



Extradition (United States of America) Regulations

Statutory Rules 1988 No. 298 as amended

made under the

Extradition Act 1988

This compilation was prepared on 22 November 2000
taking into account amendments up to SR 1992 No. 394

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

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1 Citation [see Note 1]

These Regulations may be cited as the Extradition (United States of America) Regulations.

2 Interpretation

In these Regulations, unless the contrary intention appears: *the Act* means the *Extradition Act 1988*.

3 Declaration of United States of America as extradition country

The United States of America is declared to be an extradition country.

4 Application of Act

The Act applies in relation to the United States of America subject to the Treaty on Extradition between Australia and the United States of America that came into force on 8 May 1976, as amended by the Protocol done at Seoul on 4 September 1990 (being, respectively, the treaty a copy of the text of which is set out in Schedule 1 and the protocol a copy of the text of which is set out in Schedule 2).

Schedule 1 Treaty on extradition between Australia and the United States of America

(regulation 4)

Australia and the United States of America, desiring to make more effective the cooperation of the two countries for the reciprocal extradition of offenders, agree as follows:

ARTICLE I

Each Contracting Party agrees, under the conditions and circumstances established by this Treaty, reciprocally to deliver up persons found in its territory who have been charged with or convicted of any of the offences mentioned in Article II of this Treaty committed within the territory of the other Contracting Party, or outside that territory under the conditions specified in Article IV of this Treaty.

ARTICLE II

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the following offences provided these offences are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death:

1. Murder or willful murder; assault with intent to commit murder.
2. Manslaughter.
3. Aggravated or willful wounding or injuring; assault occasioning actual bodily harm.
4. Unlawful throwing or application of any corrosive or injurious substances upon the person of another.
5. Rape; indecent assault, including unlawful sexual acts with or upon children.
6. Illegal abortion.
7. Procuring, or trafficking in, women or young persons for immoral purposes; living on the earnings of prostitution.

8. Abandoning or exposing a child when the life of that child is or is likely to be injured or endangered.
9. Bigamy.
10. Kidnapping; child stealing; abduction; false imprisonment.
11. Robbery.
12. Burglary; housebreaking or any similar offence.
13. Larceny.
14. Embezzlement.
15. Obtaining any property, money or valuable securities by false pretences or other form of deception.
16. An offence against the law relating to bribery.
17. Extortion.
18. Receiving any property, money or valuable securities knowing the same to have been unlawfully obtained.
19. Fraud by an agent, bailee, banker, factor or trustee, by a director or officer of a company or by a promoter of a company, whether existing or not.
20. An offence relating to counterfeiting or forgery.
21. Perjury; subornation of perjury; conspiring to defeat the course of justice.
22. Arson.
23. An act done with the intention of endangering the safety of any person traveling upon a railway or in any aircraft or vessel or other means of transportation.
24. Any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, of an aircraft.
25. Piracy, by statute or by law of nations; revolt on board a vessel against the authority of the master of the vessel.
26. Malicious injury to property.
27. An offence against the bankruptcy laws.
28. An offence against the laws relating to narcotics, dangerous drugs or psychotropic substances.
29. Dealing in slaves.

(2) Extradition shall also be granted for any other offences that are made extraditable under the extradition laws of Australia and which are felonies under the laws of the United States of America.

(3) Extradition shall also be granted for any offence against a federal law of the United States of America of which one of the above-mentioned offences is a substantial element, even if transporting or transportation or the use of the mails or of interstate facilities is also an element of the specific offence.

(4) Extradition shall also be granted for aiding, abetting, counseling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences mentioned in the preceding paragraphs of this Article.

(5) If extradition is requested for any offence mentioned in a preceding paragraph of this Article and that offence is punishable under the laws of both Contracting Parties by a term of imprisonment exceeding one year or by death, that offence shall be extraditable under the provisions of this Treaty whether or not the laws of both Contracting Parties would place that offence within the same category of offences made extraditable by that preceding paragraph of this Article and whether or not the laws of the requested State denominate the offence by the same terminology.

