

No. 33338

**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.

**AUSTRALIE
et
CHILI**

**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.

TREATY¹ 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.

¹ 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