TESTIMONY OF

SAMUEL M. WITTEN

DEPUTY LEGAL ADVISER

U.S. DEPARTMENT OF STATE

BEFORE THE COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ON AN EXTRADITION TREATY WITH GREAT BRITAIN AND NORTHERN IRELAND,

AN EXTRADITION PROTOCOL WITH ISRAEL,

A MUTUAL LEGAL ASSISTANCE TREATY WITH GERMANY, AND

A MUTUAL LEGAL ASSISTANCE TREATY WITH JAPAN.

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Mr. Chairman and members of the Committee:

I am pleased to appear before you today to testify in support of four bilateral law enforcement instruments, two relating to extradition and two relating to mutual legal assistance in criminal matters. If approved by the Senate and brought into force, these treaties will improve key aspects our bilateral law enforcement relationships with four of our most important international partners -- the United Kingdom, Israel, Germany, and Japan. We understand that all four of these countries have completed or nearly completed their domestic approval processes, and it is important that the United States be in a position to bring these treaties into force as soon as possible.

The Department of State greatly appreciates this opportunity to address these treaties. The growth in transborder criminal activity, especially violent crime, terrorism, drug trafficking, and the laundering of proceeds of organized crime, has confirmed the need for increased international law enforcement cooperation. Extradition treaties and MLATs are essential tools in that effort, and their negotiation is an important part of a concerted effort by the Departments of State and Justice to modernize the legal tools available for the extradition of criminal fugitives, and in the investigation and prosecution of crimes.

I will address each of the instruments individually.

EXTRADITION TREATY WITH GREAT BRITAIN AND NORTHERN IRELAND

Turning first to the proposed new U.S.-UK Extradition Treaty, I note that the United Kingdom is one of the U.S. Government's most important allies in the global war against terrorism. The new treaty, if approved by the Senate, will substantially improve our ability to cooperate together on international extradition matters, one of the cornerstones of international law enforcement cooperation.

The treaty before the Senate updates the existing U.S.-UK treaty relationship to make it consistent with virtually all of our modern extradition treaties. It will replace the 1972 extradition treaty and 1985 supplementary treaty that are currently in force between the two countries. Once the treaty is ratified, the United States will be positioned to continue to receive the benefits of several recent changes in UK law, including the reduction in the evidentiary standard that the United States will be required to meet when seeking the extradition of a fugitive from the United Kingdom, thereby making it easier to bring fugitives to justice in the United States. Among other things, the treaty would also streamline the extradition procedures regarding requests to and from UK territories, by enabling U.S. certification of extradition requests to be made in those territories rather than through the United Kingdom's central authority in London.

The proposed treaty defines conduct as an extraditable offense if the conduct on which the offense is based is punishable under the laws in both States by deprivation of liberty for a period of one year or more or by a more severe penalty. This kind of pure "dual criminality" clause will be an improvement over the treaty regime currently in place, which lists categories of offenses plus other offenses listed in relevant UK extradition law and considered felonies under U.S. law. As with all of our dual criminality treaties, this provision means that the United States would not be required to extradite a fugitive where the UK charge would not be a crime if committed in the United States, for example, because the underlying conduct would be protected by the Constitution and therefore could not be criminalized.

The treaty requires that extradition be denied if the competent authority of the Requested State determines that the request is politically motivated. Like all other modern U.S. extradition treaties, the new treaty grants the executive branch rather than the judiciary the authority to determine whether a request is politically motivated. This change makes the new treaty consistent with U.S. practice with respect to every other country with which we have an extradition treaty. Under the new treaty, as under the existing treaty, U.S. courts will continue to assess whether an offense for which extradition has been requested is a political offense.

Another helpful improvement in the proposed treaty deals with the treatment of the statute of limitations. A decision by the Requested State whether to grant the request for extradition shall be made without regard to any statute of limitations in either State. This of course does not eliminate the application of the statute of limitations for either the United States or the United Kingdom once a fugitive has been returned. Rather, it reserves the legal determination on the issue of the statute of limitations to the courts of the country where the criminal charges are pending. This provision is typical of our other modern extradition treaties. Similarly, the treaty has a modern provision on the provisional arrest of fugitives that is typical of our extradition practice and consistent with U.S. law.

The treaty also provides that the Requested State may, to the extent permitted under its law, seize and surrender to the Requesting State all items and assets, including proceeds, that are connected with the offense in respect of which extradition is granted. This same concept, which is contained in the existing treaty and virtually all U.S. extradition treaties, is helpful to law enforcement officials in some cases in securing evidence related to the offense for which the fugitive is sought.

In addition, the treaty sets forth a clear "Rule of Specialty" which provides, subject to specific exceptions, that fugitives can only be tried for the charges for which they were extradited, absent specific consent by the State that has extradited

the fugitive. The current U.S.-UK treaty does not contain a provision for waiver of the rule of specialty, and the proposed provision is substantially the same as the parallel provision in our modern extradition treaties.

Consistent with longstanding U.S. practice, the treaty would be applicable to offenses committed before, as well as after, the date of entry into force.

EXTRADITION PROTOCOL WITH ISRAEL

The extradition protocol with Israel, signed July 6, 2005, would supplement the 1962 extradition convention currently in force between the United States and Israel. The protocol would update the existing treaty relationship with this very important law enforcement partner in a manner consistent with our modern extradition treaties.

