

**TREATY
BETWEEN
THE PEOPLE'S REPUBLIC OF CHINA
AND
THE REPUBLIC OF INDONESIA
ON EXTRADITION**

The People's Republic of China and the Republic of Indonesia (hereinafter referred to as "the Parties"),

Desiring to promote the effective cooperation between the two countries in the suppression of crime on the basis of mutual respect for sovereignty, equality and mutual benefit,

Have agreed as follows:

Article 1

Obligation to Extradite

Each Party shall undertake, in accordance with the provisions of this Treaty, to extradite to each other persons found in its territory and wanted by the other Party for the purpose of conducting criminal proceedings against or executing sentence imposed on that person.

Article 2

Extraditable Offences

1. Extradition shall not be granted unless the conduct for which the extradition is requested constitutes an offence under the laws of both Parties and meets one of the following conditions:

(a) where the request for extradition is aimed at conducting a criminal proceeding, the offence is punishable under the laws of both Parties by imprisonment for more than one year, or by a more severe penalty;

(b) where the request for extradition is aimed at executing a sentence imposed, a period of sentence that remains to be served by the person sought is at least six months at the time when the request for extradition is made.

2. For the purpose of this Article, in determining whether a conduct constitutes an offence under the laws of both Parties:

(a) it shall not matter whether the laws of both Parties place the conduct within the same category of offence or denominate the offence by the same terminology;

(b) the totality of the conduct alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence described by the laws of both Parties.

3. If the request for extradition refers to several offences, each of which is punishable under the laws of both Parties, but some of which do not fulfill the other conditions set out in paragraph 1 of this Article, extradition may be granted for all offences provided that the person is to be extradited for at least one extraditable offence.

4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or foreign exchange regulation of the same kind as the law of the Requesting Party.

Article 3

Mandatory Grounds for Refusal

Extradition shall not be granted under this Treaty in any of the following circumstances:

(a) the Requested Party considers that the offence for which the extradition is requested is a political offence;

(b) the Requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on

account of that person's race, religion, nationality, ethnic, origin, political opinion, gender or status, or that that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;

(c) the offence for which the extradition is requested is a pure military offence under the laws of the Requested Party;

(d) the person sought cannot be prosecuted or his sentence cannot be enforced under the laws of either Party for any reason including lapse of time or pardon;

(e) the Requested Party has already rendered a final judgment or terminated the judicial proceedings against the person sought in respect of the offence for which the extradition is requested;

(f) the request for extradition is made by the Requesting Party pursuant to a judgment rendered *in absentia*, unless the Requesting Party guarantees that the person sought, if surrendered, be entitled to be retried in his presence.

Article 4

Discretionary Grounds for Refusal

Extradition may be refused in any of the following circumstances:

(a) the Requested Party has criminal jurisdiction over the

offence for which the extradition is requested in accordance with its national law, and is conducting or preparing to institute proceedings against the person sought for that offence;

(b) the Requested Party, while taking into account the seriousness of the offence and the interests of the Requesting Party, considers that because of personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

Article 5

Non Extradition of Nationals

1. Each Party shall have the right to refuse extradition of its nationals.

2. If extradition is not granted, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for the purpose of institution of criminal proceedings in accordance with its national law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

3. The Nationality of the person sought shall be determined as of the time of the commission of the offence for which extradition is requested.

Article 6

Channels of Communication

For the purpose of this Treaty, the Parties shall communicate with each other through diplomatic channels.

Article 7

Request for Extradition and Required Documents

1. The Requesting Party shall present a letter of request for extradition which shall include:

(a) the name of the requesting authority;

(b) the name, age, gender, nationality, number of identification documents, occupation, probable location of the person sought, and physical description, photographs and fingerprints of the person where available, and other information that may help to identify and search for the person;

(c) a brief statement of the facts of the offence, including the time, place, conduct and consequences of the offence; and

(d) the text of the legal provisions determining the offence and the punishment that can be imposed for the offence, and the legal provisions relating to the lapse of time on the institution of proceedings or on the execution of any punishment for that offence.