ARTICLE III

(1) For the purposes of this Treaty, the territory of a Contracting Party means all the territory under the jurisdiction of that Contracting Party, including airspace and territorial waters, and also includes—

(a) any vessel registered in any territory under the jurisdiction of that Contracting Party; and

(b) any aircraft registered in any such territory provided that the aircraft is in flight when the relevant offence is committed.

(2) For the purposes of this Treaty—

(a) the territory under the jurisdiction of a Contracting Party includes the Territories for the international relations of which that Contracting Party is responsible;

(b) an aircraft shall be considered in flight from the moment when the power is applied for the purpose of take-off until the moment when the landing run ends.

ARTICLE IV

When the offence for which extradition has been requested has been committed outside the territory of the requesting State—

(a) if the United States of America is the requested State—the executive authority of the United States of America; or

(b) if Australia is the requested State—the Attorney-General of Australia, shall have the power to grant the extradition if the laws of the requested State provide for jurisdiction over such an offence committed in similar circumstances.

ARTICLE V

(1) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

(2) For the purposes of this Article—

(a) a reference to the executive authority of a Contracting Party shall, in the case of Australia, be construed as a reference to the Attorney-General of Australia;

(b) Australian protected persons shall be deemed to be nationals of Australia; and

(c) the nationality of a person shall be determined to be that which he held at the time when he was charged with the offence for which his extradition is requested.

ARTICLE VI

Extradition shall be granted only if the evidence is found sufficient, according to the laws in the territory where the person whose extradition is requested is found, either to justify his trial or committal for trial if the offence with which he is charged or its equivalent had been committed in that territory or to prove that he is the identical person convicted by the courts of the requesting State.

ARTICLE VII

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

(a) when the person whose extradition is requested is being proceeded against, has been tried and discharged or punished, or has been pardoned, in the territory of the requested State for the offence for which his extradition is requested;

(b) when the prosecution for the offence has become barred by lapse of time according to the laws of the requesting State; or

(c) when the offence in respect of which extradition is requested is of a political character, or the person whose extradition is requested proves that the extradition request has been made for the purpose of trying or punishing him for an offence of a political character.

(2) If any question arises whether a case comes within the provisions of subparagraph (c) of paragraph (1) of this Article, the requested State shall decide that question.

ARTICLE VIII

If, under the law of the requesting State, an offence for which the extradition of a person is requested, or any other offence for which he may be detained or tried under paragraph (1) of Article XIV, is subject to a penalty of death but the law of the requested State does not provide for such a penalty in a similar case, the requested State may recommend to the requesting State that any punishment imposed for any of those offences be a less severe punishment.

ARTICLE IX

When the person whose extradition is requested is being proceeded against or is serving a sentence in the territory of the requested State for an offence other than that for which extradition has been requested, his surrender may be deferred until the conclusion of the proceedings and the full execution of any punishment that may be or may have been imposed on him.

ARTICLE X

The determination that extradition based upon the request therefor should or should not be granted shall be made in accordance with the law of the requested State and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by that law.

ARTICLE XI

(1) The request for extradition shall be made through the diplomatic channel.

(2) The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable laws of the requesting State including the law defining the offence, the law prescribing the punishment for the offence and the law relating to the limitation of the legal proceedings.

(3) When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting State and by such evidence as, according to the laws of the requested State, would justify his trial or committal for trial if the offence had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

(4) When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence, if any, passed upon him in the territory of the requesting State, by a statement, if applicable, showing how much of the sentence has not been served and by evidence proving that the person requested is the person to whom the judgment refers.

