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EXTRADITION TREATY WITH LITHUANIA

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

REPORT

[To accompany Treaty Doc. 107–4]

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 Republic of Lithuania, signed at Vilnius on October 23, 2001 (Treaty Doc. 107–4), having considered the same, reports favorably thereon with one condition 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 Lithuania (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 Lithuania. That treaty was signed and entered into force in 1924 (43 Stat. 1835), and

amended by a Supplementary Treaty signed in 1934 (49 Stat. 3077) (hereafter the "1924 treaty").

The treaty before the Senate is designed to replace, and thereby modernize, the treaty with Lithuania. It was signed in October 2001 and submitted to the Senate on May 7, 2002.

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 1924 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 1924 treaty with Lithuania. 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 the 1924 treaty, which does not obligate a party to extradite its nationals. Many countries in Europe 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. Inclusion of this provision in the Treaty with Lithuania is an important step forward in ensuring that fugitives who commit crimes in the United States are tried in U.S. courts.

The Treaty contains two 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) bars extradition of an individual for offenses of a "political" nature. The 1924 treaty contains such an exception in Article III, though it provides that murder or attempted murder of a Head of State or a member of his family shall not be considered a political offense. The Treaty before the Senate retains the political offense exception (and the Head of State exception to the exception) in Article 4. Several other exceptions to the political offense exception are added (see paragraph 2(c) through (f) of Article 4).

The Treaty also contains a provision related to the death penalty. Under Article 7, 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.

III. Entry Into Force and Termination

Under Article 22, the Treaty enters into force upon the exchange of the instruments of ratification. 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 public hearing on September 19, 2002, receiving testimony from representatives of the Departments of State and Justice (S. Hrg. 107–721). The Committee considered the Treaty on October 8, 2002, 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 condition set forth in the resolution of advice and consent to ratification.

V. Committee Comments

The Committee recommends favorably the Treaty with Lithuania. It modernizes a treaty which is nearly 80 years 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 Lithuania.

Following negotiation of the Rome Statute on the International Criminal Court in 1998, the Committee 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 Speciality would bar the retransfer of a fugitive to the International Criminal Court without the consent of the United States. This understanding also provides that the United States would not provide such consent unless it becomes a party to the Court under Article II of the U.S. Constitution. The Rome Statute has now entered into force. Inclusion of such an understanding in the resolution of advice and consent is unnecessary in this instance, however, because the Treaty itself specifically bars such a retransfer. Article 16(2) provides that a person extradited under the Treaty may not be extradited to a third state or extradited or surrendered to an international tribunal for any offense committed prior to extradition unless the Requested State consents.

The Committee notes that the State Department expects that parental child abduction will be an extraditable offense under the Treaty. The Committee strongly urges the Departments of Justice and State to seek extradition in such cases with Lithuania.

VI. Explanation of Extradition Treaty with Lithuania

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 Republic of Lithuania

On October 23, 2001, the United States signed an Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Lithuania. 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. Lithuania will enact the Treaty pursuant to its own domestic laws.

The Office of International Affairs, Criminal Division, United States Department of Justice, and the Office of the Legal Adviser, United States Department of State, prepared the following technical analysis of the new Treaty based on their participation in its negotiation.

As negotiated, the text of the Extradition Treaty between the United States and Lithuania substantially conforms to modern extradition treaties recently concluded by the United States, except as noted below.

ARTICLE 1—OBLIGATION TO EXTRADITE

This article provides that the Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with or convicted of an extraditable offense. During the negotiations, the Lithuanian delegation confirmed that the term "convicted" means found guilty under the laws of Lithuania. Moreover, under Lithuanian law, a defendant is sentenced at the time he is found guilty. The U.S. delegation explained that under U.S. law, there are separate proceedings for the prosecution and sentencing of a defendant. The Lithuanian delegation confirmed that a fugitive can be extradited when he has been found guilty but has not been sentenced.

ARTICLE 2—EXTRADITABLE OFFENSES

Article 2(1)—During the negotiations, the Lithuanian delegation confirmed that extraditable offenses include narcotics, terrorism, racketeering (RICO), and money laundering offenses. The Lithuanian delegation also confirmed that the treaty covers securities fraud, tax fraud, parental kidnaping, antitrust offenses, environmental protection offenses, conspiracy, and escape. The Lithuanian delegation pointed out that while some export control offenses may not be extraditable offenses, Lithuania will look for a violation of other penal laws to find the conduct is extraditable. Lithuania will extradite a fugitive who flees prosecution or escapes from detention so long as the prosecution or sentencing occurred no later than 15 years from the time the crime is committed. However, under Lithuanian law, there is no statute of limitations bar to the prosecution or sentencing of persons charged with genocide and war crimes. The Lithuanian delegation confirmed that extradition shall be granted irrespective of the amount of time remaining to be served, even if it is only a few months.

Article 2(2)—The Lithuanian delegation confirmed that, in general, an offense shall also be an extraditable offense if it consists of an attempt or a conspiracy, or participation in the commission of any offense encompassed by paragraph 1. Under Lithuanian law, the offense of abetting is applicable to all crimes. However, aiding a crime only pertains to severe felonies.

ARTICLE 3—NATIONALITY

Article 3, which contains language standard to many recent U.S. extradition treaties, was the basis for extensive discussion between the U.S. and Lithuanian delegations. The Lithuanian delegation noted that there is no word in the Lithuanian language for "nation-

ality." The closest word to "nationality" in the Lithuanian language is "citizenship." Consequently, the delegations agreed that the English text of the Treaty will use the word "nationality" and the Lithuanian text will use the word "citizenship." This provision overcomes the pre-existing legal barrier to the extradition of Lithuanian citizens. There is no barrier to extraditing non-citizens.

