

**No. 27465**

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**AUSTRALIA  
and  
ARGENTINA**

**Treaty on extradition. Signed at Buenos Aires on 6 October  
1988**

*Authentic texts: English and Spanish.*

*Registered by Australia on 30 July 1990.*

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**AUSTRALIE  
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**Traité d'extradition. Signé à Buenos Aires le 6 octobre 1988**

*Textes authentiques : anglais et espagnol.*

*Enregistré par l'Australie le 30 juillet 1990.*

## TREATY<sup>1</sup> ON EXTRADITION BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA

The Government of Australia and the Government of the Republic of Argentina;

Desiring to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

Have agreed as follows:

### *Article 1. OBLIGATION TO EXTRADITE*

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution, or the imposition or enforcement of a sentence, in the Requesting State for an extraditable offence.

### *Article 2. EXTRADITABLE OFFENCES*

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by imprisonment for a maximum period of at least one (1) year, or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least one [(1)] year of such penalty remains to be served.

2. For the purpose of this Article, in determining whether conduct is an offence against the law of both Contracting Parties:

- a) It shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
- b) The totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matter, extradition may not be refused on the ground that the law of the Requested State does not impose the same tax or duty or does not contain regulations similar to those of the Requesting State with respect to those matters.

4. Extradition shall be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is sought was committed, provided that:

- a) It was an offence under the laws of both Contracting Parties at the time of the acts or omissions constituting the offence; and

<sup>1</sup> Came into force on 15 February 1990, i.e. 30 days after the date on which the Contracting Parties had informed each other (on 9 November 1989 and 15 January 1990) of the completion of their respective legal requirements, in accordance with article 21 (1).

b) It was an offence under the laws of both Contracting Parties at the time the request for extradition was made.

5. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the law of the Requested State provides for the punishment of an offence committed outside its territory in similar circumstances.

### *Article 3. EXCEPTIONS TO EXTRADITION*

1. Extradition shall not be granted in any of the following circumstances:

a) If the Requested State determines that the offence for which extradition is requested is a political offence. The mere allegation of a political reason or motive for the commission of the offence shall not of itself render the offence an offence of a political character. Reference to a political offence, for the purpose of this paragraph, shall not include:

- i) An attack on the life of a Head of State or a member of that person's family;
- ii) An offence relating to any law against genocide; or
- iii) Any offence in respect of which the Contracting Parties have assumed or will assume an obligation to establish jurisdiction or to extradite pursuant to an international agreement to which they are both Parties;

b) If there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons;

c) If the offence for which extradition is sought is a purely military offence which is not punishable under the ordinary criminal law of the Contracting Parties;

d) If final judgement has been passed in the Requested State or in a third State in respect of the offence for which the person's extradition is sought or if the person has been granted a pardon or is the subject of an amnesty in respect of that offence;

e) If the person sought cannot be prosecuted or convicted by reason of any limitation, including the lapse of time, prescribed or imposed by the law of either Contracting Party; or

f) If the person, on being surrendered to the Requesting State, would be liable to be tried or sentenced or to serve a sentence imposed in that State by a court or tribunal

- i) That has been specially established for the purpose of trying the person's case; or
- ii) That is only occasionally, or under exceptional circumstances, authorised to try persons accused of the offence for which extradition is sought.

2. Extradition may be refused in any of the following circumstances:

a) If the person whose extradition is sought is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if its laws permit and the other State so requests, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken;

b) If the courts of the Requested State are competent to try the offence for which extradition is requested. If extradition is refused on this ground, the Requested State shall submit the case to its competent authorities in order that proceedings for the prosecution of the person may be taken;

c) If the offence for which the person is sought or any other offence for which that person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State, unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;

d) If the offence for which extradition is sought is an offence which carries a punishment of the kind referred to in Article 7 of the International Covenant on Civil and Political Rights;<sup>1</sup> or

e) If, in exceptional cases, the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, deems that, because of the personal circumstances of the person sought, the extradition would be totally incompatible with humanitarian considerations.

3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting Parties under any multilateral Convention.

#### Article 4. POSTPONEMENT OF EXTRADITION

1. The Requested State may postpone the surrender of a person:

- a) In order to proceed against that person, or so that that person may serve a sentence, for an offence other than that for which extradition is sought;
- b) When the health or other personal circumstances of the person are sufficiently serious so as to make surrender dangerous to the life of that person or incompatible with humanitarian considerations.

