

No. 18933

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**SPAIN
and
MEXICO**

**Treaty concerning extradition and mutual assistance in
criminal matters. Signed at Mexico City on 21 Novem-
ber 1978**

Authentic text: Spanish.

Registered by Spain on 18 June 1980.

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**ESPAGNE
et
MEXIQUE**

**Traité d'extradition et d'assistance mutuelle en matière
pénale. Signé à Mexico le 21 novembre 1978**

Texte authentique : espagnol.

Enregistré par l'Espagne le 18 juin 1980.

[TRANSLATION — TRADUCTION]

TREATY¹ CONCERNING EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE KINGDOM OF SPAIN AND THE UNITED MEXICAN STATES

The King of Spain and the President of the United Mexican States,

Conscious of the close ties existing between the two countries, desiring to promote greater co-operation between the two countries in all areas of common interest and convinced of the need to assist each other in order to improve the administration of justice,

Have decided to conclude a Treaty concerning Extradition and Mutual Assistance in Criminal Matters and, for that purpose, have appointed as their plenipotentiaries:

The King of Spain: Mr. Marcelino Oreja, Minister for Foreign Affairs;

The President of the United Mexican States: Mr. Santiago Roel, Secretary for Foreign Affairs,

who having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I. EXTRADITION

Article 1. The Contracting Parties undertake reciprocally to extradite, under the terms and conditions specified in the following articles, persons against whom criminal proceedings have been instituted or who are required to serve a sentence involving deprivation of liberty imposed judicially as the result of an offence.

Article 2. 1. Acts which under the laws of both Parties are punishable by a penalty involving deprivation of liberty for a maximum term of more than one year shall give rise to extradition.

2. If extradition is requested for the enforcement of a sentence, the part of the term remaining to be served must be not less than six months.

Article 3. Offences covered by multilateral conventions to which both countries are parties shall also give rise to extradition in accordance with this Treaty.

Article 4. 1. Extradition shall not be granted for offences considered by the requested Party to be of a political nature or connected with offences of that kind. For the purpose of the application of this Treaty, the murder, or other offence against the life, physical integrity or liberty, of a Head of State or Government or a member of his family shall not be considered a political offence.

2. Extradition shall likewise not be granted if the requested Party has well-founded reasons for believing that the request for extradition for an offence under ordinary law has been made for the purpose of prosecuting or punishing a person on

¹ Came into force on 1 June 1980, i.e., the first day of the second month following the date of the exchange of the instruments of ratification, which took place at Madrid on 29 April 1980, in accordance with article 43 (1) and (2).

account of his race, religion, nationality or political opinion, or that the person's position may be prejudiced for any of these reasons.

Article 5. Extradition for offences that are strictly military shall be excluded from the scope of this Treaty.

Article 6. Violations of fiscal, exchange control and customs regulations shall give rise to extradition in the manner outlined in this Treaty only when the Parties have so decided for each category of violation.

Article 7. 1. Both Parties shall be entitled to refuse extradition of their own nationals. Status as a national shall be determined at the time when the decision on extradition is taken.

2. Where the requested Party does not hand over one of its nationals, it shall so notify the competent judicial authorities so that they may initiate appropriate criminal proceedings if warranted under the law of the requested State. To that end, all documents, reports and articles relating to the offence shall be sent free of charge through the channels provided for in article 14 and the requesting Party shall be informed of the decision taken.

Article 8. The requested Party may refuse the extradition request when, according to its own laws, the offence in respect of which extradition is requested should be dealt with by its own courts.

Article 9. Extradition shall not be granted if the person has already been tried by the authorities of the requested Party for the same acts as gave rise to the request.

Article 10. If, under the law of either of the Parties, criminal responsibility has lapsed, either because the period of limitation in respect of the offence has expired or for some other reason, extradition shall not be granted.

Article 11. If the person claimed has been sentenced by default, extradition shall be granted only if the requesting Party gives guarantees that his defence will be heard and that he will be given the appropriate legal resources.

Article 12. If the offence with which the person claimed is charged is punishable by the death penalty under the law of the requesting Party, extradition shall be granted only if the requesting Party gives guarantees deemed sufficient by the requested Party that the death penalty will not be enforced.

Article 13. The person extradited may not be tried in the territory of the requesting Party by a special and extraordinary court. Extradition shall not be granted for that purpose or for the execution of a penalty imposed by courts of that kind.

