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**SPAIN
and
PERU**

**Treaty concerning extradition. Signed at Madrid on 28 June
1989**

Authentic text: Spanish.

Registered by Spain on 17 February 1994.

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**ESPAGNE
et
PÉROU**

Traité d'extradition. Signé à Madrid le 28 juin 1989

Texte authentique : espagnol.

Enregistré par l'Espagne le 17 février 1994.

[TRANSLATION — TRADUCTION]

TREATY¹ CONCERNING EXTRADITION BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF PERU

The Kingdom of Spain and the Republic of Peru:

Conscious of the deep historical ties uniting the two nations and desiring to reflect them in juridical instruments of cooperation in all areas of common interest, including judicial assistance,

Have decided to conclude a Treaty concerning Extradition as follows:

Article 1

The Contracting Parties undertake reciprocally to extradite, subject to the terms and conditions specified in the following articles and in conformity with the legislation in force in the requesting and requested States, persons being prosecuted by the judicial authorities of one of the Parties for an offence, or being sought in order to serve a sentence or security measure ordered by the judicial authorities involving deprivation of liberty.

Article 2

1. Acts which under the laws of both Parties are punishable by deprivation of liberty or security measures involving deprivation of liberty for a term of not less than one year shall give rise to extradition.

2. The extradition shall proceed in respect of perpetrators of and accomplices to a punishable act and accessories after the fact, irrespective of the degree of involvement in the punishable act.

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

4. If the request refers to several acts, some of which fail to meet the requirements of paragraphs 1 and 3, the requested Party may also grant extradition under those paragraphs.

Article 3

Punishable acts covered by multilateral agreements to which both countries are parties shall also give rise to extradition in accordance with this Treaty.

Article 4

1. In matters of punishable acts involving fiscal matters, including taxes, rates and duties, customs and exchange control, extradition shall be granted, under the provisions of this Treaty, if the acts meet the requirements of article 2.

2. Where the punishable act meets the requirements of article 2, extradition may not be denied on the sole grounds that the laws of the Parties provide for a

¹ Came into force on 31 January 1994, i.e., the last day of the month following that of the exchange of the instruments of ratification, which took place at Lima on 17 December 1993, in accordance with article 30.

different legal classification of the act or do not contain the same type of regulations in these matters.

Article 5

1. Extradition shall not be granted for offences considered to be of a political nature or connected with offences of that kind. The mere allegation of a political purpose or motivation in the commission of an offence shall not, in itself, qualify it as an offence of a political nature.

For the purposes of this Treaty, the following shall in no case be considered political offences:

(a) An attempt to assassinate a head of State or Government or a member of his family;

(b) Acts of terrorism;

(c) War crimes and crimes against the peace and security of mankind.

2. Extradition shall likewise not be granted if the requested Party has well-founded reasons for believing that the request for extradition has been submitted for the purpose of prosecuting or punishing the person sought for reasons of his race, religion, nationality, or political opinions, or that the person's situation may be prejudiced for any of those reasons.

Article 6

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

Article 7

1. Where the person sought is a national of the requested Party, the latter may refuse to grant extradition under its own laws. Nationality shall be determined at the time when the decision on extradition is taken, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

2. Where the requested Party refuses to grant the extradition of one of its nationals for reasons of nationality, it shall, at the petition of the requesting Party, refer the matter to the competent authorities so that they may initiate judicial proceedings against the person. To that end, all documents, information and articles relating to the offence may be transmitted free of charge through the channel provided for in article 15.

The requesting Party shall be informed of the decision taken on its request.

Article 8

None of the provisions of this Treaty shall be interpreted as a limitation on asylum, once it has been granted. Therefore, the requested Party may also refuse to extradite a person granted asylum under its own laws.

If extradition is denied for this reason, the provisions of paragraph 2 of the previous article shall apply.

Article 9

Extradition shall be denied:

(a) If the person sought has been sentenced or is to be tried by a court of special or *ad hoc* jurisdiction in the requesting Party.

(b) If, under the laws of either Party, liability to penalty or criminal action for the offence giving rise to the extradition request has been extinguished.

(c) If the person sought has been tried in the requested Party for the act giving rise to the extradition request.

Article 10

Extradition shall not be granted if the acts for which it is requested are punishable by the death penalty or life imprisonment, or by penalties or security measures involving bodily assault or exposure to inhuman or degrading treatment

However, extradition may be granted if the requesting Party provides sufficient guarantees that the person sought will not be executed and that the maximum sentence to be served will be the most severe short of life imprisonment, or that he will not be subjected to punishment involving bodily assault or to inhuman or degrading treatment.

