

No. 24857

**CANADA
and
ITALY**

**Treaty concerning extradition (with annex). Signed at Rome
on 6 May 1981**

Authentic texts: English, French and Italian.

Registered by Canada on 16 July 1987.

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Enregistré par le Canada le 16 juillet 1987.

TREATY¹ BETWEEN CANADA AND ITALY CONCERNING EXTRADITION

The Government of Canada and the Government of the Republic of Italy,
Desiring to regulate by mutual agreement their relations in the field of extradition,

Have agreed as follows:

Article I. 1. Each Contracting Party agrees to extradite to the other Contracting Party, subject to the provisions of this Treaty, any person found within its territory who is charged by a competent authority of the other Contracting Party with, or who has been convicted by such an authority of, an offence mentioned in Article II.

2. Where the requesting State asserts jurisdiction in respect of an offence committed outside its territory the requested State shall grant extradition solely in the case where it would assert jurisdiction on a similar basis in respect of an offence committed outside its territory.

Article II. 1. Extradition shall be granted for any offence for which extradition may be granted under the law of both Contracting Parties and, in particular, without restricting the application of the foregoing, for the offences set out in the Annex to this Treaty, provided that such act or omission is an offence punishable under the law of both Contracting Parties.

2. Extradition shall also be granted in respect of any attempt to commit, or participation in, an offence set out in the Annex.

3. Extradition shall be granted only if the offence is punishable under the law of both Contracting Parties by imprisonment for a period of two years or by a more severe penalty or where the person claimed has been convicted, a period of deprivation of liberty of at least six months' duration remains to be served.

4. Where the request for extradition relates to more than one offence, not all of which fulfill the requirements of paragraph 3, the requested State may, if it grants extradition in respect of at least one offence which fulfills those requirements, also grant extradition in respect of the others.

Article III. 1. A request for the extradition of a citizen of the requested State shall, subject to the provisions of this Treaty, be granted unless that State gives notice to the requesting State that it will prosecute the person claimed in its territory for the offence for which extradition is requested. In such a case, any files, documents and exhibits relating to the prosecution shall be provided by the requesting State. All expenses incurred in connection with the prosecution shall be borne by the requested State. The requesting State shall be informed of the result of the prosecution.

2. Extradition shall not be refused under paragraph 1 unless the person claimed is a citizen of the requested State at the time the request for extradition is submitted.

¹ Came into force on 27 June 1985 by the exchange of the instruments of ratification, which took place at Ottawa, in accordance with article XXIII (2).

Article IV. 1. Extradition shall not be granted if:

- a) The offence is considered by the requested State to be an offence of a political character; or
- b) The requested State considers that the request for extradition has been made for the purpose of prosecuting or punishing the person claimed by reason of race, religion, nationality or political opinion.

2. The following offences shall be presumed to be offences which are not of a political character where the circumstances in which they are committed involve danger to life or to the freedom of any person:

- a) A murder, kidnapping or other attack upon the person or liberty of an individual to whom a Contracting Party has a duty according to international law to give special protection;
- b) An attack on the official premises, private accommodation or means of transportation of any individual referred to in sub-paragraph (a) of this paragraph; or
- c) Any offence set out in Items 20 and 21 of the Annex.

Article V. Extradition shall not be granted where:

- a) The offence was committed on the territory of the requested State, unless the competent authorities of that State decide not to proceed against the person claimed;
- b) The person claimed has already been tried, and acquitted of, or punished for, the offence;
- c) The person claimed is or has been under investigation or trial in the requested State for the offence in respect of which extradition is requested;
- d) The offence is considered by the requested State to constitute a breach of military law alone;
- e) The prosecution or punishment is barred by lapse of time;
- f) The offence punishable by death under the law of the requesting State if the law of the requested State does not provide such a punishment for that offence, unless the requesting State considers sufficient that the death penalty shall not be imposed or, if imposed, shall not be executed.

Article VI. A request for extradition and any subsequent correspondence shall be communicated through the diplomatic channel.

