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Department.



Statutory Rules 1988 No. 61

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Extradition (State of Israel) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and pursuant to section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 24 November 1988.

N. M. STEPHEN

Governor-General

By His Excellency's Command,

Lionel Bowen
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (State of Israel) Regulations.

Interpretation

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

Declaration of State of Israel as extradition country

3. The State of Israel is declared to be an extradition country.

Application of Act

4. The Act applies in relation to the State of Israel subject to the Treaty between Australia and the State of Israel concerning Extradition that came into force on 3 January 1976 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 4

**TREATY BETWEEN AUSTRALIA AND THE STATE OF ISRAEL
CONCERNING EXTRADITION**

AUSTRALIA and The STATE OF ISRAEL

DESIRING to make provision for the extradition of persons accused or convicted of crimes,

HAVE AGREED as follows:

ARTICLE I

Each Contracting Party agrees to extradite to the other Contracting Party, subject to the provisions of this Treaty, any person found in its territory who is accused, or has been convicted, of an offence committed in the territory of the other Contracting Party or outside that territory in the circumstances referred to in paragraph 3 of Article III.

ARTICLE II

1. A reference in this Treaty to the territory of a Contracting Party is a reference to all the territory under the jurisdiction of that Party, including airspace, territorial sea and vessels and aircraft owned by that Party or registered in its territory if any such vessel is on the high seas or any such aircraft is in flight when the act or omission constituting the offence takes place.

2. For the purposes of this Treaty, an aircraft is considered to be in flight at any time from the moment when its external doors are closed following an embarkation until the moment when any such door is opened for disembarkation.

3. For the purposes of this Treaty, the territory falling under the jurisdiction of Australia includes the Territories for the international relations of which Australia is responsible.

ARTICLE III

1. Extradition shall be granted for an act or omission constituting an offence coming within any of the following categories of offences if the offence is, according to the laws of both Contracting Parties, one for which extradition can be granted:

- (i) Wilful murder: murder.
- (ii) Manslaughter.
- (iii) An offence against the law relating to genocide.
- (iv) Administering drugs or using instruments with intent to procure the miscarriage of a woman.
- (v) Maliciously or wilfully wounding or inflicting grievous bodily harm: assault occasioning actual bodily harm.
- (vi) Rape.
- (vii) Unlawful sexual intercourse with a person under the age of 16 years.
- (viii) Indecent assault.
- (ix) An offence against the law relating to the suppression of the traffic in persons and of the exploitation of the prostitution of others.
- (x) Abduction; false imprisonment; dealing in slaves.
- (xi) Stealing, abandoning, exposing or unlawfully detaining a child.
- (xii) Bribery.
- (xiii) Perjury; subornation of perjury; conspiring to defeat the course of justice.
- (xiv) Arson.

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- (xv) An offence concerning counterfeit currency.
- (xvi) An offence against the law relating to forgery.
- (xvii) Stealing; embezzlement; fraudulent conversion; obtaining property or credit by false pretences; receiving stolen property; fraud by a bailee, banker, agent, factor, trustee or by a director or officer of a company; false accounting by an officer of a company; fraud or breach of trust by a public servant.
- (xviii) Burglary; housebreaking; any similar offence.
- (xix) Robbery.
- (xx) Blackmail or extortion by means of threats or by abuse of authority.
- (xxi) An act done with the intention of endangering the safety of persons travelling on a railway, vessel or aircraft or with the intention of endangering a vessel or aircraft.
- (xxii) Piracy, involving vessels or aircraft, according to international law.
- (xxiii) An offence against the law relating to bankruptcy or insolvency.
- (xxiv) An offence against the law relating to companies.
- (xxv) Maliciously or wilfully damaging property.
- (xxvi) An offence against the law relating to dangerous drugs or narcotics.
- (xxvii) Revolt on board a vessel on the high seas or an aircraft in flight against the authority of the master of the vessel or commander of the aircraft; unlawful seizure of control of an aircraft in flight.
- (xxviii) Aiding, abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit, an offence, hereinbefore set out in this paragraph.

A person accused or convicted of any of the offences numbered (xxiii) to (xxvi) and (xxviii) shall not be extradited therefor unless he is or was liable on conviction to a term of imprisonment exceeding three years.

2. Extradition shall also be granted for any other act or omission constituting an offence if the offence is, according to the laws of both Contracting Parties, one for which extradition can be granted.

