

No. 31680

**SPAIN
and
CANADA**

**Treaty on mutual assistance in criminal matters. Signed at
Madrid on 4 July 1994**

Authentic texts: Spanish, English and French.

Registered by Spain on 15 March 1995.

**ESPAGNE
et
CANADA**

**Traité d'entraide judiciaire en matière pénale. Signé à
Madrid le 4 juillet 1994**

Textes authentiques : espagnol, anglais et français.

Enregistré par l'Espagne le 15 mars 1995.

TREATY¹ BETWEEN THE KINGDOM OF SPAIN AND CANADA OF MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Kingdom of Spain and Canada

Desiring to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in criminal matters,

Have Agreed as follows:

PART I - GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO GRANT MUTUAL ASSISTANCE

1. The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.
2. Mutual assistance for the purpose of paragraph 1 shall be any assistance given by the Requested State in respect of investigations or proceedings in the Requesting State in a criminal matter that is sought by a competent authority of that state.
3. "Competent authority" means the authority which has presented a request for mutual assistance, whether emanating from a judicial authority or endorsed by the Attorney-General of Canada or a province or one of their agents.
4. Criminal matters for the purpose of paragraph 1 mean, investigations or proceedings relating, for the Kingdom of Spain to any offence within the jurisdiction of courts ruling in penal matter, and for Canada, to any offence created by a law of Parliament or by the legislature of a province.
5. Criminal matters shall also include investigations or proceedings relating to offences concerning taxation, duties, customs and international transfer of capital or payments.

¹ Came into force on 3 March 1995, i.e., 30 days after the Contracting Parties had notified each other (on 29 November 1994 and 1 February 1995) of the completion of their respective requirements, in accordance with article 23 (1).

6. Assistance shall include:
- a) taking of evidence and obtaining of statements of persons;
 - b) provision of information, documents and other records, including criminal records, judicial records and government records;
 - c) location of persons and objects, including their identification;
 - d) search and seizure;
 - e) delivery of property, including lending of exhibits;
 - f) making detained persons and others available to give evidence or assist investigations;
 - g) service of documents, including documents seeking the attendance of persons;
 - h) measures to locate, restrain and forfeit the proceeds of crime; and
 - i) other assistance consistent with the objects of this Treaty.

ARTICLE 2

EXECUTION OF REQUESTS

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not prohibited by that law, in the manner requested by the Requesting State.
2. The Requested State shall not decline execution of a request on the ground of bank secrecy.

ARTICLE 3

REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance may be refused if, in the opinion of the Requested State the execution of the request would impair its sovereignty, security, public order or similar essential interest, prejudice the safety of any person or be unreasonable on other grounds.
2. Assistance may be postponed by the Requested State if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.
3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole

or in part with a request for assistance, or to postpone execution and shall be given reasons for that decision.

4. Before refusing to grant a request for assistance or before postponing its execution, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II SPECIFIC PROVISIONS

ARTICLE 4

PRESENCE OF PERSONS INVOLVED IN THE PROCEEDINGS IN THE REQUESTED STATE

1. The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.

2. To the extent not prohibited by the law of the Requested State, judges or officials of the Requesting State and other persons concerned in the investigation or proceedings shall be permitted to be present at the execution of the request and to participate in the proceedings in the Requested State.

3. The right to participate in the proceedings shall include the right of any person present to pose questions. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript shall be permitted.

ARTICLE 5

TRANSMISSION OF DOCUMENTS AND OBJECTS

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified true copies thereof, unless the Requesting State expressly requests the originals.

2. The original records or documents and the objects transmitted to the Requesting State shall be returned to the Requested State as soon as possible, upon the latter's request.

3. Insofar as not prohibited by the law of the Requested State, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 6

CRIMINAL RECORDS

Criminal records required in the Requesting State for purposes of criminal proceedings shall be provided to the Requesting State on the same condition as they would be provided in respect of similar proceedings in the Requested State.

ARTICLE 7

AVAILABILITY OF PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS IN THE REQUESTING STATE

1. The Requesting State may request that a person be made available to testify or to assist in an investigation.
2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances which shall be paid in advance.

ARTICLE 8

MAKING DETAINED PERSONS AVAILABLE TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

1. A person in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State to assist in investigations or proceedings, provided that the person consents to that transfer and there are no overriding grounds against transferring the person.
2. Where the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request. The time spent by the person in custody in the Requesting State shall count in the computation of the sentence that the person has to serve in the Requested State.
3. Where the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 9

SAFE CONDUCT

1. A person present in the Requesting State in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than the proceedings to which the request relates.

