

No. 33338

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**AUSTRALIA  
and  
CHILE**

**Treaty on extradition (with exchange of letters dated 19 and  
29 April 1994). Signed at Canberra on 6 October 1993**

*Authentic texts: English and Spanish.*

*Registered by Australia on 5 November 1996.*

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**AUSTRALIE  
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**Traité d'extradition (avec échange de lettres en date des 19 et  
29 avril 1994). Signé à Canberra le 6 octobre 1993**

*Textes authentiques : anglais et espagnol.*

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

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

AUSTRALIA AND THE REPUBLIC OF CHILE, desirous of making more effective the co-operation between both countries in the suppression of crime by concluding a Treaty on Extradition;

HAVE AGREED as follows:

### I

#### Obligation to extradite

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any person charged with, tried for, declared guilty of, or sentenced to imprisonment for, an extraditable offence.

### II

#### Extraditable offences

1. For the purposes of this Treaty, extraditable offences are offences which are, according to the laws of both Contracting States, punishable by loss of liberty with a maximum term of no less than one year. Where extradition is requested for the enforcement of a sentence of deprivation of liberty, extradition shall be granted only if a period of at least six months of such sentence remains to be served.
2. For the purposes of this Article, 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 place the acts or omissions that constitute the offence in the same category of offence or denominate the offence by the same terminology;
  - (b) all 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 States, the constituent elements of the offence differ.
3. Where extradition is sought for an offence against the laws relating to taxation, custom duties, foreign exchange controls or other revenue matters, extradition may not be refused on the ground that the laws of the Requested State do not impose the same kind of tax or duty or that it does not have a tax, duty, customs or exchange law of the same kind as the law of the Requesting State.

<sup>1</sup> Came into force on 13 January 1996 by notification, in accordance with article XXIII.

4. Extradition may be granted pursuant to the provisions of this Treaty provided that:
  - (a) the offence for which extradition is requested was an offence in both Contracting States at the time the acts or omissions constituting the offence took place, and
  - (b) it was an offence in both Contracting States at the time the request for extradition is submitted.

### III

#### Jurisdiction

1. Subject to this Treaty, extradition shall be granted when the offence for which extradition is requested has been committed in the territory of the Requesting State.
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 punishment of an offence committed outside its territory under similar circumstances. Where the law of the Requested State does not so provide, the Requested State may, in its discretion, grant extradition.
3. Where the offence for which extradition is sought has been committed outside the territory of the Requesting State, the Requested State may refuse to grant the extradition where it has jurisdiction, according to its own laws, to prosecute the person whose extradition is sought for the offence. If the Requested State does not grant extradition on this ground, it shall submit the case to its competent authorities and advise the Requesting State accordingly.

### IV

#### Exceptions to extradition

Extradition shall not be granted:

1. Where 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. For the purpose of this paragraph, reference to a political crime shall not include:
  - (a) the murder or other offence against the life, the physical integrity or liberty of a Head of State or of Government or any member of that person's family;
  - (b) war crimes, and crimes committed against the peace and security of mankind, in accordance with international law;
  - (c) any offence in respect of which the Contracting States have assumed or will assume an obligation to establish jurisdiction or to extradite pursuant to an international agreement to which they are both parties.

2. Where there exist substantial reasons to believe that there is an intention to prosecute or punish a person on account of that person's race, religion, nationality or political opinion, or the situation of the person whose extradition is sought may be prejudiced for any of these reasons.
3. Where the person has been or shall be judged or sentenced by an extraordinary or ad hoc tribunal in the Requesting State. A court which has been established by law which existed before the offence was committed shall not be considered an ad hoc tribunal.
4. Where the person sought has served the sentence or has been pardoned or acquitted by a court or competent authority of the Requested State or in a third State in respect of the act or omission constituting the offence for which the extradition has been requested or where the person has been granted amnesty in the Requested State for the offence.
5. When the person sought cannot be prosecuted or convicted by reason of any limitation, including the lapse of time, imposed by the law of either Contracting State.

#### V

#### Discretionary refusal of extradition

Extradition may be refused in the following circumstances:

1. If the person whose extradition is claimed is a national of the Requested State. Where the Requested State does not grant the extradition of one of its nationals, it shall submit the case, if its laws allow it, and if so requested by the Requesting State, to its competent authorities and shall notify in due time the result to the Requesting State. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.
2. If extradition has been requested for an offence that, according to the laws of the Requested State, has been committed in whole or in part within that State or within the jurisdiction of said State. In any case, extradition may be granted if the Requested State has decided not to institute proceedings.
3. If prosecution against the person whose extradition is sought is pending in the Requested State in relation to the offence for which extradition is requested.
4. Where the Requested State, while taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition would be incompatible with humanitarian considerations such as the age or health of the person sought.