3. When the offence for which extradition is requested has been committed outside the territory of the requesting State, extradition may be refused if the law of the requested State does not allow prosecution for the same category of offence when committed outside the territory of the latter State or does not allow extradition for the offence concerned.

ARTICLE IV

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

ARTICLE V

1. A person shall not be extradited where

- (a) he has already been tried and acquitted by a competent tribunal in, or has already undergone punishment according to the law of, the requested State or a third State for the act or omission constituting the offence for which his extradition is requested;
- (b) subsequent to the act or omission constituting the offence for which his extradition is requested or the institution of the prosecution or the conviction of the person for the offence, he has acquired exemption from prosecution or punishment in respect of that act or omission

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- (i) under the law of either the requesting State or the requested State by reason of lapse of time; or
 - (ii) under the law of the requesting State by reason of pardon or remission of punishment by a competent authority of that State;
 - (c) the offence for which his extradition is requested is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, regarded by the appropriate authority of the requested State as an offence of a political character; or
 - (d) the appropriate authority of the requested State has substantial or, as the case may be, reasonable grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions or that the person might, if surrendered, be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.
2. The offences of genocide, attempted genocide, or conspiracy or direct and public incitement to commit genocide shall not be regarded as offences of a political character for the purposes of this Treaty.
3. An amnesty law of the requested State shall not preclude the extradition of a person if the act or omission constituting the offence for which his extradition is requested is not subject to the jurisdiction of that State.

ARTICLE VI

If a request for extradition is made under this Treaty for a person who at the time of the request is under the age of eighteen years and is considered by the requested State to be one of its residents, the requested State may recommend to the requesting State that the request for extradition be withdrawn, specifying the reasons therefor.

ARTICLE VII

If, under the law of the requesting State, a person whose extradition is requested is liable to the death penalty for an offence for which his extradition is requested but the law of the requested State does not provide for the death penalty in a similar case, extradition of the person shall be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.

ARTICLE VIII

1. Either Contracting Party may refuse to extradite a national of that Party.
2. For the purposes of this Article, the expression "national", in relation to Australia, includes an Australian protected person.
3. The nationality of a person shall be determined as at the time of the making of the request for extradition.

ARTICLE IX

1. If a person whose extradition is requested is held in custody, has been admitted to bail or is otherwise under trial in the territory of the requested State in respect of an offence that is alleged to have been committed in the territory of that State, or is serving a sentence in that State, his extradition may be deferred until he has been discharged from custody, the recognizances upon which he was admitted to bail have been discharged or he has completed his sentence or so much of his sentence as he is required to serve, as the case may be.

SCHEDULE—continued

2. If a person whose extradition is requested is confined in an institution by reason of mental illness under the order of a court or other competent authority of the requested State his extradition may be deferred until the order has ceased to have effect.

ARTICLE X

1. A person extradited shall not be
 - (a) detained, tried or punished in the requesting State for any offence that is alleged to have been committed, or was committed, before his extradition other than
 - (i) an offence for which he was extradited, or
 - (ii) an offence for which he could be extradited under this Treaty and in respect of which the requested State consents to his extradition; or
 - (b) detained in the requesting State for the purpose of his being extradited to a third State unless the requested State consents to his being so detained.
2. Paragraph 1 of this Article does not apply if the person has left the requesting State after his extradition and has voluntarily returned to it or if he has not left the requesting State within 60 days after having been given an opportunity to do so.
3. A request for the consent of the requested State under this Article shall be accompanied by such information and documents as are required by that State.

ARTICLE XI

1. A request for the extradition of a person
 - (a) shall be in writing; and
 - (b) shall be accompanied—
 - (i) by particulars of the act or omission constituting the offence for which the extradition of the person is requested and the text of the statute or a statement of the law, as may seem necessary, creating that offence and a statement of the punishment that can be imposed for the offence;
 - (ii) by as an accurate description as possible of the person together with any other information which will help to establish his identity and nationality;
 - (iii) if the person is accused of an offence by a duly authenticated warrant for the arrest of the person, issued by a competent authority in the requesting State, and such duly authenticated documents as, according to the law in force in the part of the territory of the requested State in which he is found, would, or would when taken together with any other evidence that is, or will be, available in the requested State, constitute sufficient evidence to justify his being put on trial if the act or omission constituting the offence had occurred in that part of that territory; and
 - (iv) if the person is alleged to have been convicted of an offence by such duly authenticated documents as would prove the conviction and sentence imposed on the person, and the extent to which the sentence has not been carried out.
2. A document that, in accordance with sub-paragraph (b) of paragraph 1 of this Article, accompanies a request for the extradition of a person shall be admitted in evidence in any proceedings in the requested State for the extradition of that person.