(5) The warrant of arrest and deposition or other evidence, given under oath or affirmed, and the judicial documents establishing the existence of the conviction, or certified copies of those documents, shall be admitted in evidence in the examination of the request for extradition when—

- (a) in the case of a request by Australia—those documents or certified copies bear the signature, or are accompanied by the attestation, of a judge, magistrate or officer of Australia or are authenticated by the official seal of the Attorney-General and, in any case, are certified by the principal diplomatic or consular officer of the United States of America in Australia; or
- (b) in the case of a request by the United States of America—the warrant, if any, bears an original signature, or the other documents are certified, by a judge, magistrate or officer of the United States of America and, in any case, are authenticated by the oath of a witness or sealed with the official seal of the Department of State on behalf of the Secretary of State or of the Department of Justice on behalf of the Attorney General.

ARTICLE XII

(1) In case of urgency a Contracting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.

(2) The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgment of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the requested State.

(3) On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person claimed.

(4) A person arrested upon such an application shall be set at liberty upon the expiration of forty-five days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article XI has not been received.

(5) Paragraph (4) of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE XIII

(1) If the requested State requires additional evidence or information to enable it to decide on the request for extradition, that State may request that such evidence or information be furnished within such period as it specifies.

(2) If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested State, he shall be discharged from custody.

(3) The discharge of a person from custody under paragraph (2) of this Article shall not bar the requesting State from submitting another request in respect of the same offence.

ARTICLE XIV

(1) A person extradited under this Treaty may be detained, tried or punished in the territory of the requesting State for any offence mentioned in Article II for which the person could be convicted upon proof of the facts upon which the request for extradition was based.

(2) Except as provided in to paragraph (1) of this Article, 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, or be extradited by that State to a third State, unless—

- (a) he has left the territory of the requesting State after his extradition and has voluntarily returned to it;
- (b) he has not left the territory of the requesting State within thirty days after being free to do so; or
- (c) the offence concerned is one for which the requested State has consented to his detention, trial or punishment or to his extradition to a third State and is an offence mentioned in Article II.

(3) A request for the consent of the requested State under subparagraph (c) of paragraph (2) of this Article shall be accompanied by such information and documents as are requested by that State.

(4) This Article does not apply to offences committed after the extradition.

ARTICLE XV

A requested State, upon receiving two or more requests for the extradition of the same person either for the same offence, or for different offences, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offence, the place where the offence was committed, the nationality and residence of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested State and the other requesting State or States.

ARTICLE XVI

(1) The requested State shall promptly communicate to the requesting State through the diplomatic channel the decision on the request for extradition.

(2) Where extradition of a person for an offence is granted, the person shall be conveyed by the appropriate authorities of the requested State to a port or airport in the Territory of that State agreed between that State and the requesting State.

(3) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested State within such time as is prescribed by the laws of that State,

he may be set at liberty, and the requested State may subsequently refuse to extradite that person for the same offence.

(4) Australia is not required to extradite a person before the expiration of fifteen days after the date on which he has been held judicially to be liable to extradition, or, if proceedings for a writ of habeas corpus have been brought, before the expiration of fifteen days after the final decision of the competent court has been given.

ARTICLE XVII

(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 articles found in the requested State that have 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) Subject to the qualifications of paragraph (1) of this Article, the above-mentioned articles shall, if the requested State so requests, be surrendered to the requesting State even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

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

ARTICLE XVIII

(1) Expenses related to the transportation of the person sought to the requesting State shall be paid by the requesting State.

(2) The requested State shall make all necessary arrangements for, and meet the cost of, the representation of the requesting State in any proceedings arising out of a request for extradition.

(3) No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this Treaty, shall be made by the requested State against the requesting State.

ARTICLE XIX

(1) The right to transport through the territory of one of the Contracting Parties a person surrendered to the other Contracting Party by a third State shall be granted on request made through the diplomatic channel.

(2) In the case of a national of the requested State, the request shall establish that conditions are present which would warrant extradition of the person by the State of transit.

(3) The request may be refused if reasons of public order are opposed to the transit.

(4) Permission for the transit of a person surrendered shall include authorisation for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the State of transit in maintaining custody.

(5) The Party to which the person has been extradited shall reimburse the Party through whose territory such person is transported for any expenses incurred by the latter in connection with such transportation.

