

Treaty between the People's Republic of China and the Portuguese Republic on Extradition

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

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

Have resolved to conclude this Treaty and agreed as follows:

Article 1

Obligation to Extradition

Each Party undertakes, in accordance with the provisions of this Treaty and at the request of the other Party, 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 be granted only when the act 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 the penalty of imprisonment for a period of more than one year; or

(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. In determining whether an act constitutes an offence under the laws of both Parties in accordance with Paragraph 1 of this Article, it shall not matter whether the laws of both Parties place the act within the same category of offence or denominate the offence by the same terminology.

3. If the request for extradition concerns two or more acts each of which constitutes offence under the laws of both Parties and at least one of which fulfils the conditions provided for in Paragraph 1 of this Article, the Requested Party may grant extradition for all of those acts.

Article 3

Mandatory Grounds for Refusal

1. Extradition shall be refused if:

(a) the Requested Party considers that the offence for which the extradition is requested is a political offence, or that the Requested Party has granted asylum to the person sought;

(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, sex, religion, nationality or political opinion, or that that person's position in judicial proceedings may be prejudiced for any of those reasons;

(c) the offence for which the extradition is requested only constitutes a military offence;

(d) the person sought is a national of the Requested Party at the time the request for extradition is received by the Requested Party;

(e) the person sought is, under the laws of either Party, exempted from criminal responsibility for any reasons such as lapse of time or pardon.

(f) the Requested Party has already rendered an effective judgment or terminated the

criminal proceeding against the person sought in respect of the offence for which the extradition is requested;

(g) the request for extradition is made by the Requesting Party pursuant to a judgment rendered *in absentia*, unless the Requesting Party undertakes that the person sought has the right and opportunity to appeal against the conviction or to seek re-trial at his presence after being extradited; or

(h) the execution of the request would impair sovereignty, security, public order or other essential public interests of the Requested Party, or would be contrary to the fundamental principles of its internal law.

2. Offences that are not regarded as political offences under the internal law of the Requested Party, or under any international treaty, convention or agreement to which both States are Parties shall not be treated as political offences.

Article 4

Grounds for Optional Refusal

Extradition may be refused if:

(a) The Requested Party has criminal jurisdiction over the offence for which the extradition is requested in accordance with its internal law, and is conducting or contemplates to institute a proceeding against the person sought for that offence; or

(b) Extradition is incompatible with humanitarian considerations in view of that person's age, health or other conditions of the person sought.

Article 5

Obligation to Institute Criminal Proceedings in the Requested Party

If extradition is not granted pursuant to Sub-paragraph (d) of Article 3 of this Treaty, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authority for the purpose of institution of a criminal proceeding in accordance with its internal law. For this purpose, the Requesting Party shall provide the Requested Party with documents and evidence relating to the case.

Article 6

Channels of Communication

1. For the purpose of this Treaty, the Parties shall communicate with each other through their respectively designated authorities.
2. The authorities referred to in Paragraph 1 of this Article shall be the Ministry of Foreign Affairs for the People's Republic of China, and Procuradoria-Geral da República for the Portuguese Republic.
3. For the purpose of communication between the authorities referred to in Paragraph 1 of this Article, the English language may be used.

Article 7

Request for Extradition and Required Documents

1. The Requesting Party shall present an official request for extradition which shall include:

(a) the name of the requesting authority;

(b) the name, age, sex, and whenever available, nationality, category and number of identification documents, occupation, characteristics of appearance, domicile and residence of the person sought and other information that may help to identify and search for the person;

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

(d) legal provisions on criminalization, imposition of penalty, prescription for prosecution or penalty and early release if pertained.

2. An official request for extradition submitted by the Requesting Party shall be accompanied by:

(a) a copy of the warrant of arrest or other documents with the same effect when extradition is requested for the purpose of conducting criminal proceedings; or

(b) a copy of the effective judgment and a statement of the period of sentence which has already been served when extradition is requested for the purpose of executing

sentences;

(c) other information or material in support of the request;

(d) if available, photographs and fingerprints of the person sought and other material which may help to identify that person.

3. The official request for extradition and other relevant documents submitted by the Requesting Party in accordance with Paragraphs 1 and 2 of this Article shall be officially signed or sealed by the competent authority of the Requesting Party and be accompanied by translations 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 duly furnished. If the Requesting Party fails to submit additional information, 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 offence.

Article 9

Provisional Arrest

1. In case of urgency, one Party may make a request to the other Party 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 contents indicated in Paragraph 1 of Article 7 of this Treaty, a Statement of the existence of documents indicated in Sub-paragraph (a) or (b) of Paragraph 2 of that Article and a Statement that an official 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 thirty days after the arrest of the person sought, the competent authority of the Requested Party has not received the official request for extradition. At a duly request by the Requesting Party, such time limit may be extended for fifteen days.

5. The termination of provisional arrest pursuant to Paragraph 4 of this Article shall not prejudice the extradition of the person sought if the Requested Party has subsequently received the official 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 internal law, and shall promptly inform the Requesting

Party of its decision.

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.

2. 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.

3. If the Requesting Party has not taken over the person to be extradited within fifteen 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 4 of this Article.

4. If one 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 once again agree on the relevant matters for the execution of the extradition, and the provisions of Paragraph 3 of this Article shall apply.

Article 12

Postponed Extradition and Temporary Extradition

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 proceeding 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 and to the extent that its ongoing criminal proceedings are not hindered, temporarily extradite the person sought to the Requesting Party provided 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

If requests for extradition of the same person are made by two or more States including the Requesting Party, the Requested Party shall, according to its internal law, decide whether to accept the request of any one 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 that 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 forty-five 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 internal 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.

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 may, insofar as not contrary to its internal law, grant the request for transit made by the Requesting Party.

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 or surrender of property 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

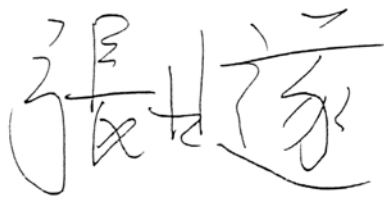
Entry into Force, Revision and Termination

1. This Treaty shall enter into force thirty days after the date of receipt of the later notification in writing and through the diplomatic channel, conveying the fulfilment of their respective constitutional or legal formalities for the entry into force of the Treaty.
2. This Treaty may be revised at any time by written agreement between the Parties. The amendments shall enter into force under the terms of Paragraph 1 of this Article.
3. Either Party may terminate this Treaty at any time by notice in writing to the other Party through diplomatic channels. The termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.
4. 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 31st day of January (month) 2007 (year), in the Chinese, Portuguese 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 Portuguese Republic

