

**No. 27130**

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**FRANCE  
and  
CANADA**

**Extradition Treaty. Signed at Ottawa on 17 November 1988**

*Authentic texts: French and English.*

*Registered by France on 26 February 1990.*

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**FRANCE  
et  
CANADA**

**Convention d'extradition. Signée à Ottawa le 17 novembre  
1988**

*Textes authentiques : français et anglais.*

*Enregistrée par la France le 26 février 1990.*

## EXTRADITION TREATY<sup>1</sup> BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF CANADA

The Government of the Republic of France and the Government of Canada, respecting each others judicial institutions and convinced of the need to strengthen cooperation between the two States in the suppression of crime by signing a Treaty for the extradition of persons charged with or convicted of an offence, have agreed as follows:

### Article 1 - DUTY TO EXTRADITE

1. Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any person found within its territory who is charged with an offence or sought for the purpose of imposition or execution of a sentence by the authorities of the other State.
2. The provisions of this Treaty shall not affect the obligations of either Contracting State under any multilateral agreements to which it is a party.

### Article 2 - CONDUCT GIVING RISE TO EXTRADITION

1. Extradition shall be granted for conduct which, under the legislation of both States, constitutes an offence punishable by a term of imprisonment of at least two years. In addition, where a sentence of imprisonment has been imposed by the courts of the requesting State, the portion of the sentence that remains to be served must be at least six months.
2. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both States, but some of which do not meet the requirements of paragraph 1 of this Article, the requested State may also grant extradition for such offences.

### Article 3 - EXTRADITION OF NATIONALS

1. The requested State shall not be bound to extradite its own nationals. Nationality shall be determined as

<sup>1</sup> Came into force on 1 December 1989, i.e., the first day of the second month following the date (31 October 1989) of the last of the notifications by which the Contracting Parties had informed each other of the completion of the required procedures, in accordance with article 26 (2).

of the date of the offence for which extradition is requested.

2. If the request for extradition is refused solely because the person sought has the nationality of the requested State, that State shall, at the request of the requesting State, refer the matter to its competent authorities for prosecution. For this purpose, the files, documents and exhibits relating to the offence shall be transmitted to the requested State. That State shall inform the requesting State of the action taken on its request.

#### Article 4 - MANDATORY REFUSAL OF EXTRADITION

Extradition shall not be granted:

1. when the offence for which extradition is requested is considered by the requested State to be a political offence or conduct connected with such an offence;
2. when the requested State has serious reason to believe that the request for extradition was presented for the purposes of prosecuting or punishing a person by reason of race, religion, nationality or political opinion, or that the situation of that person may be worsened for any of these reasons;
3. when the offence for which extradition is requested consists solely of the violation of a military obligation;
4. when the person sought has been finally convicted or acquitted in the requested State of the offence or offences for which extradition is requested.
5. when the prosecution or punishment is barred by prescription according to the law of the requested State.

#### Article 5 - DISCRETIONARY REFUSAL OF EXTRADITION

Extradition may be refused:

1. if the person sought is being prosecuted by the requested State for the offence for which extradition is requested or if the competent authorities of the requested State have decided, in accordance with the procedures provided by the law of that State, not to prosecute or have decided to terminate the prosecution they have instituted;
2. if the person sought was finally convicted or acquitted in a third State of the offence or offences for which extradition is requested;

3. if the offence for which extradition is requested is a fiscal offence. For the purposes of this paragraph, "fiscal offence" means any offence relating to taxes, duties, customs or exchange.

#### Article 6 - PLACE OF COMMISSION

1. Extradition may be refused if, under the law of the requested State, the offence for which the person is sought was committed in whole or in part in the territory of the requested State or in any other place subject to the jurisdiction of that State.
2. Extradition may not be refused when the offence was committed outside the territory of the requesting State unless the legislation of the requested State does not authorize prosecution of the same offence committed outside its territory in corresponding circumstances.