ARTICLE XX

This Treaty applies to offences mentioned in Article II committed before, on or after the date on which this Treaty enters into force, provided that no extradition shall be granted for an offence committed before that date which was not an offence under the laws of both Contracting Parties at the time of its commission.

ARTICLE XXI

(1) This Treaty is subject to ratification and the instruments of ratification shall be exchanged in Canberra as soon as possible.

(2) This Treaty shall enter into force thirty days after the exchange of instruments of ratification.

(3) This Treaty may be terminated by either Contracting Party giving notice of termination to the other Contracting Party at any time and the termination shall be effective six months after the date of receipt of such notice.

(4) This Treaty shall terminate and replace, as between the Contracting Parties to the present Treaty, the Treaty on Extradition between Great Britain and the United States of 22 December, 1931, as made applicable to Australia.

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

DONE at Washington this fourteenth day of May, 1974.

FOR AUSTRALIA:

PATRICK SHAW

FOR THE UNITED STATES OF AMERICA:

KENNETH RUSH

**Schedule 2 Protocol amending the treaty
on extradition between
Australia and the United
States of America of
May 14, 1974**

(regulation 4)

Australia and The United States of America;

Desiring to make more effective the Extradition Treaty between the Contracting Parties signed at Washington May 14, 1974 (hereinafter referred to as “the Treaty”);

Have agreed as follows:

ARTICLE 1

The text of Article II of the Treaty is replaced by the following:

“(1) An offence shall be an extraditable offence if it is punishable under the laws in both Contracting Parties by deprivation of liberty of more than one year, or by a more severe penalty. However, if the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, the executive authority of the requested State shall have authority to refuse extradition if a period of less than six months of imprisonment remains to be served.

(2) The following offences shall be extraditable if they meet the requirements of paragraph (1): conspiring to commit, attempting to commit, aiding or abetting, counselling or procuring the commission of, or being an accessory after the fact to, any offence described in that paragraph.

(3) For the purpose of this Article, an offence shall be an extraditable offence:

- (a) whether or not the laws in the Contracting Parties place the offence within the same category of offences or describe the offence by the same terminology; and
- (b) whether or not the offence is one for which United States federal law requires proof of interstate transportation, or use of the mails, or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

(4) If the offence has been committed outside the territory of the requesting State, extradition shall be granted if the laws in the requested State provide for the punishment of an offence committed outside of its territory in similar circumstances. If the laws in the requested State do not so provide, the executive authority of the requested State may, in its discretion, grant extradition.

(5) Subject to the laws in the requested State, if extradition has been granted for an extraditable offence, it shall also be granted for any other offence specified in the request even if the latter offence is punishable by deprivation of liberty of one year or less, provided that all other requirements of extradition are met.”

ARTICLE 2

Article III and Article IV of the Treaty are deleted.

ARTICLE 3

The text of paragraph 2 of Article V of the Treaty is replaced by the following:

“If the requested State refuses to extradite a national of that State on the basis of nationality it shall, if the requesting State so requests and the laws of the requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person may be undertaken in respect of all offences for which the extradition has been requested.”

ARTICLE 4

Article VI of the Treaty is deleted.

ARTICLE 5

The text of Article VIII of the Treaty is replaced by the following:

“If, under the law of the requesting State, an offence for which the extradition of a person is requested is subject to a penalty of death, the requested State may refuse the extradition unless the requesting State gives an undertaking that the death penalty will not be imposed or, if imposed, will not be carried out.”

ARTICLE 6

The text of Article IX of the Treaty is replaced by the following:

“(1) If the extradition request is granted in the case of a person who is being prosecuted or is serving a sentence in the territory of the requested State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State after the conclusion of the proceedings against that person, in accordance with conditions to be mutually determined in writing between the Contracting Parties.

(2) The requested State may postpone the extradition proceedings against, or the surrender of, any person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded and any sentence has been served.”

ARTICLE 7

The text of Article XI of the Treaty is replaced by the following:

“(1) All requests for extradition shall be made through the diplomatic channel.