Significantly, the protocol would replace the current list of offenses with a "dual criminality" regime, thus permitting extradition for offenses not currently included in the existing convention. The protocol also updates the provision listing the exceptions to extradition, including by adding a military offense exception; expanding the list of offenses excluded from the political offense exception; and modernizing the prior prosecution clause to provide that extradition may -- as opposed to shall -- be denied if the person has already been tried and convicted in a third country for the offense for which extradition is requested.

The protocol updates the statute of limitations provision in the current convention, which states that extradition shall not be granted if an offense or the execution of the penalty is time-barred in either the Requested or the Requesting Party. The protocol would limit this exception to only those situations where the Requested Party's law requires the denial of extradition if the offense or execution of the penalty is time-barred in the Requested Party. Although Israeli law currently precludes extradition if the offense or execution of the penalty is time-barred in Israel, this kind of flexible treaty provision will be helpful if Israel were to change its law to permit extradition regardless of Israel's statute of limitations.

Other provisions that would be updated by the protocol include: the provision providing for postponement of extradition proceedings or the deferral of surrender when a fugitive is already being proceeded against or serving a sentence for another offense; the procedures for requesting extradition and provisional arrest; the provision providing for the transit of a fugitive wanted by a third state; the rule of specialty provision; and the expenses provision, which also provides that a Requested Party shall represent the Requesting Party in any extradition proceedings. As with our other modern treaties, the protocol will apply to offenses committed before as well as after the date it enters into force.

The protocol addresses the issue of extradition of nationals in an innovative way intended to build on important recent advances in Israel's domestic extradition

law that make the extradition of nationals possible for Israel under certain circumstances. It repeats the existing convention's requirement that extradition cannot be denied solely on the basis of the nationality of the fugitive. It also provides that if required by its law, the Requested Party may condition the extradition of a national and resident on the assurance that the fugitive shall be returned to serve any sentence of incarceration in the Requested Party. The assurance ceases to have effect if the fugitive consents to serving his sentence in the Requesting Party or refuses to or withdraws his consent. The United States and Israel are parties to the Council of Europe Convention on the Transfer of Sentenced Persons, which provides the framework for the transfer of Israeli citizens back to Israel to serve their sentence. Moreover, the protocol requires that Israel enforce, according to its laws, the sentence imposed in the United States, even if that sentence exceeds the maximum penalty for such offense in Israel. Under Israeli law, prisoners are eligible for parole after serving 2/3 of their sentence. A returned fugitive would therefore be eligible for parole once he has served 2/3 of the term of years imposed in the United States.

I will now turn to the two mutual legal assistance treaties pending before the Committee with Germany and Japan, two key law enforcement partners.

MUTUAL LEGAL ASSISTANCE TREATY WITH GERMANY

The proposed U.S.-Germany Mutual Legal Assistance Treaty in Criminal Matters (MLAT) fills a significant gap in our network of MLATs with major European law enforcement partners. Like other recent MLATs concluded by the United States, the treaty with Germany broadly applies to criminal investigations and proceedings. It enables assistance in connection with investigations by regulatory agencies, for example the Securities and Exchange Commission, to the extent that they may lead to criminal prosecutions. Further, certain antitrust investigations and proceedings, even some types which are considered civil matters under German law, are within the scope of the MLAT.

The MLAT with Germany is typical of our over 50 MLATs with countries around the world, including most of the countries of Europe. It has several innovations, including provisions on special investigative techniques, such as telecommunications surveillance, undercover investigations, and controlled deliveries. It allows certain uses for evidence or information going beyond the particular criminal investigation or proceeding, which can include bilateral assistance to help prevent serious criminal offenses and the averting of substantial danger to public security.

The treaty identifies the U.S. Attorney General and the German federal Ministry of Justice as the central authorities responsible for the execution of the treaty. In view of the federal systems in both countries, it also lists, in an

appendix, those other federal and state authorities which are competent to initiate requests for assistance.

MUTUAL LEGAL ASSISTANCE TREATY WITH JAPAN

The United States and Japan signed an MLAT on August 5, 2003. While the United States has similar treaties in force with over 50 countries, this is the first MLAT signed by Japan. With the new proposed treaties with Germany and Japan, the United States has now concluded such treaties with all of our partners in the Group of Eight (G-8).

The Japan MLAT will provide an effective tool in the investigation and prosecution of a wide variety of offenses of concern to our two countries, including terrorism, drug trafficking, fraud and other white-collar crimes. The treaty permits assistance both for matters already deemed criminal and in connection with an administrative investigation of suspected criminal conduct (e.g., an investigation by the Securities and Exchange Commission of suspected securities fraud), in appropriate cases.

There is one aspect of this treaty related to the designation of Central Authorities that should be mentioned. The Central Authority is the entity that performs the functions provided for in the MLAT on behalf of each government. For the United States, the Central Authority is the Attorney General or a designee,

a function that has been delegated to the Office of International Affairs in the Criminal Division of the Department of Justice. For Japan, on the other hand, the Central Authority is either the Minister of Justice or the National Public Safety Commission (the National Police) or their designees. The authorization for Japan to designate two agencies is necessary because of the respective jurisdictions of the two Japanese agencies concerned. The MLAT is accompanied by an exchange of diplomatic notes provided to the Senate for its information that specifies the kinds of mutual legal assistance requests that will be handled by each agency on the Japanese side.

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Mr. Chairman, we very much appreciate the Committee's decision to consider these important treaties.

I will be happy to answer any questions the Committee may have.