Article VII. 1. A request for extradition shall be in writing and shall be accompanied by:

- a) All available information concerning the description and identity of the person claimed;
- b) A description of the offence, including the date and place of its commission, unless this information appears in the warrant of arrest or certificate of conviction; and
- c) The text of all provisions of the law of the requesting State applicable to the offence.

2. A request for extradition which relates to a person charged with an offence or to a person convicted in contumacy shall, in addition to the documents required by paragraph 1, be accompanied by:

- a) A warrant of arrest issued by judicial authority of the requesting State; and
- b) Such evidence as, according to the law of the requested State, would justify the arrest and committal for trial of the person claimed, if the offence had been committed in the requested State.

3. A request for extradition which relates to a convicted person shall, in addition to the documents required by paragraph 1, be accompanied by:

- a) A certificate of the conviction of the person claimed, including any penalty imposed, issued by a competent authority of the requesting State;
- b) A statement that there is no legal impediment to imposition or execution of the penalty and that shows how much of the penalty imposed remains to be served.

Article VIII. 1. Any document required by Article VII and any statement on oath or affirmation taken in or on behalf of the requesting State shall be admitted in evidence in extradition proceedings in the requested State if it is certified to be the original or true copy by being signed by a judge or officer of the requesting State and is authenticated by being sealed with the seal of the Minister of Justice of the requesting State. Any document that purports to be so signed and sealed shall be deemed to be duly certified and authenticated.

2. If the information given by the requesting State proves insufficient to allow the requested State to decide on the extradition request, the requested State shall ask for the necessary additional information and may set a time limit within which to receive it.

Article IX. If extradition is not granted because of insufficient evidence and if the person claimed is discharged from custody, this shall not prejudice the right of the requesting State to submit a further request for extradition in respect of the same offence together with additional evidence.

Article X. 1. The competent authorities of the requesting State may request the provisional arrest of the person claimed through either the diplomatic channel or the facilities of the International Criminal Police Organisation (INTERPOL) pending submission of the request for extradition. Where a request for the provisional arrest of the person claimed is made through the facilities of INTERPOL, it shall be confirmed through the diplomatic channel as soon as possible if the person claimed is located in the requested State.

2. The request for provisional arrest shall include:

- a) All available information concerning the description and identity of the person claimed;
- b) A statement that it is intended to request extradition;
- c) A description of the circumstances surrounding the commission of the offence;
- d) A copy of the warrant of arrest or certificate of conviction of the person claimed or a statement that such a warrant of conviction has been issued in the requesting State; and
- e) Any other information necessary to justify the issue of the warrant of arrest in the requested State.

3. The requested State shall inform the requesting State when the person claimed has been arrested.

4. If the request for extradition has not been received within the period of 45 days after the date of the arrest of the person claimed or such further time as the judicial authority of the requested State may direct, the person claimed shall be discharged from custody.

5. Discharge of the person claimed under paragraph 4 shall not prevent the initiation of subsequent extradition proceedings if the request for extradition is received after such discharge.

Article XI. Where requests for extradition of the same person are received from one of the Contracting Parties and one or more other States, the requested State shall have the discretion to determine to which State the person is to be extradited, having regard to all the circumstances, including the relative seriousness and the place of commission of the offences, the respective dates of requests, the nationality of the person sought and the possibility of a further extradition to another State.

Article XII. 1. The requested State shall notify the requesting State as soon as possible of its decision with regard to the request for extradition and, if extradition is granted, shall make the person claimed available to the persons who are authorised by the requesting State to receive him at the time and place agreed between the Contracting Parties. If extradition is not granted, reasons shall be given by the requested State.

2. Where the person claimed has been made available in accordance with paragraph 1 but has not been conveyed out of the territory of the requested State, within 45 days after the requesting State has received notice that extradition has been granted, he may be discharged from custody and the requested State may thereafter refuse to extradite him for the same offence.

3. The requested State shall inform the requesting State of the period of time during which the person claimed was in custody for the purpose of extradition.