2. A request for extradition for the purpose of conducting criminal proceedings against criminal suspects or the accused shall be accompanied by a copy of the warrant of arrest or other documents with the same effect issued by the competent authority of the Requesting Party.

3. A request for extradition for the purpose of executing a sentence imposed on the person sought shall be accompanied by a copy of the enforceable judgement and a statement of the period of sentence which has already been served.

4. The letter of request for extradition and other relevant documents submitted by the Requesting Party in accordance with Paragraphs 1 ,2 and 3 of this Article shall be officially signed or sealed by the competent authority of the Requesting Party and be accompanied by translation in the language of the Requested Party.

Article 8

Additional Information

If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient, that Party may request that additional information be furnished within thirty days or within a period as agreed between the Parties. If the Requesting Party fails to submit additional

information within that period, it shall be considered as having renounced its request voluntarily. However, the Requesting Party shall not be precluded from making a fresh request for extradition for the same person and offence.

Article 9 Provisional Arrest

1. In urgent cases, the Requesting Party may request for the provisional arrest of the person sought before making a request for extradition. Such request may be submitted in writing through the channels provided for in Article 6 of this Treaty, the International Criminal Police Organization (INTERPOL) or other channels agreed to by both Parties.

2. The request for provisional arrest shall contain the information indicated in Paragraph 1 of Article 7 of this Treaty, a statement of the existence of documents indicated in Paragraph 2 or 3 of Article 7 and a statement that a formal statement that a formal request for extradition of the person sought will follow.

3. The Requested Party shall promptly inform the Requesting Party of the result of its handling of the request.

4. Provisional arrest shall be terminated if, within a period of forty five days after the arrest of the person sought, the

competent authority of the Requested Party has not received the formal request for extradition.

5. The termination of provisional arrest pursuant to Paragraph 4 of this Article shall not prejudice the subsequent rearrest and institution of extradition proceedings of the person sought if the Requested Party has subsequently received the formal request for extradition.

Article 10

Decision on the Request for Extradition

1. The Requested Party shall deal with the request for extradition in accordance with the procedures provided for by its national law, and shall promptly inform the Requesting Party of its decision through diplomatic channels.

2. If the Requested Party refuses the whole or any part of the request for extradition, the reasons for refusal shall be notified to the Requesting Party.

Article 11

Surrender of the Person to be Extradited

1. If the extradition has been granted by the Requested Party, the Parties shall agree on time, place and other relevant

matters relating to the execution of the extradition. The Requested Party shall inform the Requesting Party of the period of time for which the person to be extradited has been detained prior to the surrender.

2. If the Requesting Party has not taken over the person to be extradited within thirty days after the date agreed for the execution of the extradition, the Requested Party shall release that person immediately and may refuse a fresh request by the Requesting Party for extradition of that person for the same offence, unless otherwise provided for in Paragraph 3 of this Article.

3. If a Party fails to surrender or take over the person to be extradited within the agreed period for reasons beyond its control, the other Party shall be notified promptly. The Parties shall agree on a new time and place and relevant matters for the execution of the extradition. In this case, the provisions of paragraph 2 of this Article shall apply.

Article 12

Postponement of Extradition and Temporary Surrender

1. If the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which the extradition is requested, the Requested

Party may, after having made a decision to grant extradition, postpone the extradition until the conclusion of the proceedings or the completion of the sentence. The Requested Party shall inform the Requesting Party of the postponement.

2. If the postponement of the extradition may seriously impede the criminal proceedings in the Requesting Party, the Requested Party may, upon request, temporarily surrender the person sought to the Requesting Party provided that its ongoing criminal proceedings are not hindered, and that the Requesting Party undertakes to return that person unconditionally and immediately upon conclusion of relevant proceedings.

