

INTER-AMERICAN CONVENTION ON EXTRADITION

Reaffirming their goal of strengthening international cooperation in legal and criminal law matters, which was the inspiration for the agreements reached in Lima on March 27, 1879, in Montevideo on January 23, 1889, in Mexico City on January 28, 1902, in Washington on February 7, 1923, in Havana on February 20, 1928, in Montevideo on December 26, 1933, in Guatemala City on April 12, 1934, and in Montevideo on March 19, 1940;

Taking into consideration resolutions CVII of the Tenth Inter-American Conference (Caracas, 1954), VII of the Third Meeting of the Inter-American Council of Jurists (Mexico, 1956), IV of the Fourth Meeting of that Council (Santiago, Chile, 1959), and AG/RES.91 (II-0/72), 183 (V-0/75) and 310 (VII-0/77) of the General Assembly of the Organization of American States, as well as the draft Conventions proposed by the Inter-American Juridical Committee in 1954, 1957, 1973, and 1977;

Believing that the close ties and the cooperation that exist in the Americas call for the extension of extradition to ensure that crime does not go unpunished, and to simplify procedures and promote mutual assistance in the field of criminal law on a wider scale than provided for by the treaties in force, with due respect to the human rights embodied in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights; and

Conscious that the fight against crime at the international level will enhance the fundamental value of justice in criminal law matters,

The Member States of the Organization of American States

ADOPT THE FOLLOWING INTER-AMERICAN CONVENTION ON EXTRADITION

Article 1

Obligation to Extradite

The States Parties bind themselves, in accordance with the provisions of this Convention, to surrender to other States Parties that request their extradition persons who are judicially required for prosecution, are being tried, have been convicted or have been sentenced to a penalty involving deprivation of liberty.

Article 2

Jurisdiction

1. For extradition to be granted, the offense that gave rise to the request for extradition must have been committed in the territory of the requesting State.
2. When the offense for which extradition is requested has been committed outside the territory of the requesting State, extradition shall be granted provided the requesting State has jurisdiction to try the offense that gave rise to the request for extradition and to pronounce judgment thereon.
3. The requested State may deny extradition when it is competent, according to its own legislation, to prosecute the person whose extradition is sought for the offense on which the request is based. If it denies extradition for this reason, the requested State shall submit the case to its competent authorities and inform the requesting State of the result.

Article 3

Extraditable Offenses

1. For extradition to be granted, the offense for which the person is sought shall be punishable at the time of its commission, by reason of the acts that constitute it, disregarding extenuating circumstances and the denomination of the offense, by a penalty of not less than two years of deprivation of liberty under the laws of both the requesting State and the requested State. Where the principle of retroactivity of penal law exists, it shall be applied only when it is favorable to the offender.
2. If the extradition is to be carried out between States whose laws establish minimum and maximum penalties, the offense for which extradition is requested shall be punishable, under the laws of the requesting and the requested States, by an average penalty of at least two years of deprivation of liberty. Average penalty is understood to be one-half of the sum of the minimum and maximum terms of each penalty of deprivation of liberty.
3. Where the extradition of an offender is requested for the execution of a sentence involving deprivation of liberty, the duration of the sentence still to be served must be at least six months.
4. In determining whether extradition should be granted to a State having a federal form of government and separate federal and state criminal legislation, the requested State shall take into consideration only the essential elements of the offense and shall disregard elements such as interstate transportation or use of the mails or other

facilities of interstate commerce, since the sole purpose of such elements is to establish the jurisdiction of the federal courts of the requesting State.

Article 4

Grounds for Denying Extradition

Extradition shall not be granted:

1. When the person sought has completed his punishment or has been granted amnesty, pardon or grace for the offense for which extradition is sought, or when he has been acquitted or the case against him for the same offense has been dismissed with prejudice.
2. When the prosecution or punishment is barred by the statute of limitations according to the laws of the requesting State or the requested State prior to the presentation of the request for extradition.
3. When the person sought has been tried or sentenced or is to be tried before an extraordinary or ad hoc tribunal of the requesting State.
4. When, as determined by the requested State, the offense for which the person is sought is a political offense, an offense related thereto, or an ordinary criminal offense prosecuted for political reasons. The requested State may decide that the fact that the victim of the punishable act in question performed political functions does not in itself justify the designation of the offense as political.
5. When, from the circumstances of the case, it can be inferred that persecution for reasons of race, religion or nationality is involved, or that the position of the person sought may be prejudiced for any of these reasons.
6. With respect to offenses that in the requested State cannot be prosecuted unless a complaint or charge has been made by a party having a legitimate interest.

Article 5

Specific Offenses

No provision of this Convention shall preclude extradition regulated by a treaty or Convention in force between the requesting State and the requested State whose purpose is to prevent or repress a specific category of offenses and which imposes on such States an obligation to either prosecute or extradite the person sought.

Article 6

Right of Asylum

No provision of this Convention may be interpreted as a limitation on the right of asylum when its exercise is appropriate.