Article XIII. The requested State may postpone the surrender of the person claimed in order to prosecute him or in order that he may serve a penalty in respect of an offence other than that for which extradition has been requested, and shall so inform the requesting State.

Article XIV. 1. If extradition is granted, the requested State shall, so far as its law permits, and subject to the rights of third parties, surrender all property, including money, found in the possession of the person claimed that may be required as evidence or that has been acquired as a result of the offence. Such property shall, so far as possible, be surrendered without any specific request and at the same time as the surrender of the person claimed.

2. The requested State may refuse to surrender any property in respect of which a third party may assert a claim, unless it receives satisfactory assurances from the requesting State that the property will be returned as soon as possible.

Article XV. 1. A person extradited under this Treaty shall not be tried, punished or detained in the requesting State for any offence committed prior to his surrender other than that for which extradition was granted except where:

a) the requested State consents thereto; or

b) having had the opportunity lawfully to leave the requesting State, he has not done so within 45 days after his final discharge from custody or, having left, he has voluntarily returned to that State.

2. Instead of the offence for which he has been extradited, the person extradited may be tried or punished for a different offence, provided that it is based on the same facts as were set out in the request for extradition and supporting documents and that it is an extraditable offence under this Treaty.

3. The requesting State shall inform the requested State of the results of the prosecution of the person extradited. A copy of the final decision shall be provided on request.

Article XVI. The Contracting Party to which a person has been extradited under this Treaty shall not reextradite him to a third State without the consent of the Contracting Party that extradited him, except in the circumstances referred to in Article XV, sub-paragraph 1(b). The request for consent to reextradition shall be accompanied by originals or two copies of the extradition documents of the third State.

Article XVII. Transit of a person who is being extradited from a third State through the territory of one Contracting Party to the other Contracting Party shall be granted on request, subject to the law of the Contracting Party through the territory of which the person is to be transported and provided that transit of a person may be refused on any ground on which the extradition of that person might be refused under this Treaty. The Contracting Party requesting transit shall provide any documents required by the other Contracting Party.

Article XVIII. Any documents submitted in accordance with this Treaty shall be accompanied by a translation certified in accordance with the law of the requesting State. Any such translation shall be admissible as evidence in extradition proceedings in the requested State.

Article XIX. Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State. The appropriate officials of the requested State shall assist the requesting State in the extradition proceedings. The requesting State shall bear the expenses incurred in respect of conveying the person extradited from the territory of the requested State and any expenses incurred in respect of transit.

Article XX. The procedure relating to provisional arrest, extradition and transit shall be governed solely by the law of the requested State.

Article XXI. 1. For the purpose of this Treaty, a reference to the territory of the Contracting Party means all territory, waters and air space under its jurisdiction.

2. An offence shall be deemed to have been committed in the territory of a Contracting Party if it was committed

- a) on the high seas on board a vessel registered in the territory of that Contracting Party; or
- b) against or on board an aircraft or in respect of an air navigation facility and that Contracting Party asserts jurisdiction over the offence.

3. An offence committed partly within the territory of one of the Contracting Parties shall be deemed to have been committed entirely within its territory.

Article XXII. Upon coming into force, this Treaty shall replace and supersede, in relations between the Contracting Parties, the Treaty between Great Britain and Italy for the Mutual Surrender of Fugitive Criminals signed in Rome on February 5, 1873¹ and the Declaration correcting an error in Article XVIII of the Treaty, signed in Rome on May 7, 1873.²

Article XXIII. 1. This Treaty shall be ratified; the instruments of ratification shall be exchanged in Ottawa as soon as possible.

2. This Treaty shall enter into force on the date of the exchange of the instruments of ratification.

3. This Treaty may be denounced in writing by either Contracting Party at any time and it shall terminate one year after the date of such denunciation.