Article 13

Requests for Extradition Made by Several States

Where requests are received from two or more states for the extradition of the same person either for the same offence or for different offences, for the purpose of determining to which of those states the person is to be extradited, the Requested State shall consider all relevant factors, including but not limited to:

- a. whether the request was made pursuant to a treaty;
- b. the gravity of the offences;
- c. the time and place of the commission of the offence;

- d. the nationality and habitual residence of the person sought;
- e. respective dates of the requests; and
- f. the possibility of subsequent extradition to another state.

Article 14

Rule of Speciality

The person extradited in accordance with this Treaty shall not be proceeded against or subject to the execution of sentence in the Requesting Party for an offence committed by that person before his surrender other than the offence for which the extradition is granted, nor shall that person be re-extradited to a third state, unless

(a) the Requested Party has consented in advance. For the purpose of such consent, the Requested Party may require the submission of the documents and information mentioned in Article 7 of this Treaty, and a statement by the extradited person with respect to the offence concerned;

(b) that person has not left the Requesting Party within thirty days after having been free to do so. However, this period of time shall not include the time during which that person fails to leave the Requesting Party for reasons beyond his control; or

(c) that person has voluntarily returned to the Requesting

Party after leaving it.

Article 15

Surrender of Property

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its national law, seize the proceeds and instrumentality of the offence and other property which may serve as evidence found in its territory, and when extradition is granted, shall surrender these property to the Requesting Party.

2. When the extradition is granted, the property mentioned in paragraph 1 of this Article may nevertheless be surrendered even if the extradition can not be carried out owing to the death, disappearance or escape of the person sought, or any other reasons.

3. The Requested Party may, for conducting any other pending criminal proceedings, postpone the surrender of above-mentioned property until the conclusion of such proceedings, or temporarily surrender that property on condition that the Requesting Party undertakes to return it.

4. The surrender of such property shall not prejudice any legitimate right of the Requested Party or any third party to that property. Where these rights exist, the Requesting Party shall, at

the request of the Requested Party, promptly return the surrendered property without charge to the Requested Party as soon as possible after the conclusion of the proceedings.

Article 16

Transit

1. When one Party is to extradite a person from a third state through the territory of the other Party, it shall request the other Party for the permission of such transit. No such request is required where air transportation is used and no landing in the territory of the other Party is scheduled.

2. The Requested Party shall, insofar as not contrary to its national law, grant the request for transit made by the Requesting Party.

3. If an unscheduled landing in the territory of the other Party occurred, transit shall be subjected to the provision of paragraph 1. That party may, insofar as not contrary to its national law, hold the person in custody for a period of forty eight hours while waiting the request of transit.

Article 17

Notification of Result

The Requesting Party shall provide the Requested Party promptly with the information on the proceedings or the execution of sentence against the extradited person or information concerning the re-extradition of that person to a third state.

Article 18

Expenses

Expenses arising from the procedures for extradition in the Requested Party shall be borne by that Party. Expenses of transportation and the transit expenses in connection with the surrender or taking over of the extradited person shall be borne by the Requesting Party.

Article 19

Relationship with Other Treaties

This Treaty shall not affect any right enjoyed and any obligation undertaken by the Parties under any other treaties.

Article 20

Settlement of Disputes

Any dispute arising from the interpretation or application of this Treaty shall be settled by consultation through diplomatic channels.

Article 21

Amendment

This Treaty may be amended at any time by written agreement between the Parties.

Article 22

Entry into Force and Termination

1. The Parties shall notify each other by diplomatic note that their respective domestic requirements for the entry into force of this Treaty have been complied with. This Treaty shall enter into force on the thirtieth day after the date of the latest diplomatic note.

2. Either Party may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given. Termination of this Treaty shall not affect the extradition proceedings commenced prior to

the termination.

3. This Treaty applies to any request presented after its entry into force even if the relevant offences occurred before the entry into force of this Treaty.

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

DONE in duplicate at Beijing on this 1 day of July (month) 2009 (year), in the Chinese, Indonesian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the People's Republic of China

For the Republic of Indonesia

