

**No. 14963**

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**AUSTRALIA  
and  
ITALY**

**Treaty of extradition. Signed at Canberra on 28 November 1973**

*Authentic texts: English and Italian.*

*Registered by Australia on 19 August 1976.*

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**Traité d'extradition. Signé à Canberra le 28 novembre 1973**

*Textes authentiques : anglais et italien.*

*Enregistré par l'Australie le 19 août 1976.*

## TREATY<sup>1</sup> OF EXTRADITION BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY

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The Government of Australia and the Government of the Republic of Italy,

Desiring to make provision for the reciprocal extradition of accused or convicted persons,

Have decided to conclude a Treaty for that purpose and have agreed upon the following provisions:

*Article I.* 1. The Contracting Parties undertake to extradite to each other, in the circumstances and subject to the conditions specified in the present Treaty, any person who, being accused or convicted of an offence within Article II committed within the territory of the one Party, or committed outside that territory in the circumstances referred to in paragraph 5 of this Article, is found within the territory of the other Party.

2. A reference in this Treaty to the territory of a Contracting Party is a reference to all the territory under the jurisdiction of that Party, including airspace and territorial sea and vessels and aircraft owned by that Party or registered in its territory if any such vessel is on the high seas or any such aircraft is in flight when the act or omission constituting the offence takes place.

3. For the purposes of this Article, an aircraft shall be considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends.

4. For the purposes of this Article, the territory falling under the jurisdiction of Australia includes the Territories for the international relations of which Australia is responsible.

5. When the act or omission constituting the offence has taken place outside the territory of the requesting Party, the requested Party has power to grant extradition if the laws of the requested Party provide for the punishment of such an act or omission outside its territory.

*Article II.* 1. Extradition shall be granted for an act or omission constituting an offence coming within any of the following descriptions of offences if the offence is, according to the laws of both Contracting Parties:

- (a) punishable by a punishment not less severe than imprisonment or other form of detention for two years; and
- (b) one for which extradition can be granted:
  - (i) Wilful murder; murder; manslaughter.
  - (ii) Aiding, abetting, counselling or procuring suicide.
  - (iii) Maliciously or wilfully wounding; inflicting grievous bodily harm; assault occasioning actual bodily harm.
  - (iv) Rape; unlawful sexual intercourse with a female.
  - (v) Indecent assault.

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<sup>1</sup> Came into force on 10 May 1976, i.e. 30 days after the date of the exchange of the instruments of ratification, which took place at Rome on 10 April 1976, in accordance with article XXVI.

- (vi) Procuring, enticing or leading away, for the purposes of prostitution, another person, even with the consent of that person; exploiting the prostitution of another person, even with the consent of that person; keeping or managing, or knowingly financing or taking part in the financing of, a brothel; knowingly letting or renting a building or other place or any part thereof for the purpose of the prostitution of others.
- (vii) Illegal abortion.
- (viii) Kidnapping; abduction; false imprisonment.
- (ix) An offence against the law relating to dangerous drugs or narcotics.
- (x) Obtaining property or pecuniary advantage by deception; theft; embezzlement; fraudulent conversion; robbery; burglary or aggravated burglary, housebreaking or any similar offence; blackmail; handling stolen goods.
- (xi) An offence against bankruptcy or insolvency law.
- (xii) An offence against the law relating to companies committed by a company director or other officer of a company.
- (xiii) An offence relating to counterfeiting of coins; an offence against the law relating to the forgery of other forms of legal tender; any other offence against the law relating to forgery; false accounting.
- (xiv) Bribery.
- (xv) Perjury; subornation of perjury; conspiracy to defeat the course of justice.
- (xvi) Arson.
- (xvii) Malicious damage to property.
- (xviii) Any act done with intent to endanger the safety of persons travelling on a railway or on a vehicle, vessel or aircraft, or to endanger a vehicle, vessel or aircraft.
- (xix) Revolt on board a ship at sea or an aircraft in flight against the authority of the master of the ship or the commander of the aircraft.
- (xx) Piracy, involving ships or aircraft, according to international law.
- (xxi) Dealing in slaves.
- (xxii) Genocide or direct and public incitement to commit genocide.
- (xxiii) Attempting or conspiring to commit, or impeding the arrest or prosecution of a person who has or is believed to have committed, any offence for which extradition may be granted under the present Treaty.

2. Extradition shall also be granted for any other act or omission constituting an offence if the offence is, according to the laws of both Contracting Parties:

- (a) punishable by a punishment not less severe than imprisonment or other form of detention for two years; and
- (b) one for which extradition can be granted.