ANNEX

1. Homicide, including murder, manslaughter, infanticide and causing death by criminal negligence.
2. Wounding, maiming or causing bodily harm.
3. Illegal abortion.
4. Kidnapping, abduction, child abduction, false imprisonment.
5. Rape, sexual or indecent assault, incest, bigamy.
6. Unlawful sexual acts with or upon a child under the age specified by the law of the Contracting Parties.
7. Offences against the laws relating to prostitution and procuring.
8. Willful non-support or abandonment of a child or another dependent person where, as a result of such nonsupport or abandonment, the life or health of that child or other dependent person is or is likely to be endangered.
9. Robbery, theft, housebreaking, burglary, embezzlement, extortion.
10. Willful damage to property.
11. Fraud and criminal breach of trust; fraudulent conversions, obtaining property, money or securities by fraud or false pretences.
12. Unlawful receipt or possession of property, including money and securities.
13. Forgery, including uttering what is forged.
14. Offences against the laws relating to counterfeiting.
15. Perjury, including subornation of perjury, making a false affidavit, statutory declaration or oral statement under oath or on affirmation.
16. Arson.
17. Obstruction of judicial proceedings or proceedings before Government bodies or interference with an investigation of a violation of a criminal statute, including the influencing, bribing, impeding, threatening or injuring by any means of any officer of the court, juror, witness or duly authorised criminal investigator.
18. Escaping or assisting or permitting the escape of a person from custody.
19. Offences against the laws relating to bribery.

¹ *British and Foreign State Papers*, vol. 63, p. 19.

² *Ibid.*, p. 28.

20. Any act or omission with the intent or that is likely to:
 - a) endanger the safety of an aircraft in flight or of any person on board such aircraft; or
 - b) destroy or render any aircraft incapable of flight.
21. Any unlawful seizure or exercise of control of an aircraft in flight by force or violence or by threat or force or violence or by any other form of intimidation.
22. Unlawful act or omission intended or that is likely to endanger the safety of any person travelling or being upon a railway or in any vessel or other means of transportation.
23. Piracy, mutiny or any mutinous act committed on board a vessel against the authority of the captain or commander of such vessel.
24. Fraudulent bankruptcy.
25. Offences against the laws relating to dangerous drugs and substances including, where prohibited under the laws of both Contracting Parties, drugs listed in schedules I, II and III of the Single Convention on Narcotic Drugs of March 30, 1961¹ and substances listed on schedules I, II, III and IV of the Convention on Psychotropic Substances of February 21, 1971,² as any such schedule may be amended at any time.
26. Offences against the laws relating to fire-arms and other weapons, ammunition, explosives, incendiary devices or nuclear materials.
27. Offences against the laws relating to the sale or purchase of securities.
28. Participation in an association of persons whose common intention is to carry out criminal offences (conspiracy, associazione a delinquere).

[For the testimonium and signatures, see p. 25 of this volume.]

¹ United Nations, *Treaty Series*, vol. 520, p. 151; see also vol. 557, p. 280 (corrigendum to vol. 520, p. 309); vol. 570, p. 346 (procès-verbal of rectification of the authentic Russian text), and vol. 590, p. 325 (procès-verbal of rectification of the authentic Spanish text).

² *Ibid.*, vol. 1019, p. 175.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent Traité.

FAIT en deux exemplaires à Rome ce 6^e jour de mai 1981, en français, anglais et italien, chaque version faisant également foi.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in two copies at Rome this 6th day of May 1981, in the French, English and Italian languages, each version being equally authentic.

IN FEDE DI CHE, i sottoscritti, debitamente autorizzati a tal fine dai loro rispettivi Governi, hanno firmato il presente Trattato.

FATTO in doppio esemplare a Roma, oggi 6 maggio 1981, nelle lingue francese, inglese ed italiana, ciascun testo facente egualmente fede.

Pour le Gouvernement du Canada :

For the Government of Canada:

Per il Governo del Canada:

[Signed — Signé]

MARK MACGUIGAN

Pour le Gouvernement de la République italienne :

For the Government of Italy:

Per il Governo della Repubblica Italiana:

[Signed — Signé]

EMILIO COLOMBO
