

**No. 33339**

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**AUSTRALIA  
and  
BRAZIL**

**Treaty on extradition. Signed at Canberra on 22 August 1994**

*Authentic texts: English and Portuguese.*

*Registered by Australia on 5 November 1996.*

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**AUSTRALIE  
et  
BRÉSIL**

**Traité d'extradition. Signé à Canberra le 22 août 1994**

*Textes authentiques : anglais et portugais.*

*Enregistré par l'Australie le 5 novembre 1996.*

## TREATY<sup>1</sup> ON EXTRADITION BETWEEN AUSTRALIA AND THE FEDERATIVE REPUBLIC OF BRAZIL

AUSTRALIA AND THE FEDERATIVE REPUBLIC OF BRAZIL, herein called the Contracting Parties,

DESIRING to make more effective the co-operation between their respective countries in the prevention and 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 person who is wanted for prosecution or the imposition or enforcement of a sentence in the Requesting Party for an extraditable offence.

### Article 2 Extraditable offences

1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by deprivation of liberty for a period of at least one year or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least nine months of the sentence remains to be served.
3. For the purposes of this Article, in determining whether conduct is an offence against the law of the Requested Party:
  - (a) it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;
  - (b) the totality of the conduct 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.

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<sup>1</sup> Came into force on 1 September 1996 by notification, in accordance with article 21.

4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence for the purposes of this Treaty. Provided that the conduct for which extradition is sought is an offence in the Requested Party, extradition may not be refused on the ground that the law of the Requested Party 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 Party.

5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

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

7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Parties, but some of which do not meet the requirements of paragraphs 1 and 2, the Requested Party may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

### Article 3 Mandatory refusal of extradition

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

- (a) when the Requested Party is competent, according to its law, to prosecute the person whose surrender is sought for the crime or offence for which that person's extradition is requested and the Requested Party intends to exercise its jurisdiction;
- (b) when, on the basis of the same facts, the person sought is being or has already been, finally judged in the Requested Party;
- (c) when the person sought has already been granted amnesty or pardon in the Requested Party;

- (d) when the legal proceedings, or the enforcement of the penalty, for the offence committed has become barred by limitation, according to the law of the Requested Party;
- (e) when the person sought may be, or has been, tried or sentenced by an extraordinary or ad hoc tribunal;
- (f) when the offence for which the person's extradition is requested is of a purely military character;
- (g) when the offence for which extradition is requested is considered by the Requested Party to be a political offence. For the purposes of this paragraph, political offence shall not include:
  - (i) the taking or attempted taking of the life of a Head of State, a Head of Government or a member of his or her family; or
  - (ii) an offence for which each Contracting Party has an obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to its competent authorities for the purpose of prosecution.

In all other cases, the determination of whether an offence constitutes a political offence will be the exclusive responsibility of the competent authorities of the Requested Party.

- (h) when the Requested Party has substantial grounds for believing that the request for extradition has been presented with a view to prosecuting or punishing the person sought, by reason of that person's race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons; or
- (i) 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.

#### Article 4

##### Discretionary refusal of extradition

Extradition may be refused under this Treaty in any of the following circumstances:

- (a) when the offence with which the person sought is charged or of which the person is convicted, or any other offence for which the person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting Party unless that Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;

- (b) when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable; and
- (c) when, in exceptional circumstances, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party decides that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

Article 5  
Extradition of nationals

1. There is no obligation upon the Requested Party to grant the extradition of a person who is a national of the Requested Party, but the extradition of its nationals will be subject to the appropriate laws of that Party.
2. Where a Party refuses extradition pursuant to paragraph 1 of this Article, it shall submit the case 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 sought may be taken. That Party shall inform the Requesting Party of any action taken and the outcome of any prosecution. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 6  
Rule of speciality

1. A person who has been extradited under this Treaty shall not be detained, prosecuted or tried for any offence committed before extradition other than that for which extradition has been granted, nor extradited to a third State for any offence, except in any of the following circumstances:
  - (a) when that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;
  - (b) when that person has not left the territory of the Requesting Party within forty-five days after being free to do so; or
  - (c) when the Requested Party consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 7 and a record of any statement made by the extradited person in respect of the offence concerned.
2. The Requesting Party may charge a person who has been extradited with an offence other than that for which extradition was granted, provided that offence is:

- (a) based on proof of the same facts contained in the extradition request and its supporting documents; and
  - (b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which the person was extradited.
3. Paragraph 1 of this Article shall not apply to offences committed after extradition.
  4. Paragraph 1(b) of this Article shall not apply if it might be construed directly or indirectly as banishment, expulsion or forced removal of a Brazilian national from Brazil.

#### Article 7

##### The request and supporting documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel.
2. The request 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, where possible, photographs and fingerprints;
  - (d) the text of the laws creating the offence and describing the penalty which may be imposed or, 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
  - (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 Brazil, 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 also be accompanied by an original or in its absence an authenticated copy of a detention order or a warrant of arrest or by the equivalent writ of legal process, issued by the competent authority of the Requesting Party.
4. When the request relates to a person who has been convicted, it shall also 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 Brazil, a copy of the sentence that has been imposed.

When a sentence has been imposed, the Requesting Party 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.

#### Article 8

##### Translation of the documents

The documents supporting the request for extradition shall comply with Article 9 and shall be accompanied by a translation into the language of the Requested Party.

#### Article 9

##### Authentication of supporting documents

1. A document that, in accordance with Article 8, accompanies a request for extradition shall be admitted, if authenticated, in any extradition proceedings in the Requested Party.
2. A document is authenticated for the purposes of this Treaty if:
  - (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the Requesting Party; and
  - (b) it purports to be sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government, of the Requesting State.