ARTICLE XII

1. If the requested State considers that the evidence furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of its law with respect to extradition, that State may request that additional evidence be furnished within such time as it specifies.
2. If the person whose extradition is requested is under arrest and the additional evidence or information furnished is not sufficient or is not received within the time

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specified, the person may be discharged from custody but his discharge shall not debar the requesting State from making a fresh request for the extradition of the person.

3. Where a person is discharged from custody in accordance with paragraph 2 of this Article, the requested State shall notify the requesting State accordingly.
4. The provisions of Article XI relating to admissibility of evidence shall apply mutatis mutandis to evidence furnished under this Article.

ARTICLE XIII

For the purposes of this Treaty, a document shall be deemed to be duly authenticated if

- (a) in the case of a document that purports to be a warrant for the arrest of a person issued in the territory of the requesting State—it purports to be signed by a Judge or Magistrate in, or by a competent officer of a court of, that State;
- (b) in the case of a document that purports to set out testimony given on oath, or declared or affirmed to be true, by a person in a proceeding in the requesting State—it purports to be certified by a Judge or Magistrate in, or by a competent officer of a court of, that State to be the original document containing or recording that testimony or a true copy of that original document;
- (c) in the case of a document that purports to have been received in evidence or to be a copy of a document that has been received in evidence, in a proceeding in the requesting State—it purports to be certified by a Judge or Magistrate in, or by a competent officer of a court of, that State to have been, or to be a true copy of a document that has been, so received in evidence; or
- (d) in the case of a document that certifies a conviction, or a sentence and the extent to which the sentence has not been carried out—it purports to be certified by a Judge, Magistrate or other competent authority of the requesting State,

and the document purports to be authenticated by the oath of a witness or to be sealed with the official seal of a Minister of State of the requesting State.

ARTICLE XIV

1. In case of urgency the requesting State may apply for the provisional arrest of a person pending the making of a request for the extradition of the person.
2. The application shall be accompanied by
 - (a) a statement of intention to request the extradition of the person;
 - (b) a statement that a warrant for the arrest of the person for the alleged commission of an offence for which his extradition may be requested under this Treaty has been issued by a competent authority in the requesting State or that the person has been convicted of such an offence in the requesting State, as the case may be; and
 - (c) such further information, if any, as would, according to the law in force in the part of the territory of the requested State in which the person is, or is suspected of being, justify the arrest of the person without the issue of a warrant, or the issue of a warrant for the arrest of the person, if the act or omission constituting the offence had taken place in that part of the State.
3. On receipt of such an application, the Government of the requested State shall take the necessary steps to secure the arrest of the person in respect of whom the application is made.
4. If a request for the extradition of a person who has been arrested upon such an application is not made in accordance with this Treaty within a reasonable time after the arrest of the person, the person may be set at liberty, but nothing in this paragraph prevents the institution of further proceedings or rearrest for the purpose of securing the extradition of the person if such a request is subsequently made.

SCHEDULE—continued

ARTICLE XV

1. A person shall not be extradited before the expiration of fifteen days after the date of the final court order directing that he be held in custody to await extradition.
2. If a person who has been ordered by a competent authority in the requested State to be held in custody to await his extradition is so held in custody at the expiration of sixty days after the date of the order or, if proceedings have been instituted in a court to contest the validity of the order, at the expiration of sixty days after the date of the decision of that court, whichever is the later, the person may be set at liberty.

ARTICLE XVI

1. If the extradition of a person is requested concurrently by one of the Contracting Parties and by another State or States, whether for the same offence or for different offences, the requested State shall decide whether the person is to be extradited to the requesting State or to the other State or one of the other States and shall notify the requesting State of its decision.
2. In making a decision the requested State shall have regard to all the circumstances and, in particular, to:
 - (a) the provisions in this regard in any Treaties subsisting between the requested State and the other State or States;
 - (b) if the requests relate to different offences—the relative seriousness of the offences;
 - (c) the place or places where the offence was or the offences were committed;
 - (d) the respective dates of the requests;
 - (e) the nationality and ordinary place of residence of the person; and
 - (f) the possibility of subsequent extradition to another State.

