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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