#### Article 7 - CAPITAL PUNISHMENT

Extradition may be refused when the offence for which extradition is requested is punishable by death under the legislation of the requesting State and the legislation of the requested State does not provide the death penalty for such an offence or the death penalty is generally not executed, unless the requesting State gives such assurances as the requested State considers sufficient that the death penalty will not be executed.

#### Article 8 - HUMANITARIAN GROUNDS

This Treaty does not preclude one of the Contracting States from refusing extradition on humanitarian grounds if the surrender may have grave consequences for the person sought, in particular because of the age or state of health of that person.

#### Article 9 - PRESENTATION OF A REQUEST FOR EXTRADITION

The written request for extradition and all subsequent correspondence shall be sent through diplomatic channels.

#### Article 10 - DOCUMENTS TO BE SUBMITTED

The following documents shall be submitted in support of a request for extradition:

1. In all cases:
  - (a) all available information about the description, identity, nationality and, if possible, whereabouts of the person sought;
  - (b) a statement prepared by a magistrate or public official of the conduct for which extradition is requested, indicating the date and place of commission, the nature of the offence and the applicable legal provisions, a copy of which shall be appended.
2. In the case of a person who is charged or being prosecuted:
  - (a) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued in the requesting State;
  - (b) in the event that the law of the requested State so requires, evidence that would justify a committal for trial of the person sought, including evidence to establish identity;
  - (c) for the purposes of the preceding sub-paragraph, originals or certified true copies of exhibits, statements, depositions, minutes, reports, appendices or any other document, whether received, gathered or obtained in France or in some other place, shall be admitted in evidence as proof of the facts contained therein, if a "juge d'instruction" certifies that they were obtained in accordance with French law and that they appear in the "dossier d'instruction" on the basis of which the order of arrest was issued.
3. In the case of a person sentenced after trial to a term of imprisonment:
  - (a) the original or a certified true copy of the sentence to be served;
  - (b) if a portion of the sentence has already been served, a statement by a magistrate or public official specifying the portion of the sentence which remains to be served.
4. When the person sought has been convicted of an offence in Canada but has not been sentenced, the original or a certified true copy of the warrant of arrest and the original or a certified true copy of a judicial document establishing that the person has been convicted and that a sentence is to be imposed.
5. When a person has been convicted in contumacy or by default,
  - (a) the original or a certified true copy of the warrant of arrest or of any document having the same force, issued in the requesting State;

- (b) the original or a certified true copy of the conviction for contumacy or by default;
  - (c) in the event that the law of the requested State so requires, evidence that would, in accordance with sub-paragraph (2)b) of this article, justify a committal for trial of the person sought for the offence and evidence establishing the identity of the person sought.
6. All documents submitted in support of a request for extradition and appearing to have been issued or certified, by a judicial authority of the requesting State or made under its authority shall be admitted in extradition proceedings in the requested State without having been taken under oath or solemn affirmation and without proof of the signature or of the official character of the person appearing to have signed them.

#### Article 11 - AUTHENTICATION

All documents submitted in support of a request for extradition shall be admitted in extradition proceedings if they are transmitted, bound together, under the seal of a department, ministry or minister of the requesting State, without proof of the official character of the seal.

#### Article 12 - ADDITIONAL INFORMATION

If the information provided by the requesting State is insufficient for the requested State to make a decision under this Treaty, the requested State shall ask for the necessary additional information and may set a time limit for the submission of that information.

#### Article 13 - PROVISIONAL ARREST

1. In cases of urgency, the competent authorities of the requesting State may request the provisional arrest of the person sought, through diplomatic channels or directly by post or telegraph, or through the International Criminal Police Organization (Interpol), or by any other method that provides a written record of the request. A request for provisional arrest shall be followed as soon as possible by a request for extradition through diplomatic channels if the person sought is found in the requested State.
2. The request for provisional arrest shall include:
  - (a) all available information concerning the description, identity and nationality of the person sought;