Article 14. The request for extradition shall be transmitted through the diplomatic channel.

Article 15. The request for extradition shall be accompanied by:

- (a) A statement and particulars of the acts for which extradition is requested, indicating as precisely as possible the time and place of perpetration and their legal classification;

- (b) The original or a certified copy of a sentence, arrest warrant, detention order or any other judicial decision having the same force under the law of the requesting Party demonstrating the existence of the offence and reasonable proof that it was perpetrated by the person claimed;
- (c) The text of the legal provisions concerning the offence or offences in question, the corresponding penalties and lengths of periods of limitation;
- (d) Information making it possible to establish the identity and nationality of the person claimed and, if possible, information leading to the establishment of his whereabouts.

Article 16. If the information or documents sent with the request for extradition are insufficient or faulty, the requested Party shall inform the requesting Party of the omissions or faults so that they may be corrected.

Article 17. 1. A person handed over for extradition shall not be prosecuted, tried or held in custody for the purpose of enforcement of a sentence for an act prior to and different from that for which extradition has been granted, except in the following cases:

- (a) Where the Party which has handed over the person gives its consent in response to a request submitted to that effect, which shall be accompanied by the documents provided for in article 15 and by a judicial record containing the statements of the defendant. Consent shall be given where the offence in respect of which it is requested calls for mandatory extradition under this Treaty;
- (b) Where the defendant, although free to leave the territory of the Party to which he was handed over, has remained in that territory for more than forty-five days without taking advantage of that opportunity.

2. Without prejudice to the provisions of paragraph 1, the requesting Party may take any measures that are necessary under its legislation to interrupt the period of limitation.

3. Where the legal classification of the act with which he is charged is altered in the course of the proceedings, the person extradited shall be prosecuted or tried only to the extent that the constituent elements of the offence under the new classification would have warranted extradition.

Article 18. Except in the case provided for in article 17, paragraph 1 (b), re-extradition to a third State shall not be granted without the consent of the Party which granted the extradition. The latter may require prior transmittal of the documentation provided for in article 15, together with a document containing the statement of the person claimed giving his reasons for agreeing or objecting to the re-extradition.

Article 19. 1. In urgent cases, the competent authorities of the requesting Party may apply for the provisional arrest of the person claimed. The application for provisional arrest shall contain an indication of the existence of one of the decisions mentioned in article 15 (b) and of intention to submit a formal request for extradition. It shall also specify the offence and the time and place of perpetration, and shall give particulars making it possible to establish the identity and nationality of the person claimed.

2. The application for provisional arrest shall be transmitted to the competent authorities of the requested Party by the fastest possible means, any method of com-

munication may be used, provided that it affords evidence in writing or is accepted by the requested Party.

3. Upon receipt of the application referred to in paragraph 1, the requested Party shall take measures leading to the arrest of the person claimed. The requesting Party shall be informed of the outcome of its application.

4. A provisional release may be granted provided that the requested Party takes whatever steps it deems necessary to prevent the escape of the person claimed.

5. The provisional arrest may be rescinded if, within forty-five days, the requested Party has not received the request for extradition and the documents referred to in article 15. In no circumstances may the provisional arrest last more than sixty days.

6. Release shall not impede the normal course of the extradition process, if the request and the documents referred to in article 15 should be received subsequently.

Article 20. If extradition is requested concurrently by one of the Parties and by other States, either for the same act or for different acts, the requested Party shall take its decision having regard to the circumstances, and in particular to the existence of other treaties binding upon the requested Party, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition.

Article 21. 1. The requested Party shall communicate its decision concerning the request for extradition to the requesting Party, through the diplomatic channel.

2. Reasons shall be given for any total or partial refusal to comply.

3. If the request for extradition is granted, the Parties shall agree on how the person claimed will be surrendered; such surrender shall take place within sixty days of the date of receipt by the requesting Party of the communication referred to in paragraph 1.

4. The person claimed shall be released if he has not been taken over within the said period, and the requested Party may subsequently refuse extradition for the same offence.

Article 22. 1. The requested Party may, after taking a decision on the request for extradition, defer surrender of the person claimed so that he may be tried or, if he has already been sentenced, so that he may serve in its territory the sentence imposed for an offence other than that for which extradition has been granted.

