLE 18—REPRESENTATION AND EXPENSES

Article 18 requires the Requested Party to advise, assist, appear in court on behalf of, and represent the interests of the Requesting Party in any proceedings arising out of an extradition request. Additionally, the Requested Party must bear all expenses incurred in that State in connection with the extradition proceedings, except for expenses related to translation and transportation of the person surrendered.

ARTICLE 19—CONSULTATION

Article 19 provides that the U.S. Department of Justice and the Dominican Office of the General Prosecutor may consult with each other directly in connection with individual cases and in furtherance of efficient implementation of the Treaty

ARTICLE 20—APPLICATION

Article 20, like its counterpart in many other United States extradition treaties, establishes that the Treaty shall apply to requests submitted after the Treaty's entry into force even if the offenses for which extradition is requested were committed before the Treaty's entry into force, so long as the conduct on which the extradition request is based constituted an offense under the laws in both Parties at the time it occurred.

ARTICLE 21—RATIFICATION AND ENTRY INTO FORCE

Article 21 notes that the Treaty is subject to ratification and shall enter into force upon the exchange of the instruments of ratification. Article 21(3) provides that, upon entry into force, the 1909 Extradition Treaty will cease to have any effect between the Parties, except that the requests pending upon entry into force shall continue under the procedures of the 1909 Extradition Treaty supplemented by Article 6 of the Treaty.

ARTICLE 22—TERMINATION

Under Article 22, either Party may terminate the Treaty by giving written notice to the other Party through the diplomatic channel. The termination shall be effective six months after the date of such notice. Nevertheless, extradition requests made before the termination becomes effective shall be governed by the Treaty until final resolution of the request.

VII. TEXT OF THE RESOLUTION OF ADVICE AND
CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of the Dominican Republic, signed at Santo Domingo on January 12, 2015 (Treaty Doc. 114–10), subject to the declaration of section 2.

SEC. 2. DECLARATION.

The advice and consent of the Senate under section 1 is subject to the following declaration:

The Treaty is self-executing.