Article 11

Extradition may be denied:

(a) If the courts of the requested Party are competent, under its own laws, to investigate the offence giving rise to the extradition request. The requesting Party shall, however, grant extradition if it has decided, or should decide, not to begin proceedings or to terminate any proceedings that have been initiated.

(b) If the offence was committed outside the territory of the requesting Party and the laws of the requested Party do not permit the prosecution of an offence of that type committed outside its territory.

(c) If the person sought is under 18 years of age at the time the extradition request is submitted and has ties in the requested Party, and that Party believes that extradition could be detrimental to his integration into society, without prejudice to the adoption of the most appropriate measures provided under the laws of the requested Party.

Article 12

1. If the person sought has been sentenced by default, extradition shall not be granted unless the requesting Party provides guarantees that his defence will be heard and that he will be given the appropriate legal resources.

2. If extradition is granted, the requesting Party may carry out the sentence with the express consent of the convicted person.

Article 13

1. In order for a person who has been extradited to be tried, sentenced or subjected to any type of restriction of his personal liberty for acts prior to and different from those which were the grounds for his extradition, the requesting Party

shall request the appropriate authorization from the requested Party. The latter may require the requesting Party to submit the documents listed in article 15.

Authorization may be granted, provided that the requirements of article 2, paragraphs 1 and 3, have been met.

2. Such authorization shall not be required if the person who has been extradited gives his express consent, or, although free to leave the territory of the State to which he was handed over, remained there for more than 60 days or left the territory and subsequently returned.

Article 14

Where the legal classification of the act with which he is charged is modified during the proceedings, the person who has been extradited shall be prosecuted or sentenced only to the extent that the constituent elements of the offence under the new classification would have warranted extradition.

Article 15

1. The request for extradition shall be made in writing and transmitted through the diplomatic channel. However, either Party may inform the other of the appointment of a central authority competent to receive and transmit requests for extradition.

2. The extradition request shall be accompanied by:

(a) A copy or transcript of the sentence, committal order, detention order or any other similar decision under the laws of the requesting Party, with a summary statement of the acts, location and date of occurrence, and, in the case of a sentence, certification that it has not been completely served and an indication of the time remaining to be served.

(b) If no sentence has been passed, a copy or transcript of the evidence on which the committal order, detention order or any other similar decision is based.

(c) As much information as is available on the identity, nationality and residence of the person sought and, if possible, his photograph and fingerprints.

(d) A copy or transcript of the legal texts which classify and sanction the offence and state the applicable penalties or security measures, of those which establish the competence of the requesting Party to try the case and of those referring to the prescription of actions and of the penalty or security measure.

(e) The guarantees regarding the application of the penalties or security measures referred to in article 10, if necessary.

Article 16

1. If the information or documents sent with the request for extradition are incomplete or defective, the requested Party shall so inform the requesting Party as soon as possible so that the requesting Party may correct, within the time-limit established by the requested Party, the omissions or errors noted.

2. If, owing to exceptional circumstances, the requesting Party is unable to meet this deadline, it may apply for an extension from the requested Party.

Article 17

The requested Party may grant extradition without observing the formalities established by this Treaty if the person sought, with the benefit of legal assistance, gives his express consent after having been informed of his right to extradition proceedings and the protection such proceedings afford him.

Article 18

1. The requested Party shall communicate to the requesting Party, through the channel provided for in article 15, its decision concerning the extradition.
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 the way in which the person sought is to be surrendered; such surrender shall take place within 45 days from the date of the communication referred to in paragraph 1 of this article.
4. If the person sought has not been received within this time period, he shall be released and the requesting Party may not subsequently request extradition for the same offence.
5. The documents, funds and other items which are to be made available to the requesting Party shall be surrendered at the same time as the person is handed over.

Article 19

1. If the person sought is being tried or is serving a sentence in the requested Party, his surrender may be postponed until those responsibilities in that Party have been extinguished, or he may be temporarily or definitively handed over on such terms as may be agreed with the requesting Party.
2. If the surrender would seriously jeopardize the life or health of the person sought, it may be postponed until such circumstances no longer exist.
3. The surrender of the person sought may also be deferred if, for sufficiently serious personal reasons, it would be incompatible with humanitarian interests.

