

No. 30802

**AUSTRALIA
and
VENEZUELA**

Treaty on extradition. Signed at Caracas on 11 October 1988

Authentic texts: English and Spanish.

Registered by Australia on 8 March 1994.

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TREATY¹ ON EXTRADITION BETWEEN AUSTRALIA AND THE REPUBLIC OF VENEZUELA

Australia and the Republic of Venezuela,

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 I Obligation to Extradite

The Contracting States agree to extradite to each other, on a reciprocal basis and in accordance with the provisions of this Treaty and with their laws, persons found in the territory of one of the States who are wanted for prosecution by the competent authority or who have been convicted or sentenced by the judicial authorities of the other State for an extraditable offence.

Article II Extraditable Offences

1. Extraditable offences are those offences punishable under the laws of both Contracting States by deprivation of liberty for a maximum period of at least one year or by a more severe penalty.

¹ Came into force on 19 December 1993, i.e., 30 days after the date on which the Contracting Parties had informed each other (on 19 November 1992 and 19 November 1993) of the completion of their respective requirements, in accordance with article XXIV (1).

2. Attempting to commit or conspiracy to commit any extraditable offence, or aiding, abetting, counselling or procuring, or being an accessory before or after the fact to, such offences shall also be extraditable offences provided these offences are punishable by deprivation of liberty for a maximum period of at least one year or by a more severe penalty under the laws of both Contracting States.

3. For the purposes of this Treaty in determining whether an offence is an offence against the laws of both Contracting States:

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

4. 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 kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting State.

5. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is requested was committed provided that:

- (a) it was an offence in the Requesting State at the time of the acts and omissions constituting the offence; and
- (b) the acts and omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

6. Where the request for extradition relates to a person convicted of an extraditable offence who is wanted for the enforcement of a sentence of deprivation of liberty, extradition shall be granted only if a period of at least six months remains to be served.

Article III Jurisdiction

1. An offence may be an extraditable offence regardless of where the acts or omissions which constitute the offence were committed.

2. 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 exercise of jurisdiction over an offence committed outside its territory in similar circumstances. Where the law of the Requested State does not so provide the Requested State may, in its discretion, grant extradition.

Article IV
Exceptions to Extradition

1. Extradition shall not be granted if the offence for which it is requested is an offence of a political nature. The following offences shall not be considered offences of a political nature:

- (a) the murder or other attack against the person of a Head of State or Head of Government or of any member of the family of a Head of State or Head of Government;
- (b) any offence in respect of which both Contracting Parties have an obligation in accordance with a multilateral agreement either to surrender the person sought or to submit the case to the jurisdiction of their competent authorities for decision as to prosecution; and
- (c) any attempt, conspiracy to commit, or aiding, abetting, counselling or procuring, or acting as an accessory before or after the fact to any of the offences mentioned in sub-paragraphs (a) and (b).

2. Extradition shall not be granted where there are substantial grounds for believing that the request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing the person sought 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.

3. Extradition shall not be granted when the person sought has been tried or sentenced or is to be tried or sentenced before an extraordinary or ad hoc tribunal of the Requesting State.

4. Extradition shall not be granted when the offence for which extradition is sought is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States.

5. Extradition shall not be granted when 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 State.

Article V

Non bis in idem

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State or in a third state or is the beneficiary of an amnesty or pardon in respect of the same offence for which extradition is requested.

2. Subject to paragraph 1 of this Article, extradition may be granted notwithstanding the fact that the authorities of the Requested State have decided not to prosecute the person sought or to terminate any criminal proceedings pending against that person in respect of the offence for which extradition is requested.

Article VI
Nationality

Extradition may be refused when the person sought is a national of the Requested State. When the Requested State refuses extradition of one of its nationals, it shall submit the case, if the Requesting State so requests and the laws of the Requested State allow, to its 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 requested, may be taken.

