

**LAW ENFORCEMENT**

**Extradition**

**Protocol Between the  
UNITED STATES OF AMERICA  
and CANADA**

**Amending Treaty of December 3, 1971**

**As Amended**

Signed at Ottawa on January 11, 1988

*with*

Exchange of Letters



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

## CANADA

### Law Enforcement: Extradition

*Protocol amending treaty of December 3, 1971, as amended.  
Signed at Ottawa on January 11, 1988,  
with exchange of letters;  
Transmitted by the President of the United States of America  
to the Senate April 24, 1990 (Treaty Doc. 101-17,  
101st Congress, 2d Session);  
Reported favorably by the Senate Committee on Foreign Relations  
July 30, 1991 (Senate Executive Report No. 102-12,  
102d Congress, 1st Session);  
Advice and consent to ratification by the Senate  
August 2, 1991;  
Ratified by the President October 30, 1991;  
Exchange of instruments of ratification at Washington  
November 26, 1991;  
Entered into force November 26, 1991.*

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

The Government of the United States of America  
and the Government of Canada;

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.

PROTOCOLE MODIFIANT LE TRAITÉ D'EXTRADITION ENTRE LES  
ÉTATS-UNIS D'AMÉRIQUE ET LE CANADA SIGNÉ À WASHINGTON  
LE 3 DÉCEMBRE 1971, EN SA VERSION MODIFIÉE PAR  
ÉCHANGE DE NOTES LE 28 JUIN ET LE 9 JUILLET 1974

Le Gouvernement des États-Unis d'Amérique et le  
Gouvernement du Canada;

Soucieux de rendre plus efficace le Traité  
d'extradition signé par les Parties contractantes à  
Washington le 3 décembre 1971, en sa version modifiée par  
accord sous forme d'Échange de Notes le 28 juin et le  
9 juillet 1974 (ci-après dénommé le "Traité");

Sont convenus de ce qui suit:

ARTICLE 1

L'article 2 du Traité est remplacé par ce qui  
suit:

"Article 2

- (1) Sera extradé tout auteur de faits qui constituent  
une infraction punissable par les lois des deux  
Parties contractantes d'une peine  
d'emprisonnement ou de détention d'autre nature  
de plus d'un an ou de toute autre peine plus  
sévère.
- (2) Une infraction est passible d'extradition même si
  - (i) les faits attributifs de compétence tels que  
le transport entre les États ou  
l'utilisation de la poste ou autres moyens  
de communication touchant le commerce  
extérieur ou entre les États, constituent un  
élément de l'infraction aux États-Unis, ou
  - (ii) elle constitue une infraction en matière  
d'impôt ou de revenu ou de nature purement  
fiscale."

ARTICLE II

L'ANNEXE du Traité en sa version modifiée est  
abrogée.

ARTICLE III

Le paragraphe (2) de l'article 3 du Traité est  
abrogé. Le paragraphe (3) de l'article 3 du Traité est  
modifié pour se lire comme suit:

- "(2) Lorsque l'infraction pour laquelle l'extradition  
est demandée a été commise hors du territoire de  
l'État requérant, l'exécutif ou toute autre  
autorité compétente de l'État requis accorde  
l'extradition si l'infraction est soumise à la  
compétence juridictionnelle de l'État requis dans  
des circonstances analogues. Si l'infraction  
n'est pas soumise à cette compétence, l'exécutif  
accorde à sa discrétion l'extradition."

ARTICLE IV

Le paragraphe (2) de l'article 4 du Traité en sa version modifiée est remplacé par ce qui suit:

- "(2) Aux fins du présent Traité, les infractions suivantes seront réputées ne pas être des infractions aux termes de l'alinéa (iii) du paragraphe (1) de cet article:
- (i) une infraction pour laquelle chacune des Parties contractantes est tenue, conformément à une convention internationale multilatérale, d'extrader la personne recherchée ou de soumettre l'affaire aux autorités compétentes pour l'exercice de l'action pénale;
  - (ii) le meurtre, l'homicide involontaire ou autre forme d'homicide coupable, le fait de causer des blessures intentionnelles ou de causer des lésions corporelles graves;
  - (iii) une infraction ayant trait à l'enlèvement, au rapt ou à toute détention illégale y compris à la prise en otage;
  - (iv) une infraction concernant la mise en place ou l'emploi d'engins explosifs, incendiaires ou destructifs ou de substances qui risquent de mettre la vie en danger ou de causer des lésions corporelles graves ou des dommages importants à la propriété; et
  - (v) la tentative ou le complot visant une des infractions susmentionnées ou le fait de conseiller de les commettre ou d'aider ou encourager une personne qui les commet ou tente de les commettre."

ARTICLE V

L'article 7 du Traité est remplacé par ce qui suit:

"Article 7

Lorsqu'un individu dont l'extradition est demandée fait l'objet de poursuites ou purge une peine dans l'État requis pour une infraction autre que celle pour laquelle l'extradition a été demandée, l'État requis pourra accorder sa remise ou la différer jusqu'à l'issue des procédures ou jusqu'à ce que l'individu ait purgé la totalité ou une partie de la peine qui lui a été imposée."