Article 20

If extradition is denied for reasons other than purely formal defects, the requesting Party may not submit another extradition request to the requested Party for the same offence.

Article 21

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 being extradited shall be permitted upon presentation of a request through the channel stipulated in article 15, accompanied by a copy of the decision granting the extradition and a copy of the original extradition request. The Parties may refuse to allow the transit of their own nationals.

The authorities of the transit State shall have custody of the person being extradited.

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

2. A request for conveyance in transit shall be unnecessary if air transport is used and no landings in the territory of the transit State are planned.

Article 22

1. Re-extradition to a third State shall not be granted without the consent of the Party which agreed to the extradition, except in the case provided for in article 13, paragraph 2.

2. To that end a new request for extradition meeting all the requirements established in this Treaty shall be made.

Article 23

1. If the extradition of the same person has been requested by more than one State, the requested Party shall determine to which of those States it will surrender the person sought and shall notify the requesting Party of its decision.

2. Where the requests refer to the same offence, the requested Party shall give preference to the request of the State in whose territory the offence was committed, unless particular circumstances exist that recommend otherwise.

The particular circumstances which may be taken into account include the nationality and habitual domicile of the person sought and the dates of the respective requests.

3. If the requests are made for separate offences, the requested Party shall give preference to the request involving the offence considered to be the most serious under its laws, unless the particular circumstances of the case recommend otherwise.

Article 24

1. In urgent cases, the competent authorities of the requesting Party may apply for the pre-trial detention of the person sought.

2. The application for pre-trial detention shall contain an indication of the existence of one of the decisions provided for in article 15, paragraph 2, and of the intention to submit without delay a formal request for extradition. It shall also specify the offence for which extradition is requested, the time and place of perpetration and, as far as possible, the identity of the person sought.

3. The application for pre-trial detention shall be transmitted by mail, telegraph or any other means that affords evidence in writing through the channel stipulated in article 15 or through the International Criminal Police Organization (INTERPOL).

4. The requested Party shall inform the requesting Party of any decisions taken and, especially and urgently, of the arrest and the time-limit within which the extradition request must be submitted.

5. The competent authority of the requested Party may order the release of the detained person, taking appropriate measures to prevent his escape. In any case, he shall be released if the extradition request has not been received within 60 calendar days after the pre-trial detention.

6. If the person sought has been released upon the expiration of the time-limit provided in the previous paragraph, the requesting Party may not apply again for the

pre-trial detention of the person sought without submitting a formal extradition request.

7. Where extradition proceedings are initiated in response to a request as provided for in article 15, without a prior urgent request for detention, the detention and any modification thereof shall be carried out under the laws of the requested Party.

Article 25

1. At the request of the requesting Party, the requested Party shall to the extent permitted by its laws seize and hand over documents, property and other articles:

(a) Which may serve as evidence, or

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

2. Such documents, money and articles, shall be handed over even if the extradition, having been granted, cannot be carried out because of the death or escape of the person sought.

3. The requested Party may retain them temporarily or hand them over on condition that they are returned if they are needed as evidence in a criminal trial already in progress.

4. In all cases the requested Party or any third parties involved shall retain any rights which they have acquired to the above-mentioned articles. Where such rights exist, the articles shall be returned to the requested Party as soon as possible and without any charge.

Article 26

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

Article 27

The requesting Party may appoint an official representative authorized to appear before the judicial authorities in the extradition proceedings. This representative shall be formally summoned to testify prior to the judicial decision on extradition.

Article 28

1. Legalization of the signatures of the authorities and officials of the Contracting Parties appearing on the documents issued in application of this Treaty shall not be required.

2. Copies of documents sent must be certified by the competent authorities.

Article 29

This Treaty shall apply to persons entering the territory of the requested State at any time after its entry into force, and to persons present in the territory of that

State 45 days after the entry into force of this Treaty, regardless of the date on which the punishable act was committed.

Article 30

This Treaty is subject to ratification and shall enter into force on the last day of the month following the exchange of the instruments of ratification, which shall take place in the city of Lima.

Article 31

This Treaty shall be of indefinite duration. Either of the two States may denounce it by written notification through the diplomatic channel. The denunciation shall take effect on the last day of the sixth month following the date of notification.

DONE at Madrid, on 28 June 1989, in two copies, both being equally authentic.

For the Kingdom
of Spain:

ENRIQUE MÚGICA HERZOG
Minister of Justice

For the Republic
of Peru:

ALLAN WAGNER TIZÓN
Ambassador of Peru