- (b) an indication of the intention to request extradition;
  - (c) the name of the offence, the date, place and circumstances in which it was committed;
  - (d) either a copy of the order of arrest or the "jugement de condamnation exécutoire" or, where applicable, the certificate of conviction in respect of the person sought, or a statement attesting that such order, judgement or certificate was issued in the requesting State.
3. If the request appears to be in order, the competent authorities of the requested State shall give it effect in accordance with the law of that State. The requested State shall inform the requesting State without delay of the action taken on the request for provisional arrest.
  4. Provisional arrest shall terminate if within forty-five (45) days following the arrest the requested State has not received the request for extradition and the documents referred to in Article 10. The possibility of provisional release at any time is not excluded but the requested State may take such measures as it considers necessary in order to prevent the persons escape.
  5. Release from custody of the person at the end of the forty-five (45) day time limit shall not prevent subsequent arrest and extradition if the request for extradition is subsequently received.

#### Article 14 - COMPETING REQUESTS

1. If extradition of the same person is requested by two or more States, the requested State shall determine to which of these States the person will be extradited and shall inform the requesting State of its decision.
2. In order to determine to which State the person will be extradited, the requested State shall take into account all of the circumstances, and in particular:
  - (a) the relative gravity of the offence;
  - (b) the date and place of the offences;
  - (c) the respective dates of the requests;
  - (d) the nationality of the person claimed;
  - (e) the usual place of residence of the person claimed.

Article 15 - SURRENDER

1. The requested State shall advise the requesting State of its decision with respect to the extradition.
2. Reasons shall be given for any refusal of the request in whole or in part.
3. In the event that the request is granted, the requesting State shall be informed of the place and date of the surrender, and of the length of time that the person was detained in custody awaiting extradition;
4. In the event of force majeure preventing the surrender or reception of the person sought, the two States shall agree on a new date for the surrender.
5. If the person claimed has not been surrendered at the appointed time, that person may be discharged on the expiry of fifteen (15) days from that date, and shall in any event be discharged on the expiry of thirty (30) days. A person who has been discharged may no longer be sought for the same conduct.

Article 16 - POSTPONEMENT OF SURRENDER

The requested State may postpone the surrender of the person sought in order to prosecute the person or to require the person to serve a sentence for an offence other than the offence which is the subject of the request for extradition and shall inform the requesting State of its decision.

Article 17 - SURRENDER OF PROPERTY

1. Upon request of the requesting State, the requested State shall seize and surrender, to the extent permitted by its law, any property:
  - (a) that might be used as an exhibit, or
  - (b) that was obtained by the commission of the offence and that was found at the time of arrest in the possession of the person sought or was discovered subsequently.
2. The property referred to in paragraph 1 of this Article shall be surrendered even if, extradition having been granted, the surrender of the person sought cannot take place as a result of that person's death or escape.
3. When such property is subject to seizure or confiscation in the territory of the requested State, that State may, for purposes of criminal proceedings



then in progress, keep it temporarily or surrender it on the condition that it be returned.

4. These provisions are subject to any rights that the requested State or third parties may have acquired to such property. If such rights exist, the property shall be returned to the requested State as soon as possible and without charge once the trial has ended.

#### Article 18 - RULE OF SPECIALTY

1. A person who has been extradited shall not be prosecuted, tried or detained for the purpose of enforcement of a sentence or for preventive purposes, nor have any restrictions imposed on his or her personal freedom, for conduct prior to the surrender, other than that for which extradition was granted, except:
  - (a) when the State which extradited the person consents thereto. A request shall be presented for this purpose, together with the documents set out in Article 10 and a judicial record setting out the statements of the person extradited. Such consent may only be granted when the offence for which it is requested is of such a nature as to justify extradition under the provisions of this Treaty;
  - (b) when the person extradited has had an opportunity to leave the territory of the State to which he or she was extradited and has not done so within 60 days following final discharge, or, having left, has returned to that State.
2. The requesting State may however take the necessary measures for eventual removal of the person from its territory and for interrupting the period of prescription in accordance with its legislation.
3. When the legal nature of an offence for which a person has been extradited is changed, the person shall not be prosecuted or tried unless the new description of the offence:
  - (a) would justify extradition under this Treaty, and
  - (b) relates to the same conduct as the offence for which extradition was granted.

