

No. 27570

**SPAIN
and
CANADA**

Treaty of extradition. Signed at Madrid on 31 May 1989

Authentic texts: Spanish, English and French.

Registered by Spain on 27 September 1990.

**ESPAGNE
et
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Enregistré par l'Espagne le 27 septembre 1990.

TREATY¹ OF EXTRADITION BETWEEN SPAIN AND CANADA

Spain and Canada,

DESIRING to make more effective their co-operation in the suppression of crime by concluding a treaty for the extradition of persons charged with or convicted of offences,

REAFFIRMING their respect for each other's legal systems and judicial institutions,

HAVE AGREED as follows:

ARTICLE I

Obligation to Extradite

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who is wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.

ARTICLE II

Extraditable Offences

1. For the purpose of this Treaty, extradition shall be granted for conduct which is punishable under the laws of both

¹ Came into force on 10 August 1990, i.e., 30 days after the date of the last of the notifications (of 5 and 11 July 1990) by which the Contracting Parties informed each other of the completion of the required procedures, in accordance with article XXIII (1).

Contracting States, both at the time of the commission of the offence and at the time of the extradition request, by imprisonment, detention order or other deprivation of liberty, for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, detention order or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.

2. For the purpose of this Article, it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same or similar terminology.

3. For the purpose of this Article, in determining whether an offence is an offence against the laws of both Contracting States, the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account without reference to the elements of the offence prescribed by the law of the Requesting State.

4. An offence of a fiscal character is an extraditable offence.

5. If the request for extradition relates to a sentence of both imprisonment as provided in paragraph 1 and a pecuniary sanction, the Requested State may also grant extradition for the enforcement of the pecuniary sanction.

6. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.

ARTICLE III

Mandatory Refusal of Extradition

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

1. when the offence for which extradition is requested is considered by the Requested State as a political offence. For the purpose of this paragraph, political offence shall not include:
 - a) the taking or attempted taking of the life of a Head of State or a member of his or her family;
 - b) an offence for which each Contracting State 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;
 - c) murder, manslaughter or other culpable homicide, malicious wounding or inflicting grievous bodily harm;
 - d) an offence involving kidnapping, abducting, or any form of unlawful detention, including taking a hostage;
 - e) an offence involving the placing or use of automatic firearms, explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage; and
 - f) an attempt or conspiracy to commit, or counselling the commission of any of the foregoing offences, or aiding or abetting a person who commits or attempts to commit such offences;
2. when the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States;

3. when final judgement has been passed in the Requested State in respect of the offence for which the person's extradition is requested; or

4. when the prosecution or the enforcement of the sentence for the offence identified in the request for extradition would be barred by lapse of time or for any other reason under the law of the Requested State.

ARTICLE IV

Discretionary Refusal of Extradition

Extradition may be refused in any of the following circumstances:

1. when the person whose extradition is requested is a national of the Requested State. Nationality shall be determined as at the time of the request. If the Requested State refuses to extradite a national of that State it shall, at the request of the Requesting State, refer the matter to its competent authorities for prosecution. For this purpose, the files, documents and exhibits relating to the offence shall be transmitted to the Requested State. That State shall inform the Requesting State of the action taken on its request;

2. when the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, because of the health or age of the person sought, the extradition would be incompatible with humanitarian considerations;

3. when the person sought is being prosecuted by the Requested State for the offence for which extradition is requested or if the competent authorities of the Requested State have decided, in accordance with the law of that State, not to prosecute or to terminate the prosecution that has been instituted;

4. when the person sought has been convicted by default and the Requesting State does not offer sufficient guarantees that appropriate legal recourse is available to that person;
5. when the offence was committed outside the territory of the Requesting State and the law of the Requested State does not, in corresponding circumstances, provide for the same jurisdiction; or
6. when the person sought has been finally acquitted or convicted in a third State for conduct constituting the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.

ARTICLE V

Capital Punishment

If the offence for which extradition is requested is punishable by death under the law of the Requesting State, and if in respect of such offence the death penalty is not provided for by the law of the Requested State or is not normally carried out, extradition may be refused unless the Requesting State gives such assurances as the Requested State considers sufficient, that the death penalty will not be carried out.

ARTICLE VI

Postponement of Surrender

When the person sought is being proceeded against or is serving a sentence in the Requested State for an offence 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 any sentence that may have been imposed.

ARTICLE VII

Presentation of a Request for Extradition

1. Requests for extradition and all other documents shall, subject to paragraph 2, be sent through diplomatic channels.

2. Nothing in paragraph 1 excludes the direct transmission of requests and all other documents between the Departments of Justice of the Contracting States, in which case a copy of the request shall be sent through diplomatic channels.

