

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;