2. A person, who is present in the Requesting State by consent as a result of a request for the person's attendance to answer before a judicial authority any acts, omissions or convictions shall not be prosecuted or detained or subjected to any other restriction of personal liberty for acts and omissions or convictions which preceded that person's departure from the Requested State, not specified in the request.

3. Paragraphs 1 and 2 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left it within a period of thirty (30) days after being officially notified that that person's attendance is no longer required or, having left that territory, has voluntarily returned.

4. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

ARTICLE 10

PROCEEDS OF CRIME

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in the latter's jurisdiction.

2. Where, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.

PART III PROCEDURE

ARTICLE 11

CONTENTS OF REQUESTS

1. In all cases requests for assistance shall include:
 - a) the name of the competent authority conducting the investigation or proceedings to which the request relates;

- b) a description of the nature of the investigation or proceedings, including a summary of the relevant facts and laws;
- c) the purpose for which the request is made and the nature of the assistance sought;
- d) the need, if any, for confidentiality and the reasons therefor; and
- e) any time limit within which compliance with the request is desired.

2. Requests for assistance shall also contain the following information:

- a) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
- b) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;
- c) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in a location in the Requested State;
- d) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence or statement sought;
- e) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned; and
- f) in the case of making detained persons available, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return.

3. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.

4. A request shall be made in writing. In urgent circumstances and where otherwise permitted by the Requested State, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 12

CENTRAL AUTHORITIES

Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister; the Central Authority for the Kingdom of Spain shall be the "Dirección General de Codificación y Cooperación Jurídica Internacional" of the Ministry of Justice and the Interior.

ARTICLE 13

CONFIDENTIALITY

1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

2. The Requested State shall, to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

ARTICLE 14

LIMITATION OF USE

The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Requested State.

ARTICLE 15

AUTHENTICATION

Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as is specified in Article 5.

ARTICLE 16

LANGUAGE

1. Requests and supporting documents shall be accompanied by a translation into French or English in the case of a request made by the Kingdom of Spain and into Spanish in the case of a request made by Canada.

2. Requests for service shall be accompanied by a translation of the documents to be served into a language understood by the person to be served.

ARTICLE 17**CONSULAR OFFICIALS**

1. Consular officials may take evidence in the territory of the receiving state from a witness on a voluntary basis without a formal request. Prior notice of the intended proceedings shall be given to the receiving state. That state may refuse its consent for any reason provided in Article 3.

2. Consular officials may serve documents on an individual who appears voluntarily at the consular premises.

ARTICLE 18**EXPENSES**

1. The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear:

- a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any allowance or expenses payable to that person while in the Requesting State pursuant to a request under Articles 7 or 8 of this Treaty; and
- b) the expenses and fees of experts either in the Requested State or the Requesting State.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV FINAL PROVISIONS**ARTICLE 19****OTHER ASSISTANCE**

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting Parties providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 20

SCOPE OF APPLICATION

This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

ARTICLE 21

CONSULTATIONS

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 22

THIRD STATES

Where, in the context of an investigation or proceeding, the judicial authorities of a third State issue any order imposing on a national or resident of one of the Parties any conduct in the territory of the other Contracting Party conflicting with the laws of that party, the Contracting Parties agree to consult through diplomatic channels to identify means to avoid or limit such conflict.

ARTICLE 23

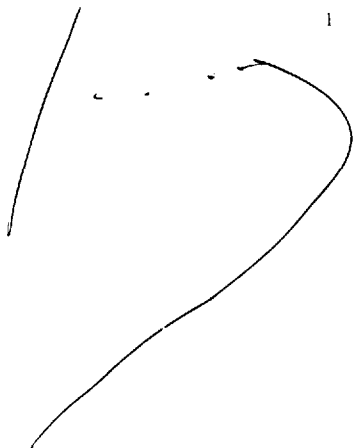
ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. Either Contracting Party may terminate this Treaty at any time by giving one year's written notice to the other Contracting Party.

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

DONE at Madrid, this Fourth day of July, One Thousand nine hundred and ninety-four in duplicate, in English, French and Spanish, each version being equally authentic.

For the Kingdom of Spain:

A large, stylized handwritten signature in black ink, consisting of a long, sweeping curve that starts high on the left and ends with a small dot on the right.

¹

For Canada:

A handwritten signature in black ink, featuring a large, circular loop on the left side followed by several smaller, connected loops and a final horizontal stroke.

²

¹ Juan Alberto Belloch Julbe.

² Jean Pierre Juneau.