3. Extradition shall also be granted for participation in an offence to which this Article applies if the participation is punishable by the laws of both Contracting Parties by a punishment not less severe than imprisonment or other form of detention for two years.

4. A person convicted of an offence shall not be extradited for that offence unless he was sentenced to imprisonment for one year or more, or, subject to the provisions of Article III, to the death penalty.

5. Extradition shall not be granted for an offence against military law that is not otherwise an offence under the criminal law or for a fiscal offence.

*Article III.* If, under the law of the requesting Party, the person sought is liable to the death penalty for an offence for which extradition is requested, but the law of the requested Party does not provide for the death penalty in a similar case, extradition shall be refused unless the requesting Party provides such assurances as the requested Party considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.

*Article IV.* 1. Either Contracting Party may refuse to extradite a national of that Party.

2. For the purposes of this Article, the expression “national”, in relation to Australia, includes an Australian protected person.

3. The nationality of a person shall be determined as at the time of making of the request for extradition.

4. Where the requested Party refuses to extradite a national of that Party, it shall, if the other Party so requests and the laws of the requested Party allow, submit the case to the competent authorities in order that proceedings may be taken if they are considered appropriate and shall inform the requesting Party of the result of the request.

5. For the purposes of paragraph 4 of this Article, the files, information and exhibits relating to the offence shall be transmitted by the requesting Party to the requested Party without charge.

*Article V.* 1. Extradition for an act or omission constituting an offence shall not be granted if final judgement has been passed by the competent judicial authorities of the requested Party or of a third State upon the person sought in respect of that act or omission.

2. Extradition may be refused if the competent authorities of the requested Party have decided not to institute, or to terminate, proceedings in respect of that act or omission.

*Article VI.* 1. The requested Party may refuse to extradite the person sought if the competent authorities of that Party are proceeding against him in respect of any act or omission constituting an offence in respect of which his extradition is requested.

2. If the person sought is under examination or under punishment in the territory of the requested Party for an offence constituted by any other act or omission, his extradition shall be deferred until the conclusion of the trial and the execution of any punishment imposed on him.

*Article VII.* Extradition for an offence shall not be granted when the person sought has, according to the law of the requesting Party or the requested Party, become immune by reason of lapse of time or otherwise from the prosecution or punishment for the act or omission constituting that offence.

*Article VIII.* A person shall not be extradited if:

- (a) the offence for which his extradition is requested is regarded by the requested Party as an offence of a political character or as an offence connected with an offence of a political character; or

- b) the requested Party has substantial grounds for regarding the request for extradition as having been made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions or for believing that the person might, if extradited, be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.

2. The offences of genocide, attempted genocide, or conspiracy or direct and public incitement to commit genocide shall not be regarded as offences of a political character.

*Article IX.* If a request for extradition is made under the present Treaty for a person who at the time of the request is under the age of eighteen years and is considered by the requested Party to be one of its residents, the requested Party may recommend to the requesting Party that the request for extradition be withdrawn, specifying the reasons therefor.

*Article X.* 1. The request for extradition shall be accompanied by:

- (a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity and nationality;
- (b) a statement and particulars of the offence for which his extradition is requested;
- (c) the text, if any, of the law creating the offence, and a statement of the punishment which can be imposed therefor and whether any time limit is imposed on the institution of proceedings, or on the execution of any punishment imposed, for that offence; and
- (d) a statement of the legal provisions which establish the extraditable character of the offence according to the law of the requesting Party.

2. If the request relates to a person accused, it shall also be accompanied by a duly authenticated warrant of arrest issued by a judge or a magistrate in the territory of the requesting Party and by such duly authenticated evidence as, according to the law of the requested Party, would justify his trial if the act or omission constituting the offence had taken place in the territory of the requested Party.

3. If the request relates to a person already convicted and sentenced, it shall also be accompanied:

- (a) by a duly authenticated certificate of the conviction and sentence; and
- (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out and, in addition, if the person sought was not present at his trial, by a duly authenticated warrant of arrest and by such duly authenticated evidence as, according to the law of the requested Party, would justify his trial if the act or omission constituting the offence had taken place in the territory of the requested Party.

*Article XI.* 1. If a request for extradition relates to an accused person, extradition shall not be granted unless evidence is furnished that the offence for which his extradition is sought is one for which extradition may be granted under the present Treaty and evidence which would be, according to the law of the requested Party, sufficient to justify his trial if the act or omission constituting the offence had taken place in its territory.

2. If a request for extradition relates to a convicted person, extradition shall not be granted unless sufficient evidence is furnished that he was convicted of an of-

fence for which extradition may be granted under the present Treaty and that he still has to serve all or part of the punishment imposed.