Article 7

Nationality

1. The nationality of the person sought may not be invoked as a ground for denying extradition, except when the law of the requested State otherwise provides.
2. In the case of convicted persons, the States Parties may negotiate the mutual surrender of nationals so that they may serve their sentences in the States of which they are nationals.

Article 8

Prosecution by the Requested State

If, when extradition is applicable, a State does not deliver the person sought, the requested State shall, when its laws or other treaties so permit, be obligated to prosecute him for the offense with which he is charged, just as if it had been committed within its territory, and shall inform the requesting State of the judgement handed down.

Article 9

Penalties Excluded

The States Parties shall not grant extradition when the offense in question is punishable in the requesting State by the death penalty, by life imprisonment, or by degrading punishment, unless the requested State has previously obtained from the requesting State, through the diplomatic channel, sufficient assurances that none of the above-mentioned penalties will be imposed on the person sought or that, if such penalties are imposed, they will not be enforced.

Article 10

Transmission of Request

The request for extradition shall be made by the diplomatic agent of the requesting State, or, if none is present, by its consular officer, or, when appropriate, by the diplomatic agent of a third State to which is entrusted, with the consent of the government of the requested State, the representation and protection of the interests of

the requesting State. The request may also be made directly from government to government, in accordance with such procedure as the governments concerned may agree upon.

Article 11

Supporting Documents

1. The request for extradition shall be accompanied by the documents listed below, duly certified in the manner prescribed by the laws of the requesting State:
 - a. A certified copy of the warrant for arrest, or other document of like nature, issued by a competent judicial authority, or the Ministerio Público as well as a certified copy of evidence that, according to the laws of the requested State, is sufficient for the arrest and commitment for trial of the person sought. This last mentioned requirement shall not apply if the laws of the requesting State and of the requested State do not so provide. If the person has been tried and convicted of the offense by the courts of the requesting State, a certified verbatim copy of the final judgment shall suffice.
 - b. The text of the legal provisions that define and penalize the alleged crime, as well as those of the statute of limitations governing prosecution and punishment.
2. The request for extradition shall also be accompanied by the translation into the language of the requested State, if appropriate, of the documents enumerated in the previous paragraph, as well as by any personal data that will permit identification of the person sought, indication of his nationality, and, whenever possible, his location within the territory of the requested State, photographs, fingerprints, or any other satisfactory means of identification.

Article 12

Supplementary Information and Legal Assistance

1. The requested State, when it considers that the documents presented are insufficient, in accordance with the provisions of Article 11 of this Convention, shall so inform the requesting State as soon as possible. The requesting State shall correct any omissions or defects observed within a period of thirty days in the event the person sought is already detained or subject to precautionary measures. If, because of special circumstances, the requesting State is unable to correct the omissions or defects within that term, it may ask the requested State to extend the term by thirty days.

2. The requested State shall provide, at no cost to the requesting State, legal assistance to protect the interests of the requesting State before the competent authorities of the requested State.

Article 13

Rule of Speciality

1. A person extradited under this Convention shall not be detained, tried or punished in the territory of the requesting State for an offense, committed prior to the date of the request for extradition, other than that for which extradition has been granted unless:

- a. That person leaves the territory of the requesting State after extradition and voluntarily returns to it; or
- b. That person does not leave the territory of the requesting State within thirty days after being free to do so; or
- c. The competent authority of the requested State consents to that person's detention, trial or punishment for another offense. In such case, the requested State may require the requesting State to submit the documents mentioned in Article 11 of this Convention.

2. When extradition has been granted, the requesting State shall inform the requested State of the final resolution of the case against the person extradited.

Article 14

Provisional Detention and Precautionary Measures

1. In urgent cases, a State Party may request by the means of communication provided for in Article 10 of this Convention, or any other such means, the detention of the person who is judicially required for prosecution, is being tried, has been convicted, or has been sentenced to a penalty involving deprivation of liberty, and may also request the seizure of the objects related to the offense. The request for provisional detention shall contain a statement of intention to present the formal request for the extradition of the person sought, a statement of the existence of a warrant of arrest or of a judgment of conviction against that person issued by a judicial authority, and a description of the offense. The request for provisional detention shall be the sole responsibility of the requesting State.

2. The requested State shall order provisional detention and, when appropriate, the seizure of objects and shall immediately inform the requesting State of the date on which provisional detention commenced.
3. If the request for extradition, accompanied by the documents referred to in Article 11 of this Convention, is not presented within sixty days of the date on which the provisional detention referred to in paragraph 1 of this article commenced, the person sought shall be set free.
4. After the period of time referred to in the preceding paragraph has expired, the detention of the person sought may not be again requested except upon presentation of the documents required under Article 11 of this Convention.

Article 15

Requests by more than One State

When the extradition is requested by more than one State for the same offense, the requested State shall give preference to the request of the State in which the offense was committed. If the requests are for different offenses, preference shall be given to the State seeking the individual for the offense punishable by the most severe penalty, in accordance with the laws of the requested State. If the requests involve different offenses that the requested State considers to be of equal gravity, preference shall be determined by the order in which the requests are received.