ARTICLE VI

Le paragraphe (3) de l'article 11 du Traité est remplacé par ce qui suit:

- "(3) Un individu arrêté est mis en liberté soixante (60) jours après son arrestation en vertu de la demande si une demande d'extradition accompagnée des documents visés à l'article 9 n'a pas été



requé. Cette disposition n'empêche pas l'introduction des procédures d'extradition de l'individu si demande et documents sont reçus par la suite."

#### ARTICLE VII

Le Traité est amendé par l'ajout, après l'article 17, de ce qui suit:

#### "Article 17 bis

Si les deux Parties contractantes ont compétence pour exercer l'action pénale contre l'individu pour l'infraction visée par la demande d'extradition, l'exécutif de l'État requis, après avoir consulté l'exécutif de l'État requérant, décide s'il y a lieu d'extrader l'individu ou de soumettre le cas à ses autorités compétentes pour l'exercice de l'action pénale. Avant de prendre cette décision, l'État requis considère tous les facteurs pertinents, notamment:

- (i) le lieu où l'individu projetait de commettre l'infraction ou de causer le préjudice ou a commis l'infraction ou causé le préjudice;
- (ii) les intérêts respectifs des Parties contractantes;
- (iii) la nationalité de la victime ou de la personne visée; et
- (iv) la disponibilité des preuves et l'endroit où elles se trouvent."

#### ARTICLE VIII

Par dérogation au paragraphe (2) de l'article 18 du Traité, le présent Protocole s'applique dans tous les cas où la demande d'extradition aura été présentée après la date de son entrée en vigueur, que l'infraction ait été commise avant ou après cette date.

#### ARTICLE IX

- (1) Le présent Protocole fera l'objet d'une ratification conformément aux procédures pertinentes du Gouvernement du Canada et du Gouvernement des États-Unis et les instruments de ratification seront échangés le plus tôt possible.
- (2) Le présent Protocole entrera en vigueur au moment de l'échange des instruments de ratification.

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

EN FOI DE QUOI, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Protocole.

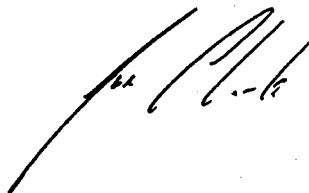
DONE in duplicate at *Ottawa*, this *11th* day of *January* 1988, in the English and French languages, the two texts being equally authentic.

FAIT en double exemplaire à *Ottawa*, ce *11<sup>ème</sup>* jour de *janvier* 1988 en français et en anglais, chaque version faisant également foi.



FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA

POUR LE GOUVERNEMENT DES  
ÉTATS-UNIS D'AMÉRIQUE



FOR THE GOVERNMENT OF CANADA

POUR LE GOUVERNEMENT DU  
CANADA

THE SECRETARY OF STATE  
WASHINGTON

January 11, 1988

Dear Mr. Minister:

I refer to the Protocol Amending the Treaty on Extradition between the United States and Canada we signed today and have the honor to address to you the following.

The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters", is an extraditable offense under the United States - Canada Extradition Treaty.

Where a person has been charged with or convicted of such an offense in Canada and is found within the jurisdiction of the United States, the United States agrees, upon request, to commence extradition proceedings against such a person pursuant to the Treaty in order that the person may be returned to Canada.

The United States will use its best efforts to honor Canadian requests for testimony, information, or other assistance pertaining to such abductions.

Canada and the United States agree to cooperate to deter such transborder abductions. To assist in achieving that purpose, the United States will continue to exert its best efforts to inform those engaged in business as bail bondsmen or bounty hunters and other interested parties of the positions set forth in this exchange of letters.

Canada and the United States agree to consult promptly concerning any case of transborder abduction involving bounty hunters which might arise in the future. The purpose of such consultations shall be to address matters relating to any such case, including any request by the Government of Canada for the return of the person so abducted. In the event of return, the

The Right Honorable  
Joe Clark, P.C., M.P.,  
Secretary of State,  
For External Affairs of Canada,  
Ottawa.

Governments agree to co-operate to have the abducted person escorted to Canada and taken into custody at the border, pursuant to a request for provisional arrest, pending the outcome of extradition proceedings. For the purpose of these consultations, the principal law enforcement contact for the United States will be the Director of the Office of International Affairs of the Criminal Division of the Department of Justice.

I have the honor to propose that this letter and your reply constitute an understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Sincerely yours,

A handwritten signature in black ink, appearing to read "George P. Shultz", with a stylized flourish at the end.

George P. Shultz

The Rt. Hon. Joe Clark, P.C., M.P.  
Secretary of State for External Affairs



Le très hon. Joe Clark, C.P., député  
Secrétaire d'Etat aux Affaires extérieures

Canada

Ottawa, January 11, 1988

JLA-0026

Dear Mr. Secretary:

I have the honour to acknowledge receipt of your letter of today's date concerning transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters". I accept your proposal that your letter and this reply constitute an Understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Yours sincerely,

A handwritten signature in black ink, appearing to read "G. P. Shultz", written in a cursive style.

The Honourable George P. Shultz  
Secretary of State of the  
United States of America