

# Australian Treaty Series

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## Australian Treaty Series 1991 No 13

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

**Treaty on Extradition between Australia and the United Mexican States  
(Canberra, 22 June 1990)**

**Entry into force: 27 March 1991  
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### **TREATY ON EXTRADITION BETWEEN AUSTRALIA AND THE UNITED MEXICAN STATES**

**AUSTRALIA AND THE UNITED MEXICAN STATES,**

**AWARE** of the close ties existing between both peoples and desiring to promote greater co-operation between the two countries in all areas of common interest, including the suppression of crime, by concluding a treaty on extradition,

**HAVE AGREED as follows:**

Obligation to extradite

Article 1

The Parties agree to extradite to each other, in accordance with the provisions of this Treaty, persons against whom criminal proceedings have been initiated or who are

wanted for the imposition or enforcement of a judicial sentence involving deprivation of liberty for an extraditable offence.

## Extraditable offences

### Article 2

1. For the purposes of this Treaty, extraditable offences are those offences, however named, which are punishable under the laws of both Parties by a penalty no less severe than deprivation of liberty for a maximum period of at least one year.
2. When the request for extradition relates to a person convicted of such an 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 of such penalty remains to be served.
3. For the purposes of this Article, in determining whether conduct is an offence against the laws of both Parties and the constituent elements of the offence differ, the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account.
4. When the offence has been committed outside the territory of the Requesting State extradition shall be granted when the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. When the law of the Requested Party does not so provide the Requested Party may, in its discretion, grant extradition.
5. Extradition may 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 it was an offence under the laws of both Parties at the time of the acts or omissions constituting the offence and at the time of the making of the request for extradition.

### Article 3

Offences which are made extraditable by multilateral conventions to which both States are parties shall also be extraditable offences for the purposes of this Treaty.

### Article 4

Extradition shall be granted for offences against laws relating to taxation, customs duties, foreign exchange control or other revenue matters where the acts or omissions constitute an extraditable offence against the laws of both Parties.

### Exceptions to extradition

#### Article 5

1. Extradition shall not be granted for offences regarded as political offences by the Requested Party or connected with offences of that nature. For the purposes of this Treaty the murder or other offence against the life, physical integrity or liberty of a Head of State or of Government, or a member of that person's family, shall not be considered a political offence.

2. Extradition shall also not be granted if the Requested Party has substantial grounds for believing that the request for extradition has been made with the aim of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinions, or that the person's situation may be prejudiced for any of those reasons.

#### Article 6

Extradition shall not be granted for an offence which is a military offence only and not an offence under the ordinary criminal law of both Parties.

#### Article 7

Extradition shall not be granted if final judgment has been passed or the person has been pardoned or granted an amnesty in the Requested State or has served the sentence for the acts or omissions constituting the offence for which extradition is requested.

#### Article 8

Extradition shall not be granted when criminal proceedings can no longer be instituted by reason of lapse of time or any other cause in accordance with the law of either Party.

#### Article 9

Extradition shall not be granted if the person sought is liable to be tried by an extraordinary or special tribunal in the territory of the Requesting State, nor for the enforcement of a sentence imposed by such a tribunal.

#### Article 10

1. Both Parties may refuse extradition of their nationals. The nationality of a person shall be determined at the time of decision on the extradition request.
2. If a Party refuses to extradite a national it shall, at the request of the Requesting Party and to the extent permitted by its law, submit the case to the competent authorities in order that proceedings for prosecution may be initiated in accordance with the laws of that Party. In such cases the documents, reports and objects relating to the offence shall be sent free of charge in the manner provided for in Article 16 and the Requesting Party shall be informed of the decision taken.

#### Article 11

The Requested Party may refuse extradition when, in accordance with its own laws, its courts are competent to try the offence for which extradition has been requested.

#### Article 12

If the person sought has been convicted in that person's absence, extradition shall not be granted unless the Requesting Party gives assurances that the person's defence will be heard and that all rights and opportunities prescribed by its law will be made available to the person.

#### Article 13

If, according to the laws of the Requesting Party, the offence for which extradition is requested or any other offence for which the person could be detained or tried in accordance with this Treaty is punishable by death, extradition shall only be granted if the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be carried out.

