

**PROTOCOL AMENDING THE TREATY ON EXTRADITION BETWEEN CANADA AND THE UNITED STATES OF AMERICA SIGNED AT WASHINGTON ON DECEMBER 3, 1971, AS AMENDED BY AN EXCHANGE OF NOTES ON JUNE 28 AND JULY 9, 1974**

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA;

DESIRING to make more effective the Extradition Treaty between the Contracting Parties, signed at Washington on December 3, 1971, as amended by the agreement effected by an Exchange of Notes on June 28 and July 9, 1974 (hereinafter referred to as the Extradition Treaty”);

HAVE agreed as follows:

ARTICLE 1

Article 2 of the Extradition Treaty is deleted and replaced by the following:

“ARTICLE 2

(1) Extradition shall be granted for conduct which constitutes an offense punishable by the laws of both Contracting Parties by imprisonment or other form of detention for a term exceeding one year or any greater punishment.

(2) An offense is extraditable notwithstanding:

(i) that conduct such as interstate transportation or use of the mails or of other facilities affecting interstate or foreign commerce, required for the purpose of establishing jurisdiction, forms part of the offense in the United States, or

(ii) that it relates to taxation or revenue or is one of a purely fiscal character.”

ARTICLE II

The SCHEDULE to the Extradition Treaty, as amended, is deleted.

ARTICLE III

Paragraph (2) of Article 3 of the Extradition Treaty is deleted. Paragraph (3) of Article 3 of the Extradition Treaty is amended to read as follows:

“(2) When the offense for which extradition is requested was committed outside the territory of the requesting State, the executive or other appropriate authority of the requested State shall grant extradition if the laws of the requested State provide for jurisdiction over such an offense committed in similar circumstances. If the laws in the requested State do not so provide, the executive authority in the requested State may, in its discretion, grant extradition.”

ARTICLE IV

Paragraph (2) of Article 4 of the Extradition Treaty, as amended, is deleted and replaced by the following:

“(2) For the purpose of this Treaty, the following offenses shall be deemed not to be offenses within subparagraph (iii) of paragraph 1 of this Article:

(i) An offense for which each Contracting Party has the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to its competent authorities for the purpose of prosecution;

(ii) Murder, manslaughter or other culpable homicide, malicious wounding or inflicting grievous bodily harm;

(iii) An offense involving kidnapping, abduction, or any form of unlawful detention, including taking a hostage;

(iv) An offense involving the placing or use of explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage; and

(v) An attempt or conspiracy to commit, or counselling the commission of, any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.”

#### ARTICLE V

Article 7 of the Extradition Treaty is deleted and replaced by the following:

#### “ARTICLE 7

When the person sought is being proceeded against or is serving a sentence in the requested State for an offense other than that for which extradition is requested, the requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed.”

#### ARTICLE VI

Paragraph (3) of Article 11 of the Extradition Treaty is deleted and replaced by the following:

“(3) A person arrested shall be set at liberty upon the expiration of sixty days from the date of arrest pursuant to such application if a request for extradition and the documents specified in Article 9 have not been received. This stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request and documents are subsequently received.”

#### ARTICLE VII

The Extradition Treaty is amended by adding the following after Article 17:

#### “ARTICLE 17 bis

If both contracting Parties have jurisdiction to prosecute the person for the offense for which extradition is sought, the executive authority of the requested State, after consulting with the executive authority of the requesting State, shall decide whether to extradite the person or to submit the case to its competent authorities for the purpose of prosecution. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

- (i) the place where the act was committed or intended to be committed or the injury occurred or was intended to occur;
- (ii) the respective interests of the Contracting Parties;
- (iii) the nationality of the victim or the intended victim; and
- (iv) the availability and location of the evidence.”

#### ARTICLE VIII

Notwithstanding paragraph (2) of Article 18 of the Extradition Treaty, this Protocol shall apply in all cases where the request for extradition is made after its entry into force regardless of whether the offense was committed before or after that date.

#### ARTICLE IX

(1) This Protocol shall be subject to ratification in accordance with the applicable procedures of the Government of the United States and the Government of Canada and instruments of ratification shall be exchanged as soon as possible.

(2) The Protocol shall enter into force upon the exchange of instruments of ratification.

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

DONE in duplicate at Ottawa, this 11th day of January 1988, in the English and French languages, the two texts being equally authentic.

FOR THE GOVERNMENT OF CANADA

Joe Clark

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

George P. Shultz