Article VII
Other Exceptions to Extradition

Extradition may be refused in any of the following circumstances:

- (a) if any offence for which extradition is requested, or any other offence for which the person sought may be detained or tried in accordance with this Treaty, is punishable by death under the laws of the Requesting State unless that State undertakes that the death penalty, if imposed, will not be carried out;
- (b) if any offence for which extradition is requested is punishable by life imprisonment under the laws of the Requesting State and a similar punishment for that offence is not contained in the law of the Requested State, unless the Requesting State undertakes that a life sentence, if imposed, will not result in a period of deprivation of liberty exceeding 30 years being served;

- (c) if the courts of the Requested State are competent to try the person sought for the offence for which extradition is requested;
- (d) if any offence for which extradition is requested may result in the person sought being subjected to cruel, inhuman or degrading punishment unless the Requesting State undertakes that that person shall not be subjected to such punishment; and
- (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 incompatible with humanitarian considerations.

Article VIII

Extradition Procedures and Required Documents

1. A request for extradition shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated or legalised in accordance with Article IX.
2. The request shall be supported, in all cases, by the following documents:
 - (a) documents, statements and other information which describe the identity, nationality and probable location of the person sought;
 - (b) a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence and a statement

indicating whether the person sought has been accused, convicted or sentenced in respect of those offences; and

- (c) a statement of the relevant law creating each offence, including any provision relating to the limitation or prescription or proceedings and a statement of the penalty that can be imposed for each offence.

3. In the case of a person accused, the request for extradition shall also include a warrant or a copy of a warrant for the arrest of the person, issued by a judge or other competent authority of the Requesting State.

4. In the case of a person convicted of the offence for which extradition is requested, but who has not yet been sentenced, the request shall also contain documents evidencing the conviction and a statement affirming the intention to impose a sentence.

5. In the case where the request for extradition relates to the enforcement of a sentence, the request shall also contain documents evidencing the conviction and the sentence imposed and a statement indicating the extent to which the sentence has not been carried out.

6. In the case of a person who has been convicted in absentia, the request shall also contain a warrant for the arrest, or a copy of the warrant for the arrest, of the person together with a statement setting out the procedures available to that person to appeal against or otherwise challenge the conviction and the sentence imposed.

Article IX

Authentication and Legalisation of Supporting Documents

The documents which, in accordance with Article VIII, accompany a request for extradition shall be admitted in evidence in any extradition proceedings in the Requested State if:

- (a) in the case of a request made by Australia, they are certified by an officer of the Department of Foreign Affairs and Trade and legalized by a competent diplomatic or consular officer of the Republic of Venezuela in Australia;
- (b) in the case of a request by Venezuela, they purport to be signed or certified by a Judge, Magistrate or other judicial officer in or of that State and they purport to be sealed with an official or public seal of that State of a Minister or a Ministry of that State.

Article X

Additional Information

1. If the Requested State considers that the documentation furnished pursuant to Article VIII of this Treaty is not sufficient, that State shall notify the Requesting State as soon as possible. The Requesting State shall correct the omissions or defects within forty-five days of the date of notification. Upon request by the Requesting State, giving justifications therefor, the Requested State may agree to an extension of an additional thirty days.

2. If the additional information requested by the Requested State is insufficient or is not received within the time stipulated, the person sought shall be set at liberty. Such release shall not prejudice further detention and extradition for the same offence if the Requesting State submits a request for extradition supported by the documents required by Article VIII.

3. Where the person sought is released from custody in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as practicable.

Article XI Provisional Arrest

1. In case of urgency a Contracting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise 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. The request 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 Article VIII authorizing the arrest of the person, 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 an application for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought and shall promptly notify the Requesting State of the results of its request.

4. A person arrested upon an application for provisional arrest may be set at liberty upon the expiration of sixty days from the date of that person's arrest if a request for extradition has not been received.

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

Article XII

Translation

The request for extradition and the documents submitted in support thereof shall be accompanied by a translation into the language of the Requested State.

Article XIII

Requests for Extradition from more than one State

If the Requested State receives requests for the extradition of the same person, whether for the same or different offences, from the other Contracting State and from one or more States, it shall determine to which of the States it shall surrender the person. In making its determination it shall take into account, inter alia, the following factors:

- (a) if the requests relate to different offences, the relative seriousness of the offences;
- (b) the time and place of the commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person; and
- (e) the ordinary place of residence of the person.