2. In such cases the Requested State shall advise the Requesting State accordingly.

#### Article 5. EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel.

2. The request for extradition shall be accompanied by:

- a) A statement of the acts or omissions which are alleged against the person in respect of each offence for which extradition is sought;
- b) A statement of each offence for which extradition is sought;
- c) The details necessary to establish the identity and nationality of the person sought including, when possible, photographs and fingerprints;
- d) The text of the laws creating the offence and describing the penalty which may be imposed and, if the request is made by Australia for a common law offence, by a statement of the basis of the creation of the offence and the applicable penalty; and

<sup>1</sup> United Nations, *Treaty Series*, vol. 999, p. 171; vol. 1057, p. 407 (rectification of authentic Spanish text); vol. 1059, p. 451 (corrigendum to vol. 999).

e) If the request is made by Australia, the text of the laws imposing any limitation in respect of proceedings or, if the request is made by Argentina, the text of the laws relating to the extinguishment of the action or the penalty.

3. When the request relates to a person who has not been convicted, it shall be accompanied by a detention order or a warrant of arrest or by the equivalent writ of legal process, issued by the competent authority of the Requesting State.

4. When the request relates to a person who has been convicted, it shall be accompanied by the following documents:

- a) If the request has been made by Australia, a certificate of conviction and a copy of the sentence, if it has been imposed; or if a sentence has not been imposed a statement of intention to impose a sentence;
- b) If the request has been made by the Republic of Argentina, a copy of the sentence that has been imposed.

When a sentence has been imposed the Requesting State shall provide a certificate stating that the sentence is immediately enforceable and that it has not been fully enforced and the extent to which it has not been carried out.

5. The documents supporting the request for extradition shall comply with Article 8 and shall be accompanied by a translation into the language of the Requested State.

#### Article 6. CONVICTION "IN ABSENTIA"

Extradition shall not be granted when the person sought has been convicted *in absentia* unless the Requesting State gives assurances that it shall reopen the proceedings so that the person sought has an opportunity to present a defence. In such a case the Requesting State shall furnish its request in accordance with Article 5 of this Treaty as if the person had not been convicted of the offence.

#### Article 7. SIMPLIFIED EXTRADITION

Notwithstanding that the formal requirements of this Treaty have not been complied with, the Requested State may grant the extradition if the person sought expressly agrees after having been informed of his rights to an extradition proceeding and of the protection afforded by such proceeding.

#### Article 8. AUTHENTICATION OF SUPPORTING DOCUMENTS

1. Any document that, in accordance with Article 5 of this Treaty, accompanies a request for extradition shall be admitted in evidence in any extradition proceedings in the Requested State if:

- a) It purports to be signed or certified by a Judge, or other judicial officer in or of the Requesting State; and
- b) It purports to be sealed with an official seal of a Minister of State or of a department of the Government of the Requesting State.

2. The signatures and seal on documents presented through the diplomatic channel shall be deemed to be those of the persons and the Department referred to in paragraph 1 of this Article.

### *Article 9. ADDITIONAL INFORMATION*

1. If the Requested State considers that the documents submitted in support of the extradition request are not sufficient according to the provisions of this Treaty, it may request the presentation of additional information within such time as it specifies.

2. If the person whose extradition is sought is in custody or on bail as a result of the extradition request and the additional information furnished is not sufficient, in accordance with this Treaty, or has not been received within the time specified, the person may be released from custody or discharged. Such release or discharge shall not preclude a further arrest if the request accompanied by the necessary additional information is subsequently received.

### *Article 10. PROVISIONAL ARREST*

1. In case of urgency either Contracting Party may apply through the diplomatic channel or by means of the facilities of the International Criminal Police Organisation (INTERPOL) for the provisional arrest of the person sought. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. An application for provisional arrest shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraphs 3 and 4 of Article 5, a statement of the offence committed, a statement of the punishment that can be, or has been, imposed for the offence and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such an application the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the results of its request.

4. A person arrested upon such application may be set at liberty upon the expiration of [forty-five (45)] days from the date of the arrest if a request for extradition, supported by the documents specified in Article 5, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings for the extradition of the person sought if the request is subsequently received.

6. A person provisionally arrested may, in accordance with the laws of the Requested State, be released from custody by the competent authorities of that State provided adequate measures to prevent the person absconding are taken.

### *Article 11. CONFLICTING REQUESTS*

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

2. Where requests relate to the same offence, the Requested State shall, unless the particular circumstances of the case require otherwise, give preference to the request of the State in whose territory the offence was committed. Other particular circumstances which may be taken into account include the nationality and ordinary place of residence of the person sought and the dates of the respective requests.

3. Where the requests relate to different offences, the Requested State shall give preference to the request relating to the offence regarded as most serious under its law unless the particular circumstances of the case require otherwise.

#### *Article 12. COMMUNICATION OF THE DECISION*

The Requested State shall, as soon as a decision has been made on the request for extradition, communicate the decision to the Requesting State through the diplomatic channel. If the request is refused, in whole or in part, the Requested State shall advise the Requesting State of the reasons for the refusal.

#### *Article 13. SURRENDER*

1. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.

2. The Requesting State shall remove the person from the Requested State within the period of thirty [(30)] days from the date of the notification referred to in Article 12.

3. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited, within the period specified in paragraph 2 of this Article it shall notify the other Contracting Party. The Contracting Parties shall mutually decide upon a new date of surrender.

4. If the person is not removed within the period determined pursuant to paragraphs 2 or 3 of this Article the person shall be released and the Requesting State may not submit a further request in respect of the same offence.

#### *Article 14. SURRENDER OF PROPERTY*

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.

2. Such property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition is postponed or cannot be carried out owing to the death or escape of the person sought provided that the rights of third parties are respected.

3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

#### *Article 15. RULE OF SPECIALITY*

1. A person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of personal liberty in the territory of the Requesting State for any offence committed prior to extradition other than:

a) Any other extraditable offence of which the person could be convicted upon proof of the facts upon which the request for extradition was based, provided that that offence does not carry a penalty which is more severe than that which could be imposed for the offence for which extradition was granted; or

b) Any other extraditable offence in respect of which the Requested State consents. A request for the consent of the Requested State shall be accompanied by the documents required by Article 5.

2. Paragraph 1 of this Article does not apply if the person gives express consent to being detained or tried for any other offence committed prior to extradition or, having had an opportunity voluntarily to leave the territory of the Requesting State has not done so within [thirty (30)] days, or if the person has returned to the Requesting State after leaving it.

#### *Article 16. RE-EXTRADITION TO A THIRD STATE*

Where a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not surrender that person to a third State for an offence committed prior to the surrender, unless:

- a) The Requested State consents to re-extradition, in which case the request for such consent shall be accompanied by the documents referred to in Article 5; or
- b) If the person gives express consent to being re-extradited or, having had an opportunity voluntarily to leave the territory of the Requesting State has not done so within [thirty (30)] days, or if the person has returned to that State after leaving it.

#### *Article 17. TRANSIT*

1. The transit of a person being extradited from a third State through the territory of a Contracting Party shall be granted after a copy of the communication granting the extradition together with a copy of the original request for extradition has been submitted through the diplomatic channel, provided that there are no reasons of public policy for refusing transit.

2. The authorities of the State where the person sought is in transit shall take charge of the custody of that person.

3. The Contracting Party in whose territory the extradited person is in transit may order his release if transportation is not continued within a reasonable time.

4. The Requesting State shall reimburse the State which granted transit for any expenses incurred by that State in relation to that transit.

5. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the State of transit.

6. If an unscheduled landing occurs in the territory of one Contracting Party that Party may require the other Party to furnish a request for transit which may be communicated through the facilities of INTERPOL and subsequently confirmed through the diplomatic channel. The State of transit shall detain the person being extradited until the transportation is continued provided that the request is received within [ninety-six (96)] hours of the unscheduled landing.

#### *Article 18. EXPENSES*

All expenses incurred in the territory of the Requested State as a result of the extradition shall be borne by that State except for expenses connected with the international transportation of the person sought which shall be borne by the Requesting State.



*Article 19.* REPRESENTATION

The Requested State, through its competent authorities, shall afford representation for the interests of the Requesting State in the extradition proceedings. The representative appointed by the Requested State will be legally authorized to act in those proceedings.

*Article 20.* MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Subject to any further Treaty between them, the Contracting Parties agree to afford each other, in accordance with their laws, mutual assistance to the maximum extent possible for the purposes of the investigation of any offence and for the purposes of any criminal proceedings under their jurisdiction.

*Article 21.* ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty [(30)] days after the date on which the Contracting Parties have notified each other in writing that their respective legal requirements for the entry into force of this Treaty have been complied with.

2. On the entry into force of this Treaty, the Treaty for the Mutual Extradition of Fugitive Criminals done at Buenos Aires on 22 May 1889<sup>1</sup> and confirmed by Notes of 10 June and 18 August 1971 shall cease to be in force between Argentina and Australia.

3. Requests for extradition made after this Treaty has entered into force shall be governed by its provisions whatever the date of the commission of the offence.

4. Requests for extradition made before this Treaty enters into force shall continue to be governed by the Treaty referred to in paragraph 2 of this Article.

5. Either Contracting Party may notify the other in writing at any time of its intention to terminate this Treaty and it shall cease to be in force on the one hundred and eightieth [(180th)] day after the day on which notice is given.

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

DONE at Buenos Aires on the sixth day of October one thousand nine hundred and eighty eight in two originals each one of them in English and Spanish languages, both texts being equally authentic.

For the Government  
of Australia:

[Signed — Signé]<sup>2</sup>

For the Government  
of the Republic of Argentina:

[Signed — Signé]<sup>3</sup>

<sup>1</sup> *British and Foreign State Papers*, vol. 81, p. 1305.

<sup>2</sup> Signed by Lionel Bowen — Signé par Lionel Bowen.

<sup>3</sup> Signed by D. M. Caputo — Signé par D. M. Caputo.