3. If the requested Party considers that the evidence furnished in support of the request for the extradition of a person is not sufficient to enable the extradition to be granted, that Party may request that additional evidence be furnished within such time as that Party specifies.

*Article XII.* 1. When a request for extradition is granted, the requested Party shall, so far as its law allows, hand over to the requesting Party all articles (including sums of money):

(a) that may serve as proof of the offence; or  
(b) that have been acquired by the person sought as a result of the offence and are in his possession.

2. If the articles in question are liable to seizure or confiscation in the territory of the requested Party, the latter may, in connexion with pending proceedings, temporarily retain them or hand them over on condition that they are returned without charge.

3. These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought.

4. When these rights exist, the articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

*Article XIII.* A person sought shall not be extradited until he has been held judicially to be liable to extradition and until the expiration of any further period which may be required by the law of the requested Party.

*Article XIV.* 1. In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the competent authorities of the requesting Party.

2. The application for provisional arrest shall contain an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgement of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest if the act or omission constituting the offence had taken place in the territory of the requested Party.

3. When such an application is made, all necessary steps shall be taken in the territory of the requested Party to secure the arrest of the person in respect of whom the application is made.

4. The provisional arrest of the person sought shall be terminated upon the expiration of forty days from the date of his arrest if the request for his extradition has not been received but this provision shall not prevent the re-arrest or extradition of the person sought if the request for his extradition is received subsequently.

*Article XV.* 1. The authorities of the requested Party shall admit as evidence, in any proceedings for extradition, a sworn deposition or affirmation taken in the territory of the requesting Party, any warrant, any copy of any such deposition, affirmation or warrant, and any certificate of a conviction or sentence if it is duly authenticated.

2. A document shall be deemed to be duly authenticated for the purposes of this Treaty if:

- (a) in the case of a warrant it is signed, or in the case of any other original document it is certified, by a judge, magistrate or other competent authority of the requesting Party, or in the case of a copy it is so certified to be a true copy of the original; and
- (b) it is authenticated either by the oath of some witness or by being sealed with the official seal of the appropriate Minister of the requesting Party, or in such other manner as may be permitted by the law of the requested Party.

3. Any record of testimony that has not been given on oath but is duly authenticated shall be admitted in evidence in any proceedings for extradition where there is an indication that the person who gave the testimony, before deposing before the judicial authorities of the requesting Party, was informed by those authorities of the penal sanctions to which he would be subject in the case of false or incomplete statements.

*Article XVI.* Where a document that is sent from a Contracting Party to the other Contracting Party in accordance with the present Treaty is not in the language of the other Contracting Party, a translation of the document into that language shall be sent by the first-mentioned Contracting Party at the same time as the document is sent or as soon as possible after the document is sent.

*Article XVII.* 1. If the extradition of a person is requested concurrently by one of the Contracting Parties and by another State or States, whether for the same offence or for different offences, the requested Party shall decide whether the person is to be extradited to the requesting Party or to the other State or one of the other States.

2. In making a decision the requested Party shall have regard to all the circumstances and, in particular, to:

- (a) the provisions in this regard in any Treaties subsisting between the requested Party and the other State or States;
- (b) if the requests relate to different offences, the relative seriousness of the offences;
- (c) the place or places where the offence was or offences were committed;
- (d) the respective dates of the requests;
- (e) the nationality and ordinary place of residence of the person; and
- (f) the possibility of subsequent extradition to another State.

*Article XVIII.* 1. Where extradition of a person is granted, the person shall be conveyed by the appropriate authorities of the requested Party to a port or airport in the territory of that Party agreed between that Party and the requesting Party.

2. The date on which the person to be extradited to the requesting Party shall be agreed between that Party and the requested Party.

3. If the person has not been taken over within seven days after the agreed date or such other date as is agreed between the Parties in substitution for that date, the requested Party may release the person from custody.

4. Nothing in the preceding provisions requires the requested Party to surrender a person if he has not been taken over before the expiration of two months from the making of the order for his extradition or of the final decision of the courts of that Party on any application by the person for release from custody or on any appeal by the person against the decision to extradite him.

5. If a person is released from custody in accordance with paragraph 3 of this Article, the requested Party may refuse to extradite the person for the offence concerned.

*Article XIX.* 1. A person extradited shall not:

- (a) be kept in custody or tried in the territory of the requesting Party for any offence, other than one for which extradition can be granted under the present Treaty and which is established by the facts in respect of which the extradition is granted, or on account of any matter that does not fall within the present Treaty; or
- (b) be extradited by the requesting Party to a third State.