#### Article 14

Extradition may also be refused:

(a) 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; or

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

### Authentication of requests

#### Article 15

1. The request for extradition shall be made in writing through the diplomatic channel.

2. All documents submitted in support of a request for extradition shall be authenticated, in accordance with the following provisions:

(a) in the case of a request made by the United Mexican States, a document is authenticated for the purposes of this Treaty if:

(i) it purports to be signed or certified by a judicial authority of the United Mexican States, and

(ii) it purports to be sealed with an official seal of the United Mexican States.

(b) in the case of a request made by Australia, a document is authenticated for the purposes of this Treaty if :

(i) the document is certified by a competent judicial authority of Australia, and

(ii) the document is legalized by the Australian Department of Foreign Affairs and Trade and by the Mexican diplomatic or consular representative duly accredited to Australia.

### Documentary requirements

#### Article 16

1. The following documents, accompanied by a translation into the language of the Requested State, shall be sent with the extradition request:

(a) a statement of the acts or omissions for which the extradition is requested, indicating as precisely as possible the time and place of their commission and their legal description;

(b) the original or authenticated copy of the warrant of arrest, warrant of commitment, conviction or sentence, if imposed, or any other judicial order made under the laws of the Requesting Party which authorizes the arrest of the person and from which the existence of the offence and its commission by the person sought may be reasonably inferred;

(c) a statement of the basis of the laws relating to the offence or offences which are the subject of the request and a statement of the punishment that may be imposed and the provisions relating to the period of limitation or prescription;

(d) the details which enable the identity and nationality of the person sought to be established and, whenever possible, information which may help establish the person's location; and

(e) when a person has been convicted, a statement that it is intended to impose a sentence or, when a sentence has been imposed, the length of that sentence, the fact that it is immediately enforceable and, if applicable, the period remaining to be served.

2. To the extent permitted by the law of the Requested Party, extradition of a person may be granted pursuant to the provisions of this Treaty, notwithstanding that the requirements of this Article have not been complied with, provided that the person sought consents to an order for his extradition being made.

#### Additional information

#### Article 17

If the details or documents sent with the request for extradition are insufficient or defective, the Requested Party shall inform the Requesting Party of the omissions or defects which may be corrected, before the request will be submitted to the judicial authority.

#### Rule of speciality

#### Article 18

A person extradited under this Treaty shall not be detained, tried or punished in the territory of the Requesting State for an offence other than that for which extradition has been granted nor be extradited by the Requesting Party to a third State, for any offence committed prior to the extradition, unless:

(a) the person has left the territory of the Requesting State after extradition and has voluntarily returned to it;

(b) the person has not left the territory of the Requesting State within 60 days after being free to do so; or

(c) the Requested Party has given its consent to such detention, trial, punishment or to extradition to a third State. The request for the consent of the Requested Party under this Article shall be accompanied by the documents mentioned in Article 16.

2. These provisions shall not apply to offences committed after the extradition.

#### Provisional arrest

#### Article 19

1. In case of urgency, the Requesting Party may apply through the diplomatic channel for the provisional arrest of a person sought. Such an application 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 paragraph (b) of Article 16 authorising the arrest of the person, a statement of the offence alleged and of the punishment that can be, or has been, imposed for the offence and a summary of the acts or omissions alleged to constitute the offence.

2. An application for provisional arrest may be made by any written means.

3. On receipt of the application referred to in paragraph 1, the Requested Party shall take the necessary steps to secure the arrest of the person sought. The Requesting Party shall be informed of the outcome of its application.

4. The person provisionally arrested may be discharged if on the expiration of 60 days the Requested Party has not received the request for extradition and the documents mentioned in Article 16 or documents requested pursuant to Article 17.

5. The discharge of a person shall not preclude the institution of extradition proceedings if the request and the documents mentioned in Article 16 are subsequently received.

#### Concurrent requests

##### Article 20

If concurrent requests for extradition are received from one of the Parties and other States, either for the same offence or different offences, the Requested Party shall determine to which of those States extradition shall be granted, having regard to the circumstances, including other treaties under which the Requested Party has obligations, the relative seriousness of the offences, the place of commission of the offences, the dates of the respective requests, the nationality and ordinary place of residence of the person sought and the possibility of later extradition.