ARTICLE XVII

Where an order has been made for the extradition of a person, he shall be conveyed by the appropriate authorities in the requested State to such place of embarkation in the territory of that State and at such time as are agreed by the Contracting Parties.

ARTICLE XVIII

1. The requested State shall arrange for the representation of the requesting State in any legal proceedings relating to the extradition of the person whose extradition is requested and shall otherwise represent the interests of the requesting State.
2. Except as provided by paragraphs 3 and 4 of this Article, no pecuniary claim arising out of the arrest, detention, examination and surrender of the person whose extradition is requested shall be made by the requested State against the requesting State.
3. Expenses relating to the transportation of the person whose extradition is requested from the place of embarkation referred to in Article XVII of this Treaty shall be paid by the requesting State.
4. If, for the purpose of giving effect to its obligations under paragraph 1 of this Article, the requested State engages legal officers or other persons who receive no salary or compensation other than specific fees for acts or services performed, that State is entitled to receive from the requesting State the usual payment for those acts or services in the same manner and to the same amount as though the acts or services had been performed in ordinary criminal proceedings under the laws of the requested State.

SCHEDULE—continued

ARTICLE XIX

1. To the extent that the law of the requested State permits, any property that is, at the time of the arrest of a person whose extradition is requested, in the possession or under the control of the person, or has been acquired by him as a result of the offence for which his extradition is requested, and may be material as evidence in proving that offence shall, if the Government of the requesting State so requests, be delivered up with the person on his extradition.
2. If the property is liable to seizure or confiscation in the requested State, that State may, in connection with pending criminal proceedings, temporarily retain the property or deliver it up on condition that it is returned without charge after the trial of the person extradited.
3. Any rights of the requested State or third persons in respect of any property shall be preserved and, where such rights exist, the property shall, unless the requested State waives its right to the return of the property, be returned to the requested State free of charge after the trial of the person extradited.

ARTICLE XX

1. Transit through the territory of one of the Contracting Parties of a person extradited to the other Contracting Party by a third State shall be granted on request provided that conditions are present that would justify the extradition of the person by the State of transit.
2. A request for transit shall be accompanied by
 - (a) a duly authenticated copy of the warrant or of a certificate proving the conviction of that person issued in the requesting State; and
 - (b) if those documents do not specify the offence for which the person is to be extradited a document specifying the offence and setting out particulars of the offence.
3. The Contracting Party to whom the person has been extradited shall reimburse the State of transit for any expense incurred by that State in connection with the transit.
4. Permission for the transit of a person includes permission for the person during transit to be held in custody by a person nominated by the Contracting Party to which the first-mentioned person is to be extradited.
5. Where
 - (a) a person who is to be extradited by a third State to a Contracting Party is proposed to be transported by aircraft over the territory of the other Contracting Party, without landing in that territory; and
 - (b) the first-mentioned Contracting Party is of the opinion that, if the aircraft were to land in that territory, the transit of that person through that territory would be permitted under the preceding paragraphs of this Article.the first-mentioned Contracting Party shall notify the other Contracting Party of the proposed transport of the person and shall confirm to the other Contracting Party that, in its opinion, the transport would be in accordance with the said paragraphs.
6. In the event of an unscheduled landing in the territory of a Contracting Party of an aircraft carrying a person who is being so transported, that Contracting Party may permit the transit but otherwise shall cause the person to be held in custody pending receipt of a request for transit, and if such a request for transit is not received within 15 days the person may be released.

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ARTICLE XXI

1. Communications between the Contracting Parties shall be conveyed through diplomatic channels.
2. An application under Article XIV of this Treaty may also be made by means of the facilities of the International Criminal Police Organization (Interpol), but so that the application is in addition communicated through diplomatic channels not later than seven days thereafter.

ARTICLE XXII

1. This Treaty shall enter into force 30 days after the date of signature.
2. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty in Hebrew and English languages, each text being equally authentic.

DONE in duplicate at Jerusalem on the Fourth day of December, One Thousand Nine Hundred and Seventy-Five, corresponding to the Thirtieth day of Kislev, Five Thousand Seven Hundred and Thirty-Six.

For Australia
R. J. SMITH

For the State of Israel
YIGAL ALLON

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on *L* 1988.

30 November/