#### Article 10

##### Supplementary information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.
3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 11  
Provisional arrest

1. In case of urgency a Contracting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.
2. The application for provisional arrest shall include:
  - (a) information concerning the identity and, if available, nationality, of the person sought, the person's physical description and probable location;
  - (b) a statement that extradition will be requested;
  - (c) the name, date and place of the offence and a brief description of the facts of the case;
  - (d) a statement indicating that an order of arrest exists or a conviction was pronounced with the date, place and issuing authority; and
  - (e) a statement indicating the maximum deprivation of liberty that may be imposed or that was imposed and, where applicable, that remains to be served.
3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the person claimed and the Requesting Party shall be promptly notified of the result of its request.
4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 7 within sixty days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 12  
Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of a request for extradition. Extradition having been granted, the Requested Party shall communicate promptly to the Requesting Party that the person to be extradited is held at its disposition.



2. 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 mutually acceptable to both Parties.
3. The Requesting Party may send to the Requested Party, after receiving the latter's consent, one or more duly authorised agents, either to aid in the identification of the person sought or to convey the person to the territory of the Requesting Party. Such agents, during their stay in the territory of the Requested Party, shall not perform any acts of authority, and shall be subject to the applicable laws of that Party.
4. The Requesting Party shall remove the person from the territory of the Requested Party within fifty days of receipt of the decision referred to in paragraph 1, and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.
5. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited, it shall notify the other Contracting Party. The two Contracting Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 4 of this Article shall apply.

#### Article 13

##### Postponed or temporary surrender

1. When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.
2. When, in the opinion of the competent medical authority, the person whose extradition is requested cannot be transported from the Requested Party to the Requesting Party without serious danger to the person's life due to grave illness, the surrender of the person under the provisions of the present Treaty shall be deferred until such time as the danger, in the opinion of the competent medical authority, has been sufficiently mitigated.
3. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for the purposes of prosecution to the Requesting Party in accordance with conditions to be determined between the Contracting Parties. A person who is returned to the Requesting Party following a temporary surrender may be finally surrendered to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 14  
Consequences of a refusal of extradition

If the extradition of a person is refused, no other request for extradition of the same person can be presented on the basis of the same facts which determined the original request.

Article 15  
Communication of the final sentence

The Party to which an extradition has been granted shall notify the Requested Party of the final decision pronounced on the case.

Article 16  
Expenses

1. The Requested Party 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 Party.
2. The Requested Party shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to a person nominated by the Requesting Party.
3. The Requesting Party shall bear the expenses incurred in conveying the person from the territory of the Requested Party.

Article 17  
Surrender of property

1. To the extent permitted under the law of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting Party so requests, be surrendered if the extradition is granted.
2. Subject to paragraph 1 of this Article, the above mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death or escape of the person sought.
3. Where the law of the Requested Party or the rights of third parties so require, any articles so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

## Article 18 Transit

1. Transit through the territory of one of the Contracting Parties of a person surrendered by a third State shall be granted on request made through the diplomatic channel by the other Contracting Party. The request shall include information concerning:
  - (a) the nationality of the person being surrendered;
  - (b) the offences for which surrender has been granted;
  - (c) a copy of, or details of, the order of surrender made by the third State; and
  - (d) details of the punishment which can be imposed for the offences for which surrender has been granted.
2. The request for transit may be denied for any reason for which extradition may be refused under this Treaty or if granting the request would be contrary to *ordre public*.
3. Permission for the transit of a person shall, subject to the law of the Requested Party, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 2 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.
5. The Contracting Party to which the person is being extradited shall reimburse the other Contracting Party for any expenses incurred by that other Contracting Party in connection with the transit.
6. No authorisation for transit shall be required when air transport is to be used and no landing is scheduled in the territory of the transit State.
7. If an unscheduled landing occurs in the territory of one Contracting Party, the other Party shall furnish a request for transit as provided for in paragraph 1 of this Article. The State of transit shall detain the person being extradited until the transportation is continued provided that the request for transit is received within 96 hours of the unscheduled landing.

## Article 19 Concurrent requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party

shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all the relevant circumstances and, in particular, to:
  - (a) if the requests relate to different offences, the relative seriousness of those offences;
  - (b) the time and place of commission of each offence;
  - (c) the respective dates of the requests;
  - (d) the nationality of the person sought; and
  - (e) the ordinary place of residence of the person.

#### Article 20

##### Preservation of multilateral obligations

Nothing in this Treaty affects any obligations which have been, or shall in the future be, assumed by the Contracting Parties under any multilateral Convention.

#### Article 21

##### Entry into force and termination

1. The present Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. This Treaty shall apply to any offence specified in Article 2 whether it was committed before or after its entry into force.
3. Either Contracting Party may terminate this Treaty at any time by giving six months' written notice to the other Contracting Party.

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

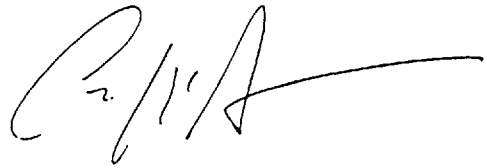
DONE in duplicate, in the English and Portuguese languages, each text being equally authentic, at Canberra on the twenty-second day of August 1994.

For Australia:



GARETH EVANS  
Minister for Foreign Affairs

For the Federative Republic  
of Brazil:



CELSON LUIZ NUNES AMORIM  
Minister for External Relations