5. If the offence for which extradition is sought is an offence considered strictly military. For the purposes of this Treaty, strictly military offences shall be those acts or omissions proper to the military service that are included only in special laws applicable to members of the Armed Forces.

## VI

### Obligations arising from multilateral agreements

This Treaty shall not affect any obligation the Contracting States may have assumed or shall assume in the future in accordance with the provisions of any multilateral agreement to which both Contracting States are parties.

## VII

### Excluded penalties

No person surrendered according to the provisions of this Treaty may suffer the death penalty or be subject to torture or any cruel, inhuman or degrading punishment.

## VIII

### Postponement of surrender

1. Where the person whose extradition is sought is being prosecuted or is serving a sentence in the Requested State for an offence other than the one for which the extradition is requested, the surrender of the person may be postponed until he or she is available to be surrendered in accordance with the laws of the Requested State. No civil case in the Requested State, to which the person sought is a party, shall avoid or postpone the surrender.

2. Where the health or other personal circumstance of the person sought are such that the surrender would put his or her life in danger or where the surrender is incompatible with humanitarian considerations, the surrender may be postponed until the situation does not represent or pose a danger to his or her life nor is incompatible with humanitarian considerations.

## IX

### Extradition proceedings and documents requested

1. The request for extradition and for the seizure of property related to the offence shall be submitted in writing and shall be communicated by diplomatic means.

2. The extradition request shall be accompanied by:

- (a) where the person is accused of an offence, a copy of the warrant for the arrest of the person or a copy of the equivalent writ of legal process

authorizing the apprehension of the person, a statement of each offence for which extradition is sought, a statement of the acts or omissions that have been alleged against the person in respect of each offence, as well as copies of documents or other information in support of the warrant of arrest in respect of the person sought;

- (b) where the person has been convicted of an offence, such documents as provide evidence of the conviction, a copy of the sentence imposed, the fact that the sentence is immediately enforceable and the extent to which the sentence has not been carried out, as well as copies of documents or other background information in support of the case against the person, including a statement of the acts or omissions that constitute the offence;
- (c) in relation to requests by Australia, where the person has been convicted of an offence but no sentence has been imposed, a situation that may arise in the Australian system of criminal justice, such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence, as well as copies of documents or other background information in support of the case against the person, including a statement of the acts or omissions that constitute the offence;
- (d) in all cases, a statement of the relevant law creating the offence, including any provision relating to the limitation of proceedings such as proceedings which are barred by time, and a statement of the penalty that can be imposed for the offence; and
- (e) in all cases, a description of the person sought, as precisely as possible, together with any other information that may help to determine the identity and nationality of the person.

## X

### Additional information

1. Where the documents submitted in accordance with the provisions of Article IX of this Treaty are considered insufficient, the Requested State shall advise the Requesting State as soon as possible. The Requesting State shall correct the omissions or deficiencies within a term of 45 days if the person sought is already under arrest for the purpose of the extradition proceedings.

If due to special circumstances the Requesting State is not able to correct the omissions or deficiencies within the specified term, it may ask the Requested State for an additional period of 30 days to do so.

2. If the person sought is under arrest for extradition purposes and the additional information provided is insufficient for the purposes of this Treaty or has not been

received within the term specified in paragraph 1 of this Article, the person shall be released unconditionally. Such release shall not prevent further extradition for the same offence if the Requesting State submits a request for extradition supported by the documents required by Article IX.

3. When the person is released unconditionally in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as possible.

#### XI

##### Language

Any document submitted in support of an extradition request shall be translated into the language of the Requested State.

#### XII

##### Legalization and authentication of documents

The documents which, in accordance with Articles IX and X, 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 Chile in Australia; and
- (b) in the case of a request by the Republic of Chile, they purport to be signed or certified by a Judge, Magistrate or other officer in or of the Republic of Chile and they purport to be sealed with an official or public seal of the Republic of Chile or of a Minister of State or of a Department or officer of the Government of the Republic of Chile.

#### XIII

##### Provisional arrest

1. In a case of urgency, a Contracting State may request, through the International Criminal Police Organisation (INTERPOL) or by other means, the provisional arrest of the person sought and seizure or confiscation of property related to the offence. The request may be sent by mail or telegraph or by any other means affording a record in writing.