ARTICLE VIII

Documents to be Submitted

1. The following documents shall be submitted in support of a request for extradition:

- a) in all cases:
 - i) information about the description, identity, location and nationality of the person sought;
 - ii) a statement prepared by a judicial or public official of the conduct constituting the offence for which the extradition is requested, indicating the place and date of the commission of the offence, the nature of the offence and the applicable legal provisions in accordance with Article II paragraph (1). This statement shall also indicate that these legal provisions, a copy of which shall be appended, were in force both at the time of the commission of the offence and at the time of the extradition request.

- b) in the case of a person who is accused of an offence:
- i) the original or a certified true copy of the order of arrest or of any document having the same force and effect, issued in the Requesting State;
 - ii) in the event that the law of the Requested State so requires, evidence that would justify committal for trial of the person sought, including evidence to establish identity;
 - iii) for the purpose of the preceding subparagraph, originals or certified true copies of exhibits, statements, depositions, minutes, reports, appendices or any other document, appearing to have been received, gathered or obtained in Spain or in another country, by a judicial authority or confirmed before a judicial authority, whether taken or affirmed under oath or not, shall be admitted in evidence as proof of the facts contained therein, if a judicial authority of Spain certifies that they were obtained in accordance with Spanish law and that they appear in the judicial file ("actuaciones") on the basis of which the order of arrest or equivalent document was issued.
- c) in the case of a person sought for the enforcement of a sentence:
- i) the original or a certified copy of the judgement or other document setting out the conviction and sentence to be served;
 - ii) if a portion of the sentence has already been served, a statement by a public official specifying the portion of the sentence which remains to be served.
- d) in support of a request from Canada, relating to a person who has been convicted but has not been sentenced, the original or a certified copy of the order of arrest

and the original or a certified copy of a document establishing that the person has been convicted and that a sentence is to be imposed.

- e) in the case of a person convicted by default:
 - i) the original or a certified true copy of the warrant of arrest or of any document having the same force, issued in the Requesting State;
 - ii) the original or a certified true copy of the conviction by default;
 - iii) in the event that the law of the Requested State so requires, evidence that would, in accordance with sub-paragraph 1.b(ii) of this Article, justify a committal for trial of the person sought for the offence and evidence establishing the identity of the person sought.

2. All documents submitted in support of a request for extradition and appearing to have been certified or issued by a judicial authority of the Requesting State or made under its authority, shall be admitted in extradition proceedings in the Requested State without having to be taken under oath or solemn affirmation and without proof of the signature or of the official character of the person appearing to have signed them.

3. No authentication or further certification of documents submitted in support of the request for extradition shall be required.

4. Any translation of documents submitted in support of a request for extradition, provided by the Requesting State, shall be admissible for all purposes in extradition proceedings.

ARTICLE IX**Additional Information**

If the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of this Treaty, that State may request that additional information be furnished within such time as it specifies.

ARTICLE X**Provisional Arrest**

1. In case of urgency, the Requesting State may apply, in writing, through the International Criminal Police Organisation (INTERPOL) or to the competent authorities of the Requested State for the provisional arrest of the person sought pending the presentation of the request for extradition.
2. The application for provisional arrest shall give particulars of the final court decision or warrant of arrest, a description of the offence, when and where it was committed and the details of the identity of the person sought, and shall contain a statement that an extradition request will be made subsequently.
3. On receipt of such an application for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its application.
4. A person arrested upon such application shall be released from custody upon the expiration of sixty days from the date of that person's arrest if a request for that person's extradition, supported by the documents specified in Article VIII, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution or continuation of proceedings with a view to extraditing the person sought if the request and the supporting documents are received subsequently.

ARTICLE XI

Consent to Extradition

Extradition of a person sought may be granted pursuant to the provisions of this Treaty, notwithstanding that the requirements of Articles VII and VIII have not been complied with, provided that the person sought consents to an order for extradition being made.

ARTICLE XII

Competing Extradition Requests

1. When requests are received from two or more States for the extradition of the same person, the Requested State shall determine to which of those States the person is to be extradited and shall notify the other Contracting State of its decision.
2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:
 - a) the relative seriousness of the offences, if the requests relate to different offences;
 - b) the time and place of commission of each offence;
 - c) the respective dates of the requests;
 - d) the nationality of the person; and

- e) the ordinary place of residence of the person.

