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101Information & Printing Division, Attorney-General's
Department.

Statutory Rules 1990 No. 1

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Extradition (Republic of Ecuador) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 18 June 1990.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Michael Duffy
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (Republic of Ecuador) Regulations.

Commencement

2. These Regulations commence on 1 August 1990.

Interpretation

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

Declaration of Republic of Ecuador as extradition country

4. The Republic of Ecuador is declared to be an extradition country.

Application of the Act

5. The Act applies in relation to the Republic of Ecuador subject to the Treaty on Extradition between Australia and the Republic of Ecuador done at Quito on 13 October 1988 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 5

**TREATY ON EXTRADITION
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND****THE GOVERNMENT OF THE REPUBLIC OF ECUADOR**

The Government of Australia and the Government of the Republic of Ecuador,

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

HAVE AGREED as follows:

ARTICLE 1**OBLIGATION TO EXTRADITE**

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE 2**EXTRADITABLE OFFENCES**

1. For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by imprisonment for a period of not less than one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.
2. For the purpose of this Article, in determining whether an offence is an offence against the law of both Contracting Parties:
 - (a) it shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within the same category of offence in their respective legal systems, or denominate the offence by the same terminology in their respective legal systems;
 - (b) the totality of 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 Parties, the constituent elements of the offence differ.
3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other public revenue matter, extradition shall not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty customs or exchange regulation of the same kind as the law of the Requesting State.
4. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the law of the Requested State makes punishable an offence committed outside its territory in similar circumstances. Where the law of the Requested State does not make such an offence punishable, the Requested State may, in its discretion, grant extradition.

SCHEDULE—continued

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:
- (a) it was an offence in the Requesting State at the time of the acts or omissions constituting the offence; and
 - (b) the acts or omissions alleged would, if they had taken place in the territory of the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.

ARTICLE 3

EXCEPTIONS TO EXTRADITION

1. Extradition shall not be granted in any of the following circumstances:
- (a) if the offence for which extradition is sought 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. Reference to a political offence, for the purposes of this paragraph shall not include:
 - i. the taking or attempted taking of the life of a Head of State or a member of his or her family;
 - ii. an offence against the law relating to genocide; or
 - iii. any offence in respect of which the Contracting Parties have assumed or will assume an obligation to establish jurisdiction or to extradite pursuant to an international agreement to which they are both parties.
 - (b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
 - (c) if the offence for which extradition is sought is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting Parties;
 - (d) if final judgment has been passed in the Requested State or in a third state in respect of the offence for which the person's extradition is sought;
 - (e) if the person whose extradition is sought has, according to the law of either Contracting Party, become immune from prosecution or punishment by reason of prescription or lapse of time; or
 - (f) if the person sought has been tried or sentenced or is to be tried before an extraordinary or ad hoc tribunal of the Requesting State.
2. Extradition may be refused in any of the following circumstances:
- (a) if the person whose extradition is sought is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other 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 in respect of all or any of the offences for which extradition has been sought may be taken, if that is considered appropriate;
 - (b) if the courts of the Requested State are competent to try the offence for which extradition is requested. Nevertheless, extradition may be granted if the Requested State has decided not to institute proceedings. If extradition is refused pursuant to this paragraph the Requested State shall submit the

SCHEDULE—continued

case to its competent authorities and inform the Requesting State of its decision:

- (c) if the offence with which the person sought is accused or of which he or she is convicted, or any other offence for which he or she may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
 - (d) if the offence for which extradition is requested 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
 - (e) if, in exceptional cases, the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, deems that, because of the personal circumstances of the person sought, the extradition would be totally incompatible with humanitarian considerations.
3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting Parties under any multilateral Convention.

ARTICLE 4**POSTPONEMENT OF EXTRADITION OR SURRENDER**

1. The Requested State may postpone the extradition of a person in order to proceed against him, or so that he may serve a sentence for an offence other than an offence constituted by an act or omission for which his extradition is sought.
2. The Requested State may postpone the surrender of a person when the health or other personal circumstances of the person are such as would make surrender dangerous to the life of the person or incompatible with humanitarian considerations.
3. In such cases the Requested State shall advise the Requesting State accordingly.

ARTICLE 5**EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS**

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel.
2. The request for extradition shall be accompanied:
 - (a) if the person is accused of an offence, by a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (b) if a person has been convicted in his or her absence of an offence, by a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;
 - (c) if the person has been convicted of an offence otherwise than in his or her absence, by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
 - (d) if the person has been convicted of an offence otherwise than in his or her absence but no sentence has been imposed, by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;

SCHEDULE—continued

- (e) in all cases by the text of the relevant provision of the law, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, as the case may be, and in either case, a statement of the punishment that can be imposed for the offence; and
 - (f) in all cases by as accurate a description as possible of the person claimed together with any other information which may help to establish that person's identity and nationality.
3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State.