- (2) The request for extradition shall be supported by:
 - (a) documents, statements, or other types of information which describe the identity and probable location of the person sought;
 - (b) a description of the conduct constituting the offence;
 - (c) a statement of the law describing the essential elements of the offence for which extradition is requested; and
 - (d) a statement of the law describing the punishment for the offence and the law relating to the limitation of legal proceedings.
- (3) A request for the extradition of a person who is sought for prosecution or who has been found guilty in his absence shall also be supported by:
 - (a) a copy of the warrant or order of arrest issued in the requesting State for the arrest of the person for the offence;
 - (b) a copy of the charging document, if any; and
 - (c) a description of the facts, by way of affidavit, statement, or declaration, setting forth reasonable grounds for believing that an offence has been committed and that the person sought committed it.
- (4) A request for extradition of a person who has been found guilty of the offence for which extradition is sought, other than a person who has been found guilty in his absence, shall also be supported by:
 - (a) a copy of the judgment of conviction, if available, or a statement by a judicial authority that the person has been found guilty;
 - (b) information establishing that the person sought is the person to whom the finding of guilt refers;
 - (c) a copy of the sentence imposed, if the person has been sentenced, and a statement establishing to what extent the sentence has been carried out; and
 - (d) if the person has been found guilty but no sentence has been imposed, a statement affirming that it is intended to impose a sentence.

- (5) The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:
- (a) in the case of a request from the United States, they
 - (i) purport to be signed or certified by a judge, magistrate, or officer in or of the United States; and
 - (ii) purport to be authenticated by the oath or affirmation of a witness or 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;
 - (b) in the case of a request from Australia, they are certified by the principal diplomatic or consular officer of the United States resident in Australia, as provided by the extradition laws of the United States; or
 - (c) they are certified or authenticated in any other manner accepted by the law of the requested State.”

ARTICLE 8

The text of Article XII of the Treaty is replaced by the following:

“(1) In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Department of Justice in the United States and the Attorney-General’s Department in Australia. The facilities of the International Criminal Police Organisation (Interpol) may be used to transmit such a request.

- (2) The application for provisional arrest shall contain:
 - (a) a description of the person sought;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 - (d) a description of the laws violated or alleged to have been violated and, where applicable, the penalty which may be imposed;

- (e) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that a request for the extradition of the person sought will follow.

(3) On receipt of the application, the requested State shall take appropriate steps to secure the arrest of the person sought. The requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

(4) A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the requesting State if the executive authority of the requested State has not received the formal request for extradition and the supporting documents required in Article XI.

(5) The fact that the person sought has been discharged from custody pursuant to paragraph (4) of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are received at a later date.”

ARTICLE 9

Article XIII of the Treaty is amended by deleting the words evidence or wherever they occur in Article XIII (1) and Article XIII (2), and by adding the following:

“(4) If the person sought, after being personally advised by the competent authority of the requested State of his right to formal extradition proceedings, consents to surrender to the requesting State, the requested State may surrender the person as expeditiously as possible and without further proceedings.”

ARTICLE 10

The text of Article XIV of the Treaty is replaced by the following:

“(1) A person extradited under this Treaty may not be detained, tried, or punished in the requesting State except for:

- (a) the offence for which extradition is granted or any other offence of which the person could be convicted on proof of the conduct constituting the extradition offence provided that the offence carries the same or a lesser punishment;
- (b) any offence committed after the extradition; or
- (c) any offence for which the executive authority of the requested State consents to the person's detention, trial or punishment. For the purposes of this subparagraph, the requested State may require the submission of the documents specified in Article XI.

(2) A person extradited under this Treaty by a Contracting Party may not be extradited to a third State for an offence committed prior to his surrender unless that Contracting Party consents.

(3) Paragraphs (1) and (2) of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

- (a) that person leaves the territory of the requesting State after extradition and voluntarily returns to it; or
- (b) that person does not leave the territory of the requesting State within fifteen days of the day on which the person is free to do so."