2. In all cases, the request for provisional arrest shall include:

- (a) a declaration of the intention of submitting a formal extradition request;

- (b) relevant material to establish the identity of the person;
  - (c) where a person is accused of an offence, a declaration of the existence of a warrant for arrest or any other legal document of similar nature authorizing the arrest of the person, or where the person sought has been convicted or sentenced according to the laws of the Requesting State, the terms of the judgement or conviction against the person; in any case, a statement of the acts or omissions that constitute the offence, including copies of documents and background information in support of the case against the person and a statement of the punishment that can be or has been imposed for the offence.
3. Upon receipt of such a request, the Requested State shall take the necessary measures to ensure the provisional arrest of the person and, if applicable, the seizure of property related to the offence and shall inform the Requesting State of the date of arrest.
4. If the extradition request, together with the necessary documents, is not received by the Requested State within 60 days of the date of the arrest of the person, the person shall be released unconditionally. A new extradition request in respect of the same offence may only be made by submitting the documents mentioned in Article IX.

#### XIV

##### Requests from more than one State

1. When requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of the States it will extradite the person and it shall notify its decision to the Requesting States.
2. Where the requests refer to the same offence, the Requested State shall give preference to the request from the State in whose territory the offence was committed, unless there exist particular circumstances that recommend otherwise.

The particular circumstances which may be taken into account by the Requested State include the nationality, common domicile or residence of the person sought, the existence or otherwise of a treaty, the date of the respective requests, date of the offence and the possibility of subsequent extradition to another State.

3. Where the requests relate to different offences, the Requested State shall give preference to the request relating to the offence considered most serious according to its laws, unless the particular circumstances recommend otherwise.



## XV

## Communication of the decision

The Requested State shall inform the Requesting State of the decision on the extradition request as soon as possible, including the reasons for the grant or refusal of the request, as well as documents relating to the decision.

## XVI

*Non bis in idem*

Once the extradition request has been ultimately refused, a new request may not be submitted for the same offence.

## XVII

## Surrender of the person sought and property

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 sought within a period of 30 days from the date on which it is notified that the person is available and, if the person is not removed within such time, he or she shall be unconditionally released and may not be extradited for the same offence.
3. If circumstances beyond its control prevent the Requesting State from removing the person to be extradited, the Requesting State shall notify the Requested State accordingly, and the Requested State may extend the period stipulated in paragraph 2 of this Article for 30 additional days or for an additional period appropriate to the circumstances.
4. To the extent permitted by the laws of the Requested State and subject to the rights of third parties, which shall be duly respected, all property seized in the Requested State that has been acquired as a result of the offence or that may be required as evidence, shall be surrendered if extradition is granted and the Requesting State so requests.
5. Subject to paragraph 4 of this Article, the property above-mentioned shall be surrendered to the Requesting State, if the Requesting State so requests, even if extradition cannot be carried out due to the death or escape of the person sought.
6. Where the laws of the Requested State or the rights of third parties so require, any property surrendered in accordance with this Article shall be returned, free of charge, to the Requested State if that State so requests.

## XVIII

## Principle of speciality

No person extradited in accordance with the provisions of this Treaty shall be arrested, prosecuted or sentenced in the territory of the Requesting State for an offence committed before the date of the extradition request other than the offence for which the extradition was granted, unless:

- (a) the person surrendered, having had the opportunity to leave voluntarily the territory of the State to which he or she was surrendered, remains there for more than thirty days or returns to it after having departed from it; or
- (b) the Requested State so consents. A request for the consent of the Requested State under this Article shall be accompanied by the documents stipulated in Article IX and, if applicable, any additional information it may have for the purpose of correcting omissions or deficiencies in the documentation.

## XIX

## Surrender to a third State

Once the person sought has been surrendered to the Requesting State by the Requested State, the first shall not surrender the person to a third State for an offence committed before the date of surrender of the person, unless:

- (a) the Requested State gives its consent to the surrender of the person. In giving its consent, the Requested State may request from the Requesting State the production of the documents mentioned in Article IX; or
- (b) the person departs the territory of the Requesting State after the extradition and then returns voluntarily to that State; or
- (c) the person voluntarily remains in the territory of the Requesting State for more than 45 days after being at liberty to leave.