ARTICLE 6

AUTHENTICATION OF SUPPORTING DOCUMENTS

1. A document that, in accordance with Article 5, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested State.
2. A document is authenticated for the purposes of this Treaty if:
 - (a) it purports to be signed or certified by a Judge, Magistrate or other judicial officer in or of the Requesting State; and
 - (b) it purports 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.

ARTICLE 7

ADDITIONAL INFORMATION

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is sought is in custody for the purpose of extradition and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.
3. Where the person is released from custody in accordance with paragraph 2, the Requested State shall notify the Requesting State as soon as practicable.

ARTICLE 8

SIMPLIFIED EXTRADITION

The Requested State may grant extradition without a formal extradition proceeding if:

- (a) its laws do not expressly prohibit it; and
- (b) the person sought irrevocably consents in writing to the extradition after being advised of that person's right to a formal extradition proceeding and the protection afforded by such a proceeding.

ARTICLE 9

PROVISIONAL ARREST

1. In case of urgency a Contracting Party may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the

SCHEDULE—continued

provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The 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 2 of Article 5 authorizing the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and a concise statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such an application the Requested State shall take the necessary steps to secure the arrest of the person claimed and the Requesting State shall be promptly notified of the result of its request.

4. A person arrested upon such an application may be set at liberty upon the expiration of 45 days from the date of his or her arrest if a request for extradition, supported by the documents specified in Article 5, has not been received.

5. The release of a person pursuant to 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 10**CONFLICTING REQUESTS**

1. Where requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) first, the respective dates of the requests;
- (b) secondly, if the requests relate to different offences, the relative seriousness of the offences;
- (c) thirdly, the time and place of commission of each offence.

3. Other circumstances which may be taken into account are:

- (a) the nationality of the person sought in any case where that person is a national of one of the Requesting States; and
- (b) the ordinary place of residence of the person.

ARTICLE 11**SURRENDER**

1. The Requested State shall as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel.

2. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.

3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State specifies and, if the person is not removed within that period, the Requested State may refuse to extradite that person for the same offence.

4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited it shall notify the other

SCHEDULE—continued

Contracting Party. The two Contracting Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 12

SURRENDER OF PROPERTY

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 property found in the Requested State that has 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 paragraph 1 of this Article, the abovementioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition 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 13

RULE OF SPECIALITY

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of personal liberty, in the territory of the Requesting State for any offence committed before extradition other than any other extraditable offence in respect of which the Requested State consents to that person being so detained, tried or subjected to a restriction of personal liberty including any other extraditable offence of which that person could be convicted upon proof of the facts upon which the request for extradition was based.
2. A request for the consent of the Requested State under this Article shall be accompanied by the documents mentioned in Article 5.
3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the Requesting State after leaving it.

ARTICLE 14

SURRENDER TO A THIRD STATE

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned state shall not surrender that person to any third state for an offence committed before that person's surrender unless:
 - (a) the Requested State consents to that surrender; or
 - (b) the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the Requested State or has returned to the territory of the Requesting State after leaving it.
2. Before acceding to a request pursuant to sub-paragraph (1)(a) of this Article, the Requested State may request the production of the documents mentioned in Article 5.

SCHEDULE—continued

ARTICLE 15

TRANSIT

1. Where a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the Contracting Party to which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.
2. Upon receipt of such a request the Requested Contracting Party shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.
3. Permission for the transit of a person shall, subject to the law of the Requested Contracting Party, include permission for the person to be held in custody during transit.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if his or her transportation is not continued within a reasonable time.
5. No authorization 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, that Contracting Party may require a request for transit as provided in paragraph 1. That Contracting Party shall detain the person to be 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.
6. The Contracting Party to which the person is being extradited shall reimburse the other Contracting Party for any expense incurred by that other Contracting Party in connection with the transit.

ARTICLE 16

EXPENSES

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until he or she is surrendered to a person nominated by the Requesting State.
3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

ARTICLE 17

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Subject to any further treaty between them, the Contracting Parties agree to afford to each other, in accordance with their laws, mutual assistance to the maximum extent possible for the purposes of the investigation or prosecution of any offence under their jurisdiction.

SCHEDULE—continued

ARTICLE 18

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. On the entry into force of this Treaty, the Treaty between the United Kingdom and Ecuador for the Mutual Surrender of Fugitive Criminals done at Quito on 20 September 1880, and the Supplementary Convention to that Treaty done at Quito on 4 June 1934, shall cease to be in force between Australia and Ecuador.
3. 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 for which extradition is requested.
4. Requests for extradition made before this Treaty enters into force shall continue to be governed by the Treaties referred to paragraph 2 of this Article.
5. 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 notice is given.

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

DONE AT QUITO on the thirteenth day of October One Thousand nine hundred and eighty eight in English and Spanish, each text being equally authentic.

FOR THE GOVERNMENT
OF AUSTRALIA

FOR THE GOVERNMENT
OF THE REPUBLIC OF ECUADOR

LIONEL BOWEN
ATTORNEY-GENERAL

MARIO ALEMAN
INTERIM MINISTER
OF FOREIGN AFFAIRS

NOTE

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

25 June