2. Instead of deferring surrender, the requested Party may temporarily hand over the person claimed, if its legislation so permits, on such terms as the two Parties establish by mutual agreement.

3. Surrender may likewise be deferred if the claimed person's state of health is such that moving him might endanger his life or aggravate his condition.

Article 23. 1. If required by the requesting Party, the requested Party shall, to the extent permitted by its legislation and without prejudice to the rights of third parties, seize and hand over articles:

(a) Which may serve as evidence;

(b) Which have been acquired as a result of the offence and have been found in the possession of the person claimed at the time of his arrest, or have been discovered subsequently.

2. The articles referred to in the foregoing paragraph shall be handed over even if extradition, having been granted, cannot be enforced because of the death, disappearance or escape of the person claimed.

3. If the articles referred to in paragraph 1 are liable to seizure in the territory of the requested Party in connection with pending criminal proceedings, that Party may temporarily retain them or hand them over on condition that they are returned.

4. When the requested Party or a third Party has rights to articles that have been handed over to the requesting Party for the purpose of criminal proceedings, pursuant to the provisions of this article, they shall be returned to the requested Party as soon as possible and without any charge.

Article 24. 1. Provided that it does not jeopardize the maintenance of law and order, conveyance in transit through the territory of either Party of a person who is not a national of that Party and who is being handed over to the other Party by a third State shall be permitted upon presentation, through the diplomatic channel, of a certified copy of the decision granting the extradition.

2. The authorities of the transit State shall have custody of the defendant so long as he remains in its territory.

3. The requesting State shall reimburse the transit State for any expenses it may incur in this connection.

Article 25. In matters not provided for in this Treaty, the respective domestic legislation of the Parties shall apply to the procedure for extradition.

Article 26. Expenses occasioned by extradition in the territory of the requested Party shall be borne by that Party, except for those relating to the transport of the person claimed, which shall be borne by the requesting Party.

TITLE II. MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 27. 1. The Parties undertake to provide each other with mutual assistance, in accordance with the provisions of this Treaty, in the conduct of inquiries and formalities relating to all criminal proceedings instituted in connection with acts which fall within the jurisdiction of the requesting Party at the time when the assistance is requested.

2. This Treaty shall not apply to purely police measures or to military offences, except where they constitute breaches of ordinary law.

3. Assistance may be provided, in the interests of justice, even in the case of acts not punishable under the law of the requested Party. Nevertheless, assistance may be requested for the execution of measures to seize articles and to search persons and premises only in the case of acts which are also considered offences under the legislation of the requested Party.

Article 28. Judicial assistance may be refused:

(a) If, in the opinion of the requested Party, the request relates to political crimes, to offences connected with crimes of this kind or to fiscal offences;

(b) If the requested Party considers that compliance with the request would jeopardize the maintenance of law and order.

Article 29. A request for assistance shall be complied with in accordance with the legislation of the requested Party and shall be confined to the formalities specifically requested.

Article 30. 1. The requested Party shall execute letters rogatory relating to criminal proceedings addressed to it by the judicial authorities or Public Prosecutor of the requesting Party and issued for the purpose of preliminary inquiry, procedural action or communication.

2. If the letters rogatory are issued for the purpose of obtaining procedural judicial orders, pieces of evidence or any kind of documents in general, the requested Party may simply transmit certified copies or photocopies, unless the requesting Party specifically requests the originals.

3. The requested Party may refuse to send articles, procedural judicial orders or original documents requested if its legislation does not permit to provide them or if it needs them for criminal proceedings that have already been instituted.

4. Articles or documents which have been transmitted in execution of letters rogatory shall be returned as soon as possible, unless the requested Party waives that requirement.

Article 31. At its express request, the requesting Party shall be informed of the date and place of execution of the letters rogatory.

Article 32. 1. The requested Party shall proceed to serve the judicial decisions or documents relating to judicial proceedings sent to it for that purpose by the requesting Party.

2. Service may be effected simply by delivery of the document to the person named therein; or, if the requesting Party so requests, in any manner prescribed by the legislation of the requested Party, or in any other manner compatible with that legislation.

3. Service of documents shall be confirmed by a receipt dated and signed by the person named, or by a certificate from the competent authority stating that service was effected and indicating the manner and date thereof. One or other of these documents shall be transmitted to the requesting Party, and if service cannot be effected the reasons therefor shall be given.