## XX

## Transit

The Contracting States may authorize the transport, through their respective territories, of a person surrendered to the other State by a third State, in accordance with the following provisions:

- (a) a transit request shall include the description of the person that is being transferred and a brief summary of the facts. A person in transit shall be kept in custody during the period of transit;

- (b) no authorization is required when the means of transportation is by air and no landing is scheduled in the territory of the State of transit;
- (c) if an unscheduled landing in the territory of a Contracting State occurs, that Contracting State may require the other State to furnish a request for transit in accordance with paragraph (a) of this Article. The State of transit shall keep the person in custody until the transportation is continued provided that the request is received within 96 hours of the unscheduled landing;
- (d) where the person is in custody in accordance with paragraphs (a) or (c) of this Article, the Contracting State in whose territory the person is detained may order that the person be put at liberty if his or her transfer is not continued within 10 days or within such additional period considered reasonable by that Contracting State, taking into account all the circumstances of the case; and
- (e) the Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expenses incurred by the latter in relation to the transit.

#### XXI

##### Expenses

The expenses incurred in relation to the arrest, custody, maintenance and transportation of the person extradited, as well as those incurred by the seizure of property, shall be borne by the Requested State until the time of the surrender, whilst those expenses incurred after the surrender of the person or of the property shall be borne by the Requesting State.

#### XXII

##### Mutual assistance in criminal matters

The Contracting States agree, in accordance with their respective laws, to afford each other the maximum co-operation possible in criminal matters, for the purposes of the investigation and prosecution of offences committed within their respective jurisdictions.

#### XXIII

##### Entry into force and termination

1. This Treaty shall enter into force 30 days after the date of the last communication between the Contracting States that their respective constitutional and legal requirements have been complied with.
2. All extradition requests submitted after the entry into force of this Treaty shall be governed by this Treaty whatever the date of the commission of the offence.

3. Either Contracting State may terminate this Treaty by means of a notice in writing at any time, and the Treaty shall cease to be in force 180 days after the date of the notice.
4. On the entry into force of this Treaty, the Treaty on Extradition between the Republic of Chile and Great Britain done at Santiago on 26 January 1897<sup>1</sup> shall cease to be in force between Australia and the Republic of Chile, except with respect to extradition proceedings pending between Australia and the Republic of Chile.

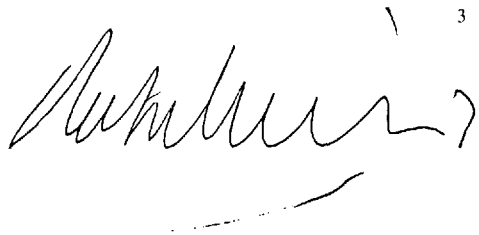
IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at Canberra on the sixth day of October, nineteen hundred and ninety-three, in two originals in English and Spanish, both texts being equally authentic.

For Australia:

A handwritten signature in black ink, appearing to be 'Michael Lavarch', with a small superscript '2' to its right.

For the Republic  
of Chile:

A handwritten signature in black ink, appearing to be 'Enrique Silva Cimma', with a small superscript '3' to its right.

<sup>1</sup> League of Nations, *Treaty Series*, vol. LXXXIII, p. 485.

<sup>2</sup> Michael Lavarch.

<sup>3</sup> Enrique Silva Cimma.

## EXCHANGE OF NOTES

## I

EMBASSY OF CHILE  
AUSTRALIA

27/94

Canberra, 19 April 1994

The Embassy of Chile presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Extradition Treaty between Chile and Australia which was signed on 6 October 1993.

The Embassy of Chile has the further honour to propose that the following errors found in the Spanish language texts of the said treaty be rectified as shown:

	<u>Where it says</u>	<u>It should say</u>
Article II, 4, a)	<u>de</u> ambos Estados	<u>en</u> ambos Estados
Article III, 2, line 4	<u>ésta</u> podrá	<u>éste</u> podría
Article IX, 2, (b) line 5	fund <u>e</u> menten	fund <u>a</u> menten
Article XIII, 2, (c) line 9	podri <u>a</u>	podr <u>í</u> a
Article XIV, 3, line 3	recomi <u>an</u>	recomi <u>en</u>
Last paragraph, line 2	Español <u>o</u> Inglés	Español <u>e</u> Inglés

The Embassy of Chile has the honour to propose that if the foregoing is acceptable to the Government of Australia, then the Spanish language texts of the Extradition Treaty will be regarded by both countries as rectified ab initio upon receipt of a Note to this effect from the Department of Foreign Affairs and Trade.

For the Department's information, the Embassy of Chile also encloses the Spanish version of this Verbal Note.

The Embassy of Chile avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.