#### Surrender

##### Article 21

1. The Requested Party shall communicate its decision on the request for extradition to the Requesting Party through the diplomatic channel.
2. If extradition is refused, either totally or partially, reasons shall be given.
3. If extradition is granted, the Parties shall mutually decide on arrangements for the surrender of the person sought. The Requesting Party shall remove the person whose extradition has been granted within 60 days from the date on which that Party receives advice from the Requested Party that the person is available for surrender.
4. If the person sought has not been removed from the Requested State within the period specified, that person shall be released.

#### Postponement of surrender

##### Article 22

1. The Requested Party may, after having made its decision on the request for extradition, postpone the surrender of the person in order to prosecute that person for an offence other than that for which it has granted extradition or, if sentence has already been passed for such an offence, so that the person may serve that sentence in its territory.



2. With the written consent of the person sought, the Requested Party may defer surrender when, for reasons of the health of the person, surrender may endanger that person's life or aggravate his or her condition.

### Surrender of property

#### Article 23

1. At the request of the Requesting Party, the Requested Party shall secure and deliver, to the extent its laws permit and without prejudice to the rights of third parties, property:

(a) that may serve as evidence; or

(b) which has been obtained as a result of the offence and has been found in the possession of the person sought at the time of that person's arrest, or which has been subsequently found.

2. The property mentioned in paragraph 1 shall, if the Requesting Party so requests, be surrendered even though the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.

3. The Requested Party may temporarily retain any property mentioned in paragraph 1 if it is the subject of, or required for, proceedings in that State, or it may temporarily surrender it on condition that it be returned free of charge.

4. When the Requested Party or third parties have rights over the property surrendered to the Requesting Party in accordance with the provisions of this Article, such property shall be returned to the Requested Party as soon as possible and free of charge.

### Transit

#### Article 24

1. When a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory.

2. A request for permission to transit shall be made through the diplomatic channel and shall be accompanied by a copy of the resolution granting the extradition.

3. Upon receipt of such a request the Requested Party shall grant the request unless there are reasons of public policy for opposing the request. The Requested Party may also refuse permission to transit if the person is a national of that State.

4. The authorities of the transit State shall be responsible for the custody of the prisoner while that person remains in its territory.

5. The Requesting Party shall re-imburse the transit State for any expenses it incurs in connection with the transit.

### Multilateral obligations

#### Article 25

Nothing in this Treaty shall affect any obligations which have been or shall in the future be assumed by both Parties under any multilateral convention.

### Applicable laws

#### Article 26

The laws of the respective Parties shall be applied to the extent that the provisions of this Treaty do not govern the extradition proceedings.

### Expenses

#### Article 27

The expenses incurred in relation to an extradition in the territory of the Requested Party shall be borne by that Party, except those relating to transport of the person sought which shall be borne by the Requesting Party.

### Entry into force and termination

#### Article 28

1. This Treaty shall come into force on the date on which the Parties have notified each other in writing through the diplomatic channel that their respective domestic requirements for the entry into force have been complied with.[\[1\]](#)

2. Either Party may terminate this Treaty by notice in writing through the diplomatic channel at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

3. On the entry into force of this Treaty the provisions of the Treaty for the Mutual Surrender of Fugitive Criminals between Great Britain and Mexico done at Mexico City on 7 September 1886<sup>[2]</sup> shall cease to have effect between Australia and Mexico.

4. 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.

5. Requests for extradition made before this Treaty has entered into force shall continue to be governed by the Treaty referred to in paragraph 3 of this Article.

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

**DONE** in two originals at CANBERRA on the twenty-second day of June One Thousand, Nine Hundred and Ninety in English and Spanish each text being equally authentic.

FOR AUSTRALIA: FOR THE UNITED MEXICAN STATES:

[Signed:] [Signed:]

GARETH EVANS FERNANDO SOLANA

<sup>[1]</sup> Notes to this effect were exchanged at Canberra 25 January and 27 March 1991. The Treaty entered into force 27 March 1991.