Article 16

Legal Rights and Assistance

1. The person sought shall enjoy in the requested State all the legal rights and guarantees granted by the laws of that State.
2. The person sought shall be assisted by legal counsel, and if the official language of the country is other than his own, he shall also be assisted by an interpreter.

Article 17

Communication of the Extradition Decision

The requested State shall promptly inform the requesting State of its decision on the request for extradition and the reasons for its approval or denial.

Article 18

Non bis in idem

Once the request for extradition of a person has been denied, a request may not be made again for the same offense.

Article 19

Surrender of the Person Sought and Delivery of Property

1. The surrender of the person sought to the agents of the requesting State shall be carried out at a place determined by the requested State. This place shall, if possible, be an airport from which direct international flights depart for the requesting State.
2. If the request for provisional detention or for extradition is accompanied by a request for the seizure of documents, money or other objects that result from the alleged offense or may serve as evidence, such objects shall be collected and deposited under inventory by the requested State for subsequent delivery to the requesting State when the extradition is granted and even though the extradition is impeded by force majeure, unless the law of the requested State forbids such delivery. In any event, the rights of third parties shall not be affected .

Article 20

Deferral of Surrender

1. When the person sought is being tried or is serving a sentence in the requested State for an offense other than that for which the extradition is requested, his surrender may be deferred until he is entitled to be set free by virtue of acquittal, completed service or commutation of sentence, dismissal, pardon, amnesty or grace. No civil suit that the person sought may have pending against him in the requested State may prevent or defer his surrender.
2. When the surrender of the person sought would, for reasons of health, endanger his life, his surrender may be deferred until it would no longer pose such a danger.

Article 21

Simplified Extradition

The requested State may grant extradition without a formal extradition proceeding if;

- a. Its laws do not expressly prohibit it;

b. The person sought irrevocably consents in writing to the extradition after being advised by a judge or other competent authority of his right to a formal extradition proceeding and the protection afforded by such a proceeding.

Article 22

Period for Taking Custody of the Person Sought

If the extradition has been granted, the requesting State shall take custody of the person sought within a period of thirty days from the date on which he was placed at its disposal. If it does not take custody within that period, the person sought shall be set free and may not be subjected to a new extradition procedure for the same offense or offenses. This period, however, may be extended for thirty days if the requesting State is unable, owing to circumstances beyond its control, to take custody of the person sought and escort him out of the territory of the requested State.

Article 23

Custody

The agents of the requesting State who are in the territory of another State Party to take custody of a person whose extradition has been granted shall be authorized to have custody of him and escort him to the territory of the requesting State, provided, however, that such agents shall be subject to the jurisdiction of the State in which they are.

Article 24

Transit

1. If prior notification has been given from government to government through diplomatic or consular channels, the States Parties shall permit and cooperate in the transit through their territories of a person whose extradition has been granted under the custody of agents of the requesting State and/or the requested State, as the case may be, upon presentation of a copy of the order granting the extradition.
2. Such prior notification shall not be necessary when air transport is used and no landing is scheduled in the territory of the State Party that will be flown over.

Article 25

Expenses

Expenses incurred in the detention, custody, maintenance, and transportation of both the person extradited and of the objects referred to in Article 19 of this Convention shall be borne by the requested State up to the moment of surrender and delivery, and thereafter such expenses shall be borne by the requesting State.

Article 26

Waiver of Legalization

When the documents provided for in this Convention are communicated through the diplomatic or consular channel, or direct from government to government, their legalization shall not be required.

Article 27

Signature

This Convention shall be open for signature by the member states of the Organization of American States.

Article 28

Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 29

Accession

1. This Convention shall be open to accession by any American State.
2. This Convention shall be open to accession by States having the status of permanent observer to the Organization of American States, following approval of the pertinent request by the General Assembly of the Organization.

Article 30

Reservations

Each State may, at the time of signature, approval, ratification, or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

Article 31

Entry into Force

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.
2. For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 32

Special Cases of Territorial Application

1. If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it shall, at the time of signature, ratification, or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.
2. Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 33

Relations with other Conventions on Extradition

1. This Convention shall apply to the States Parties that ratify it or accede to it and shall not supersede multilateral or bilateral treaties that are in force or were concluded earlier unless the States Parties concerned otherwise expressly declare or agree, respectively.
2. The States Parties may decide to maintain in force as supplementary instruments treaties entered into earlier.

Article 34

Duration and Denunciation

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 35

Deposit, Registration, Publication and Notification

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the member states of that Organization and the states that have acceded to the Convention of the signatures; deposits of instruments of ratification, accession, or denunciation; and reservations, if any. It shall also transmit to them the declarations referred to in Article 32 of this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this convention.

DONE AT CARACAS, Republic of Venezuela, on this twenty-fifth day of February, one thousand nine hundred and eighty-one.