4. Requests for the summoning of a person charged with an offence, a witness or an expert to appear before the authorities of the requesting Party need not be acted on if they are received less than forty-five days before the date set for the appearance. The requesting Party must take that time-limit into account when formulating its request.

Article 33. 1. If the requesting Party wishes a person who is in the territory of the other Party to appear as a witness or expert, the last-mentioned Party shall serve the summons as requested, but any warning clauses or penalties prescribed in the case of failure to appear shall not be given effect.

2. The request referred to in the foregoing paragraph shall indicate the amount of the travel, subsistence and other allowances to be paid to the witness or expert.

Article 34. If the requesting Party deems it particularly necessary for a witness or expert to appear in person before its judicial authorities, it shall mention the fact in the request for a summons.

Article 35. 1. No person of whatsoever nationality who, in response to a summons, appears before the judicial authorities of the requesting Party as a witness or expert may be prosecuted or detained in that State by reason of an act committed or a conviction pronounced prior to his departure from the territory of the requested Party.

2. The immunity provided for in the foregoing paragraph shall cease if the witness or expert remains in the territory of the requesting Party for more than forty-five days after the date on which his presence ceases to be required by the judicial authorities of that Party.

Article 36. 1. If, in a criminal matter, one of the two Parties deems it necessary for a person held in custody in the territory of the other Party to appear before its judicial authorities as a witness or for purposes of confrontation, it shall make a request to that effect. The request shall be complied with, provided that the person concerned consents and the requested Party considers that no important reasons exist for not doing so.

2. The requesting Party shall be obliged to keep the surrendered person in custody and shall return him as soon as the formality for which the surrender was requested has been accomplished.

3. Any expenses arising from the application of this article shall be borne by the requesting Party.

Article 37. The Parties shall inform each other of any sentences which the judicial authorities of either Party have imposed on nationals of the other Party.

Article 38. When one Party requests extracts from the judicial records of a person, specifying the reason for the request, those records shall be transmitted to it unless this is prohibited under the legislation of the requested Party.

Article 39. 1. Requests for assistance shall contain the following particulars:

- (a) The name of the authority which issued the document or rendered the decision;
- (b) The nature of the document or decision;
- (c) A precise description of the assistance being requested;
- (d) The offence to which the proceedings relate;
- (e) Wherever possible, the identity and nationality of the accused or convicted person;
- (f) The name and address of the intended recipient.

2. Letters rogatory issued for a purpose other than the mere service of documents shall also specify the charges and contain a brief statement of the facts.

3. If the requested Party does not comply with a request for assistance, it shall return the request stating the reasons for non-compliance.

Article 40. 1. For the purpose of the matters specified in this Title, each Party shall designate the authorities empowered to send and receive communications concerning assistance in criminal matters.

2. Notwithstanding the foregoing, the Parties may in any case use the diplomatic channel or instruct their consuls to execute the formalities permitted under the legislation of the receiving State.

TITLE III. FINAL PROVISIONS

Article 41. Documents transmitted in compliance with this Treaty shall not require legalization when they are sent through the diplomatic channel or through the authorities referred to in paragraph 1 of the foregoing article.

Article 42. Any difficulty which may arise in the application or interpretation of this Treaty shall be settled through the diplomatic channel.

Article 43. 1. This Treaty is subject to ratification. The exchange of the instruments of ratification shall take place in the city of Madrid as soon as possible.

2. This Treaty shall enter into force on the first day of the second month following the date of the exchange of instruments of ratification and shall remain in force until either of the Parties denounces it. It shall cease to have effect six months after the date on which the denunciation was received.

3. When this Treaty enters into force, the Treaty of 17 November 1881 shall be abrogated without prejudice to the provisions of paragraph 5.

4. Requests for extradition made after the entry into force of this Treaty shall be governed by its clauses, regardless of the date on which the offence was committed.

5. Requests for extradition made prior to the entry into force of this Treaty shall continue to be dealt with and shall be resolved in accordance with the provisions of the Treaty of 17 November 1881.

IN WITNESS WHEREOF, the Plenipotentiaries sign this Treaty, done at Mexico City, in two equally authentic original copies, on 21 November 1978.

For the Government
of the Kingdom of Spain:

[Signed]

MARCELINO OREJA
Minister
for Foreign Affairs

For the Government
of the United Mexican States:

[Signed]

SANTIAGO ROEL
Secretary
for Foreign Affairs