

No. 27439

**BRAZIL
and
SPAIN**

Treaty concerning extradition. Signed at Brasília on 2 February 1988

Authentic texts: Portuguese and Spanish.

Registered by Brazil on 24 July 1990.

**BRÉSIL
et
ESPAGNE**

Traité d'extradition. Signé à Brasília le 2 février 1988

Textes authentiques : portugais et espagnol.

Enregistré par le Brésil le 24 juillet 1990.

[TRANSLATION — TRADUCTION]

TREATY¹ CONCERNING EXTRADITION BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE KINGDOM OF SPAIN

The Federative Republic of Brazil and

The Kingdom of Spain

(Hereinafter referred to as "States"),

Conscious of the close historical ties uniting the two nations, and

Desiring to reflect those ties in legal instruments concerning cooperation in areas of common interest, including cooperation to facilitate the administration of justice in criminal matters,

Have agreed as follows:

TITLE I. PURPOSE OF THE TREATY

Article I

The two States undertake to surrender to each other, subject to the conditions laid down in this Treaty and in accordance with the legal formalities in force in the requesting and the requested States, persons against whom criminal proceedings have been instituted or who have been sentenced by the judicial authorities of one State and are present in the territory of the other State.

TITLE II. CASES IN WHICH EXTRADITION IS ALLOWABLE

Article II

1. Extradition shall be granted in respect of acts punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a term of more than one year, independent of modifying circumstances and the description of the offence.
2. If extradition is requested for the enforcement of a sentence, the part of the term remaining to be served must be greater than one year.
3. When the request for extradition refers to more than one offence, and some of the offences do not meet the requirements of the two preceding paragraphs, extradition may be granted if any of the offences meet those requirements.
4. Extradition shall be carried out in respect of perpetrators, accessories and accessories after the fact, whatever the degree of execution of the offence.
5. Extradition shall also be granted in respect of acts covered by multilateral agreements duly ratified by both States.
6. Extradition shall be granted for fiscal offences against the Treasury, including those relating to contraband and exchange control, in accordance with the terms of this Treaty and the law of the requested State. Extradition may not be refused on the grounds that the law of the requested State does not impose the same

¹ Came into force on 30 June 1990, i.e., the last day of the month following the exchange of the instruments of ratification, which took place at Madrid on 11 May 1990, in accordance with article XXIII.

kind of tax or duty or does not contain the same kind of regulations as the law of the requesting State.

TITLE III. CASES IN WHICH EXTRADITION IS NOT ALLOWABLE

Article III

1. When the person claimed is a national of the requested State, that State shall not be obliged to surrender him. In the event that extradition is not granted, the individual shall, if the other State so requests, be prosecuted in the requested State for the act which prompted the request for extradition, unless that act is not punishable under the law of the requested State.

2. In the aforementioned case, the requesting State shall supply evidence for the prosecution of the accused and the other State shall undertake to inform it of the sentence or final decision concerning the matter.

3. Nationality shall be determined under the law of the requested State, as at the time of the decision concerning extradition, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

Article IV

1. Extradition shall not be granted:

(a) When, according to its own law, the requested State is competent to adjudicate on the offence;

(b) When the person claimed is liable to prosecution or has already been tried for the same act in the requested State or has been granted an amnesty or pardon in that State;

(c) When the person claimed has, according to the law of either the requesting or the requested State, become immune by reason of lapse of time from criminal prosecution or punishment;

(d) When the person claimed would be tried in the requesting State before a court or tribunal of special jurisdiction;

(e) When the offence for which extradition is requested is purely military in nature;

(f) When the offence is political or connected with a political offence;

(g) When the requested State has substantial reasons for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person claimed on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

2. The authorities of the requested State shall have exclusive competence to evaluate the nature of the offence.

3. Allegations of political purposes or motives shall not prevent extradition if the act constitutes principally a violation of ordinary law. In that event, extradition shall be granted provided that the requesting State gives a formal assurance that political purposes or motives will not contribute to the imposition of a heavier sentence.

4. For the purposes of this Treaty, offences shall be considered to be purely military when they involve acts not covered by ordinary criminal law and are de-

rived solely from special legislation applicable to members of the armed forces and intended to maintain order or discipline in those forces.

5. The following shall not be considered as political offences:

- (a) An attempt against the life of a foreign Head of State or Government or a member of his family;
- (b) Terrorist acts;
- (c) War crimes or crimes against the peace and security of mankind.

TITLE IV. GUARANTEES APPLICABLE TO THE PERSON CLAIMED

Article V

1. A person extradited by virtue of this Treaty shall not:

(a) Be surrendered to a third country which claims him without the consent of the requested State;

(b) Be tried for any prior act, unless the individual himself expressly and freely consents, or, having been set free and warned of the consequences of remaining for more than 30 days in the territory of the State where he was tried, he has remained there past that time-limit.

2. If the description of the act charged is altered in the course of proceedings, the person claimed shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article VI

1. Extradition shall not be granted unless the requesting State guarantees that the time the person claimed has spent in custody in the requested State as a result of the request for extradition will be counted.

2. If the act giving rise to the request for extradition is punishable by death, life imprisonment or penalties involving physical punishment or inhuman or degrading treatment, the requested State may make extradition conditional on a prior guarantee from the requesting State through the diplomatic channel that, if the person is convicted, such sentences will not be imposed, and that the first two will be converted into the maximum term of deprivation of liberty provided under the law of the requested State.

Article VII

If the person claimed has been sentenced by default, extradition shall not be granted if, in the view of the requested State, the basic right to a defence accorded to all persons accused of an offence has not been respected in the proceedings giving rise to the sentence. Extradition may, however, be granted if the requesting State gives sufficient assurances that the person claimed may make use of the remedies and other procedural guarantees provided under the law of the requesting State.

Article VIII

The requested State may deny extradition of a person claimed to whom it has granted or is in the process of granting asylum. In this case, the provisions of article III shall apply.