#### Article 19 - RE-EXTRADITION TO A THIRD STATE

The Contracting State to which a person has been extradited under this Treaty may not extradite that person to a third State without the consent of the extraditing State, except in the cases provided for in Article 18(1)(b). The requested State may require the production of the documents provided for in Article 10.

#### Article 20 - TRANSIT

Transit by a person extradited by a third State to one of the two Contracting States through the territory of the other Contracting State shall be granted on request, subject to the legislation of the latter State and to any cases where extradition may be refused under this Treaty. The request shall be made through diplomatic channels and shall be accompanied by the documents referred to in Article 10, if the State through which transit is requested so requires.

#### Article 21 - APPLICABLE LAW

Unless there is provision to the contrary in this Treaty, proceedings relating to arrest and extradition shall be governed by the laws of the requested State.

#### Article 22 - LANGUAGES

All documents submitted by either Contracting State in accordance with this Treaty may be in the French or English language.

#### Article 23 - EXPENSES

All expenses resulting from extradition shall be borne by the State in whose territory such expenses were incurred, with the exception of the expenses of transporting the person extradited and those resulting from a request for transit, which shall be borne by the requesting State.

#### Article 24 - CONDUCT OF PROCEEDINGS

1. In the case of a request for extradition presented by France, the Attorney General of Canada shall conduct the extradition proceedings.
2. In the case of a request for extradition presented by Canada, the competent French authorities shall conduct the extradition proceedings in accordance with French law.

#### Article 25 - ENTRY INTO FORCE

1. Upon coming into force this Treaty shall replace and abrogate, in the relations between the Contracting States, the treaty between Great Britain and France

for the Mutual Surrender of Fugitive Criminals, signed at Paris on August 14, 1876,<sup>1</sup> and amended by the Conventions signed at Paris on February 13, 1896<sup>1</sup> and October 17, 1908,<sup>1</sup> however, any request for extradition presented prior to the entry into force of this Treaty shall still be governed by the provisions of the treaty between France and Great Britain as amended.

2. This Treaty shall apply to any request presented after its entry into force, even if the offence for which extradition is requested was committed before that date.
3. The request shall be deemed to have been presented for the purpose of paragraphs 1 and 2 of this Article on the date on which the diplomatic note requesting the extradition is received by the Ministry of Foreign Affairs, for France, and by the Department of External Affairs, for Canada.

#### Article 26 - RATIFICATION OR APPROVAL

1. Each Contracting State shall notify the other of the completion of the proceedings required for this Treaty to come into force.
2. This Treaty shall come into force on the first day of the second month following the day on which the last notice was received.
3. Either Contracting State may terminate this Treaty at any time by giving the other Contracting State notice of termination through diplomatic channels. Termination shall take effect one year after the date of receipt of the said notice.

*[For the testimonium and signatures, see p. 232 of this volume.]*

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<sup>1</sup>United Nations, *Treaty Series*, vol. 1324, p. 327.

EN FOI DE QUOI, les représentants des deux Gouvernements, autorisés à cet effet, ont signé la présente Convention et y ont apposé leur sceau.

IN WITNESS WHEREOF, the representatives of the two Governments, being authorized for this purpose, have signed this Treaty and affixed their seals thereto.

FAIT en double exemplaire à *Ottawa*, ce *17<sup>ème</sup>* jour de *Novembre* 1988, en langues française et anglaise, les deux textes faisant également foi.

DONE in duplicate at *Ottawa* this *17<sup>th</sup>* day of *November* 1988, in the French and English languages, each version being equally authentic.

Pour le Gouvernement  
de la République française :

For the Government  
of the Republic of France:

[Signé — Signed]<sup>1</sup>

Pour le Gouvernement  
du Canada :

For the Government  
of Canada:

[Signé — Signed]<sup>2</sup>

<sup>1</sup> Signé par Philippe Husson — Signed by Philippe Husson.

<sup>2</sup> Signé par François A. Mathys — Signed by François A. Mathys.