ARTICLE XIII

Surrender of Person to be Extradited

1. The Requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State. Reasons shall be given for any complete or partial rejection of an extradition request.
2. When extradition of a person for an offence is granted, the person shall be removed from a point of departure in the territory of the Requested State convenient to both Contracting States.
3. The Requesting State shall remove the person from the territory of the Requested State within such reasonable period as the Requested State specifies. If the person is not removed within that period, the Requested State may refuse to grant extradition for the same offence.
4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited, it shall notify the other State. The Contracting States shall agree upon a new period of time for surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE XIV

Surrender of Property

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required

as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted or the person consents to extradition.

2. Subject to the provisions of paragraph 1 of this Article, the above mentioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition cannot be carried out owing to the death or escape of the person sought.

3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

ARTICLE XV

Rule of Specialty

A person who has been extradited shall not be proceeded against, sentenced or detained nor be subjected to any other restriction of personal liberty for any acts or omissions committed prior to that person's surrender, other than that for which the person was extradited, except in the following cases:

- a) when the Requested State consents. A request for consent shall be accompanied by the documents or information mentioned in Article VIII; or
- b) when that person, having had the opportunity to leave the territory of the Requesting State, has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.

ARTICLE XVI**Re-Extradition to a Third State**

1. When a person has been surrendered to the Requesting State by the Requested State, the Requesting State shall not surrender that person to any third State for an offence committed before that person's surrender unless:
 - a) the Requested State consents; or
 - b) the person, having had the opportunity to leave the territory of the Requesting State, has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.
2. Before acceding to a request pursuant to sub-paragraph (1)(a) of this Article, the Requested State may require the production of the documents in support of the request of the third State.

ARTICLE XVII**Transit**

1. When a third State has granted the extradition of a person to one of the Contracting States, that Contracting State shall seek the transit permission for that person from the other Contracting State in the case of a scheduled stopover in the latter State's territory.
2. The Contracting State requested for transit may require such documents as it considers necessary to make the decision on transit.
3. The Contracting State requested for transit may refuse to give its permission on any grounds provided by its law.

ARTICLE XVIII**Applicable Law**

Unless there is provision to the contrary in this Treaty, proceedings relating to arrest and extradition shall be governed by the law of the Requested State.

ARTICLE XIX**Language**

All documents submitted in accordance with this Treaty shall be in or translated into an official language of the Requested State.

ARTICLE XX**Mutual Legal Assistance in Extradition**

The Requested State agrees upon request, to the extent permitted by its law, to gather evidence within its own territory for the Requesting State relating to the offence for which extradition has been requested.

ARTICLE XXI**Conduct of Proceedings**

1. In the case of a request for extradition presented by the Spanish authorities, the Attorney General of Canada shall conduct the extradition proceedings.

2. In the case of a request for extradition presented by Canadian authorities, the extradition proceedings shall be conducted in accordance with Spanish law.

3. Nothing in this Article affects the rights or obligations of the diplomatic or consular representatives of the Contracting States.

ARTICLE XXII

Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition, including a prosecution as a result of a refusal to grant extradition on the basis of nationality.

2. The Requested State shall bear the expenses incurred in its territory for the arrest and detention of the person whose extradition is requested, until the person is surrendered.

3. The Requesting State shall bear the expenses incurred in conveying the person extradited from the territory of the Requested State.

ARTICLE XXIII

Entry into Force and Termination

1. This Treaty shall enter into force thirty days after the Contracting States have exchanged notifications that the legal requirements for its entry into force have been met.

2. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

3. Subject to paragraph 5 below, on entry into force of this Treaty, the Treaty between Great Britain and Spain for the Mutual Surrender of Fugitive Criminals, signed at London on June 4, 1878,¹ as amended by the Declaration signed at Madrid February 19, 1889² amending Articles II and VI of the Treaty, shall cease to have effect between the Contracting States.

4. Extraditions requested after the entry into force of this Treaty shall be governed by its provisions.

5. Extraditions requested prior to the entry into force of this Treaty shall continue to be governed by the provisions of the Treaty between Great Britain and Spain signed on June 4, 1878, as amended.

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

DONE at Madrid on the thirty-first day of May, nineteen hundred eighty-nine, in the Spanish, English and French languages, each version being equally authentic.

For the Kingdom of Spain:

[Signed]³

For Canada:

[Signed]⁴

¹ *British and Foreign State Papers*, vol. 69, p. 6.

² *Ibid.*, vol. 81, p. 28.

³ Signed by Francisco Fernandez Ordóñez.

⁴ Signed by Joe Clark.