Article XIV

Decision and Surrender

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State.
2. Where extradition is granted, the authorities of the Contracting States shall mutually decide on the date and place of surrender of the person sought.
3. If the person sought is not removed from the territory of the Requested State within the time set in accordance with paragraph 2 of this Article, that person may, subject to paragraph 4 of this Article, be set at liberty and the Requested State may subsequently refuse to extradite that person for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person, it shall notify the other Contracting State. The two Contracting States shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

Article XV

Postponement of Surrender

1. Notwithstanding the provisions of Article XIV, the surrender of the person sought may be postponed:
 - (a) when the person sought is the subject of criminal proceedings or is serving a sentence in the Requested State, until the final discharge or release of the person; and
 - (b) when for reasons of the health of the person sought the removal could endanger the life of that person, until such danger no longer exists.
2. In either case, the Requested State shall advise the Requesting State of the postponement and the reasons therefor.

Article XVI

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. The property mentioned in paragraph 1 of this Article shall, if the Requesting State so requests, be surrendered to that State even if the extradition having been consented to cannot be carried out.

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

Article XVII
Rule of Speciality

1. Subject to paragraph 2 of this Article, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of personal liberty in the Requesting State for any offence committed before the extradition other than:

- (a) an offence for which extradition was granted, or any other extraditable offence of which the person could be convicted upon proof of the facts upon which 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 requested; or
- (b) any other extraditable offence in respect of which the competent authority of the Requested State consents to the detention, trial or punishment of the person. For the purposes of this sub-paragraph:
 - (i) the Requested State may require the production of the documents mentioned in Article VIII; and

(ii) the extradited person may be detained by the Requesting State for a period of ninety days, or for such longer period as consented to by the Requested State, while the request for consent is considered.

2. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which the person was extradited or if the person has returned to the Requested State after leaving it.

Article XVIII

Re-Extradition to a Third State

1. A person surrendered in accordance with this Treaty may not be extradited to a third State for an offence committed before that person's surrender unless the State which surrendered that person consents to the re-extradition.

2. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the State to which that person was surrendered and has not done so within 45 days of final discharge in respect of the offence for which the surrender was granted or if the person has returned to that State after leaving it.

3. The Requested State may request the production of the documents mentioned in Article VIII in relation to any request for consent made pursuant to paragraph 1 of this Article.

Article XIX
Voluntary Surrender

If the person sought voluntarily consents to being surrendered to the Requesting State, the Requested State may surrender that person even though the formal requirements of this Treaty have not been complied with.

Article XX
Transit and Overflight

1. Either Contracting State may authorise transportation through its Territory of a person surrendered to the other State by a third State. A request for transit shall be submitted through the diplomatic channel, or directly between the Attorney-General's Department of Australia and the Ministry of Justice of the Republic of Venezuela. The offices of INTERPOL may also be used for the transmission of the request, which shall contain a description of the person to be transported and a brief statement of the facts of the case. A person in transit may be held in custody during the period of transit.

2. No authorisation is required where air transportation is used and no landing is scheduled on the territory of the other Contracting State. If an unscheduled landing occurs on the territory of the other Contracting State, it may require the submission of a request for transit pursuant to paragraph 1 of this Article. That Contracting State shall detain the person to be transported until the request is effected, so long as the request for transit is received within 96 hours of the unscheduled landing.

Article XXI

Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting State.
2. The Requesting State shall bear the costs of translation of documents and of conveying the person surrendered. The Requesting State shall also reimburse the Requested State for expenses incurred by the Requested State in connection with the transit of a person to the Requesting State.

Article XXII

Multilateral Obligations

Nothing in this Treaty shall affect any obligations which have been or shall in the future be assumed by the Contracting States under any multilateral Convention to which they are both party.

Article XXIII

Mutual Assistance in Criminal Matters

Subject to any further treaty between them, the Contracting States 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 XXIV

Entry into Force and Termination

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

2. Either Contracting State may terminate this Treaty by notice in writing, and it shall cease to be in force on the one hundred and eightieth 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 *Caracas* on the *Eleventh* day of *October* One Thousand nine hundred and eighty - *eight* in two originals in the English and Spanish languages both texts being equally authentic.

For Australia:



LIONEL BOWEN
Attorney-General

For the Republic
of Venezuela:



GERMAN NAVA CARRILLO
Minister for Foreign Affairs