ARTICLE 5(1)—PRIOR PROSECUTION

The Lithuanian delegation expressed concern that the terms "convicted or acquitted" used in the first sentence are not broad enough to cover all matters under Lithuanian law. Therefore, the following sentence was added to provide a broader definition: "Conviction or acquittal also means, under Lithuanian law, an agreed resolution approved by a court with final and binding effect."

ARTICLE 9—ADMISSIBILITY OF DOCUMENTS

The delegations discussed the procedures required by their respective governments for the admissibility of extradition documents. They agreed that when the United States requests the extradition of a fugitive located in Lithuania, the documents must be "certified by the signature and official seal of the executive authority of Requesting State." In instances in which Lithuania requests the extradition of a fugitive, the documents must be "certified by the principal diplomatic or principal consular officer of the United States resident in the Republic of Lithuania, as provided by the extradition laws of the United States."

ARTICLE 11(1)—PROVISIONAL ARREST

Paragraph 1 provides that, in urgent cases, the United States Department of Justice and the Office of the Public Prosecutor or the facilities of the International Criminal Police Organization (Interpol) may transmit provisional arrest requests. The Lithuanian delegation noted that urgent provisional arrest requests should be perfected through the diplomatic channel. Thus, the United States agreed that in circumstances where the provisional arrest request is transmitted directly to the Office of the Public Prosecutor or Interpol, the United States will also provide a copy of the provisional arrest request, at a later time, through the diplomatic channels.

ARTICLE 12(1)—DECISION AND SURRENDER

The delegations agreed that notification of the Requested State's decision on the request for extradition should be provided through diplomatic channels. They also agreed to provide informal notification between the Department of Justice and the Office of the Public Prosecutor.

ARTICLE 13(1)—TEMPORARY AND DEFERRED SURRENDER

This article provides that, if the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought by the Requesting State for the

purpose of prosecution. The delegations agreed that, for purposes of this article, the term "prosecution" shall encompass standing trial, entering a plea of guilty, or receiving a sentence. Moreover, the delegations agreed that in instances where the Requested State agrees to temporarily surrender the person sought, the Requesting State agrees that the person shall remain in custody unless the Requested State provides written approval for release on bail or some other form of constructive custody.

ARTICLE 14—REQUESTS FOR EXTRADITION MADE BY SEVERAL STATES

Article 14 contains standard language that makes clear that if the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority of the Requested State shall determine to which State, if any, it will surrender the person. The United States delegation noted that the decision by the United States will be made by the Department of State, in consultation with the Department of Justice. The Lithuanian delegation noted that the decision by Lithuania will be made by the Ministry of Justice, in consultation with the Office of the Prosecutor.

The delegations discussed relevant factors that shall be considered in making a decision regarding extradition where requests are made by several states. In accordance with paragraph c, the nationality of the person sought will be considered in determining the relevance of the respective interests of the Requesting States. Moreover, in paragraph e, the English text will use the term "nationality" of the victim, and the Lithuanian text will use the term "citizenship" of the victim. The delegations confirmed that these terms have the same meaning, as explained in Article 3 above.

ARTICLE 16(2)—RULE OF SPECIALITY

In order to ensure that this provision encompasses surrenders other than through extradition, the delegations agreed that the provision would read as follows: "A person extradited under this Treaty may not be extradited to a third State or extradited or surrendered to an international tribunal for any offenses committed prior to extradition unless the Requested State consents."

ARTICLE 17—CONSENT TO WAIVER OF EXTRADITION PROCEEDINGS

The delegations agreed that the Rule of Specialty does not apply when the person sought consents to be surrendered. The Lithuania delegation confirmed that such a consent can be made prior to the receipt of the formal documentation. They indicated that Lithuanian law requires a consent to be made in writing.

ARTICLE 18(2)—TRANSIT

In the unlikely event that either Party needs to invoke Article 18(2) to make an unscheduled landing on the territory of the other State, a request for transit must be received within 48 hours of the unscheduled landing. Typically, the language of this provision pro-

vides for 96 hours, however, under Lithuanian law, a person cannot he detained for more than 48 hours without consent of the court.

ARTICLE 20—CONSULTATION

The Parties agreed that they would meet and consult with each other once a year in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

ARTICLE 22—RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

The Parties agreed, in general, to the standard language of this provision. However, the Lithuanian delegation indicated that an additional sentence was necessary to clarify the status of requests submitted to the Ministry of Justice under the old Treaty, but not yet submitted to the courts prior to the entry into force of the new Treaty. The Lithuanian delegation feared that without further clarification, their courts would rely on the outdated Treaty. Thus, the delegations agreed to add the following sentence at paragraph 4: "With respect to any extradition proceedings in which the request for extradition was received by the Requested State but not submitted to its courts before the entry into force of this Treaty, the Requesting State, after entry into force of this Treaty, may amend or supplement the request for extradition as necessary in order for it to be submitted to the courts of the Requested State under this Treaty."

VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

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

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE EXTRADITION TREATY WITH LITHUANIA, SUBJECT TO A CONDITION.

The Senate advises and consents to the ratification of the Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Lithuania, signed at Vilnius on October 23, 2001 (Treaty Doc. 107–4; in this resolution referred to as the "Treaty"), subject to the condition in section 2.

SEC. 2. CONDITION.

The advice and consent of the Senate under section 1 is subject to the condition that nothing in the Treaty requires or authorizes legislation or other action by the United States that is prohibited by the Constitution of the United States as interpreted by the United States.

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