ARTICLE 11

The text of Article XV of the Treaty is replaced by the following:

"If the requested State receives requests from the other Contracting Party and from any other State or States for the extradition of the same person, either for the same offence or for a different offence, the executive authority of the requested State shall determine to which State it will surrender the person. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

- (a) whether the requests were made pursuant to treaty;
- (b) the place where each offence was committed;
- (c) the respective interests of the requesting States;
- (d) the gravity of the offences;

- (e) the nationality of the victim;
- (f) the possibility of further extradition between the requesting States; and
- (g) the chronological order in which the requests were received from the requesting States.”

ARTICLE 12

The text of Article XVI of the Treaty is replaced by the following:

“(1) The requested State shall promptly notify the requesting State of its decision on the request for extradition.

(2) If the request is denied in whole or in part, the requested State shall provide information as to the reasons for the denial of the request. The requested State shall provide copies of pertinent judicial decisions on request.

(3) If the request for extradition is granted, the competent authorities of the Contracting Parties shall arrange for the time and place of the surrender of the person sought.

(4) If the person sought is not removed from the territory of the requested State within the time prescribed by the law of that State, that person may be discharged from custody, and the requested State may subsequently refuse extradition for the same offences.”

ARTICLE 13

The text of Article XVII of the Treaty is replaced by the following:

“(1) To the extent permitted under its laws, the requested State may seize all articles, documents, and evidence connected with the offence in respect to which extradition is or is to be sought and surrender those items to the requesting State if extradition is subsequently granted. The items mentioned in this Article may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.

(2) The requested State may require that the surrender of any property be subject to satisfactory assurances from the requesting State

that the property will be returned to the requested State as soon as practicable. The requested State may also defer surrender of any property if it is needed as evidence in the requested State.

(3) The rights of third parties in any property shall be duly respected.”

ARTICLE 14

The text of Article XVIII of the Treaty is replaced by the following:

“(1) The requested State shall advise, assist, and otherwise represent the interests of the requesting State in any proceedings arising out of a request for extradition.

(2) The requesting State shall bear the expenses related to any translation of documents and the transportation of the person surrendered. The requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

(3) Neither State shall make any pecuniary claim against the other arising out of the arrest, detention, examination, or surrender of the person sought under this Treaty.”

ARTICLE 15

The text of Article XIX of the Treaty is replaced by the following:

“(1) Either Contracting Party may authorise transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall 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 Party. If an unscheduled landing occurs on the territory of the other Contracting Party, the other Contracting Party may require the request for transit as provided in paragraph 1. That Contracting Party shall detain the person being transported until the request for transit is received and the

transit is effected, so long as the request is received within 96 hours of the unscheduled landing.”

ARTICLE 16

Notwithstanding Article XX of the Treaty, this Protocol shall apply in all cases in which the request for extradition is made after its entry into force regardless of whether the offence was committed before or after that date.

ARTICLE 17

This Protocol shall enter into force on the date on which the Contracting Parties have exchanged written notification that they have complied with their respective requirements for the entry into force of this Protocol.

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

DONE at Seoul, this 4th day of September, 1990

MICHAEL DUFFY

RICHARD THORNBURG

FOR AUSTRALIA:

FOR THE UNITED STATES OF
AMERICA:

Table of Statutory Rules

Notes to the Extradition (United States of America) Regulations**Note 1**

The Extradition (United States of America) Regulations (in force under the *Extradition Act 1988*) as shown in this compilation comprise Statutory Rules 1988 No. 298 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1988 No. 298	30 Nov 1988	1 Dec 1988 (<i>see Gazette</i> 1988, No. S366)	
1992 No. 394	16 Dec 1992	21 Dec 1992	—

Table of Amendments

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 4.....	am. 1992 No. 394
Heading to Schedule	rep. 1992 No. 394
Heading to Schedule 1	ad. 1992 No. 394
Schedule 2	ad. 1992 No. 394