2. The foregoing provisions do not apply:

- (a) to offences committed or matters arising after the extradition;
- (b) to offences referred to in Article II of the present Treaty in respect of which the requested Party consents to the person being kept in custody or tried;
- (c) to the extradition of the person to a third State if the requested Party consents to his being so extradited; or
- (d) if the person has left the territory of the requesting Party after his extradition and has come back voluntarily to that territory or, if he has not left that territory, at the expiration of thirty days after he has had an opportunity of leaving that territory.

*Article XX.* 1. Where

- (a) a person is to be extradited for an offence by a third State to a Contracting Party through the territory of the other Contracting Party; and
- (b) the person could be extradited for that offence by the other Contracting Party to the first-mentioned Contracting Party under the conditions of the present Treaty,

the other Contracting Party shall, upon request, permit the transit of that person through its territory.

2. A request for transit shall be accompanied by

- (a) a copy of the warrant or of a certificate proving the conviction of that person, issued in the territory of the requesting Party, being a copy duly authenticated; and
- (b) if those documents do not specify the offence for which the person is to be extradited, a document specifying the offence and setting out particulars of the offence.

3. Permission for the transit of a person includes permission for the person during transit to be held in custody by a person nominated by the Contracting Party to which the first-mentioned person is to be extradited.

*Article XXI.* 1. Where

- (a) a person who is to be extradited by a third State to a Contracting Party is proposed to be transported by aircraft over the territory of the other Contracting Party, without landing in that territory; and
- (b) the first-mentioned Contracting Party is of the opinion that, if the aircraft were to land in that territory, the transit of that person through that territory would be permitted under Article XX of the present Treaty,

the first-mentioned Contracting Party shall notify the other Contracting Party of the proposed transport of the person and shall confirm to the other Contracting Party that, in its opinion, the transport would be in accordance with Article XX of the present Treaty.

2. In the event of an unscheduled landing in the territory of a Contracting Party of an aircraft carrying a person who is being so transported, that Contracting Party may either permit the transit or shall cause the person to be held in custody pending the receipt of a request for transit in pursuance of Article XX of the present Treaty.

*Article XXII.* 1. Where Australia is the requested Party, it shall arrange for the representation of the Republic of Italy in any legal proceedings relating to the extradition of the person sought and shall otherwise represent the interests of the Republic of Italy.

2. Where the Republic of Italy is the requested Party, it shall represent the interests of Australia by all legal means envisaged by its legal system.

3. Except as provided by paragraphs 4 and 5 of this Article, no pecuniary claim arising out of the arrest, detention, examination and surrender of the person sought shall be made by the requested Party against the requesting Party.

4. Expenses relating to the transportation of the person sought from the port or airport referred to in Article XVIII of the present Treaty shall be paid by the requesting Party.

5. If, for the purpose of giving effect to its obligations under paragraph 1 or 2 of this Article, the requested Party engages legal officers or other persons who receive no salary or compensation other than specific fees for acts or services performed, that Party is entitled to receive from the requesting Party the usual payment for those acts or services in the same manner and to the same amount as though the acts or services had been performed in ordinary criminal proceedings under the laws of the requested Party.

*Article XXIII.* 1. Communications between the Contracting Parties shall be conveyed through the diplomatic channel.

2. An application under Article XIV of the present Treaty may also be made by means of the facilities of the International Criminal Police Organisation (INTERPOL).

*Article XXIV.* 1. On the entry into force of the present Treaty the provisions of the Treaty for the Mutual Surrender of Fugitive Criminals signed at Rome on the 5th day of February 1873<sup>1</sup> (in this Article referred to as "the Treaty of 1873") shall cease to have effect as between Australia and the Republic of Italy.

2. The present Treaty shall apply to any offence committed before its entry into force, provided that the offence would have constituted an offence under the Treaty of 1873 and under Article II of the present Treaty.

*Article XXV.* Either of the Contracting Parties may terminate the present Treaty at any time by giving notice to the other and, if such a notice is given, the Treaty shall cease to have effect six months after the receipt of the notice.

<sup>1</sup> United Nations, *Treaty Series*, vol. 104, p. 48.

*Article XXVI.* 1. The present Treaty is subject to ratification and the instruments of ratification shall be exchanged at Rome as soon as possible.

2. It shall enter into force thirty days after the date of the exchange of instruments of ratification.

DONE in duplicate at Canberra on the twenty-eighth day of November, One thousand nine hundred and seventy-three, in the English and Italian languages, each text being equally authentic.

*[Signed — Signé]*<sup>1</sup>

For the Government  
of Australia

*[Signed — Signé]*<sup>2</sup>

For the Government  
of the Republic of Italy

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<sup>1</sup> Signed by D. R. Willesee—Signé par D. R. Willesee.

<sup>2</sup> Signed by Luigi Granelli—Signé par Luigi Granelli.