International Cooperation in Criminal Matters between Spain and Latin America

Elena del Mar García Rico
Lecturer on Public International Law and International Relations
University of Malaga

I. PRELIMINARY REMARKS

The analysis that we propose to conduct here calls for some preliminary remarks about the standpoint from which to broach a topic as complex as that of international cooperation in criminal matters between Spain and Latin America, as well as the difficulties inherent in the attainment of a goal within the limited scope of this study.

In this respect, it should be made clear from the outset that this topic has been approached from an exclusively internationalist stance. We see it essential to sound this note of warning, in view of the concurrence of a dual element: firstly, there is the fact that international cooperation in criminal matters constitutes an area of international relations strongly influenced by other legal disciplines, and by international criminal law and its principal instrument of application, international criminal procedural law, in particular.

Secondly, while still confining ourselves to the framework of the international legal system, we therefore find ourselves faced with a comprehensive body of rules and regulations encompassing many, varied forms of cooperation, ranging

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from transfer of proceedings in criminal matters, transfer of sentenced persons or extradition of an individual accused or sentenced for committing an offence, to the simple exchange of information between the police forces or governmental bodies of different countries,[1] as well as encompassing judicial assistance *per se* in criminal matters.[2]

In brief, we are focusing on classic formulae of cooperation which are based on the principle of reciprocity as the sovereign expression of States, structured around the conclusion of international treaties, and essentially respond to the fundamental features of a horizontal or inter-state model of international cooperation.

Indeed, in this regard, unlike the institutionalised or vertical-type mechanisms that emerged in the closing decades of the 20th century, and pertain to the prosecution and punishment of conduct running counter to the common interests of the international community,[3] the model of inter-state or horizontal cooperation arose precisely as a means of confronting transnational criminal phenomena, such as, *inter alia*, piracy or drug-trafficking, which had already begun to arouse the interest of States at the beginning of this century.

Hence, it is not difficult to establish that recent advances made in the sphere of international cooperation in criminal matters[4] have hardly modified the already widely established current international practice, favourable to the adoption of international

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1 As pointed out by Reus Martínez, N., "*Cooperación jurídica internacional en materia penal: una visión de la práctica*", in *Cooperation jurídica internacional*, Colección Escuela Diplomática No. 5, pp. 235–242, at p. 235.

2 In this respect, we share the generalised view, whereby the terminology of judicial help or assistance in the scope of international legal cooperation is used to refer exclusively to those acts of judicial aid consisting of service and transfer of judicial documents as well as evidence, and the gathering of evidence abroad: in this connection, see Bueno Arús, F. and Miguel Zaragoza, J., *Manual de Derecho Penal Internacional*, Madrid, 2003, p. 245.

3 Such as genocide, war crimes and crimes against humanity, which are to be found at the root of different models of or plans for cooperation in criminal matters in recent decades, namely: on the one hand, a model of horizontal or inter-state cooperation (between States); and on the other, a vertical or institutionalised model of cooperation, between States and international organisations and institutions, such as *ad hoc* International Criminal Courts or the International Criminal Court, as indicated in García Rico, E.M., "*Principios de cooperación internacional en la persecución y castigo de los crímenes de guerra y contra la humanidad*", *Aula de Formación Abierta 2002/2003*, Malaga, 2003, pp. 393–401, at p. 398.

4 Fostered, insofar as the vertical or institutional model of cooperation is concerned, by the creation of international criminal courts, and by multilateralisation of international treaties on the topic, and the creation of more simplified and effective formulae of cooperation, with regard to inter-state and horizontal mechanisms of cooperation respectively.

agreements and the use of classic institutions, such as extradition, to regulate and limit the sovereign jurisdiction of States in criminal matters.[5]

Similarly, and without forswearing this model of horizontal or inter-state cooperation, it should be stressed that, essentially, treaties of a bilateral nature constitute the general rule, against which the adoption of multilateral agreements is little more than an exception, as we shall have occasion to see.

This assertion is confirmed, moreover, on examining the significant number of agreements around which international cooperation in criminal matters between Spain and Latin America countries revolves. The sixty or more agreements adopted in recent decades comprise a vast body of treaty law. Its systematic tabulation and analysis has led us to employ widely varying criteria, which we have endeavoured to reflect in the tables appended below and should be duly set forth in these opening lines.

The most relevant aspects of this treaty practice can be approached from the traditional chronological stance, thereby affording an overview on the basis of which the trend in bilateral relations between Latin American States and Spain can be discerned. Nevertheless, achievement of this goal likewise requires account to be taken of the criterion pertaining to the spatial scope of such treaties and, by extension, ascertainment of the countries with which these links have been established.

It is evident, however, that such relations are in great measure determined by the third criterion of possible classification, i.e., the scope of the subject matter (*ratione materiae*) of these treaties. In this regard, one has to ask oneself about the precise nature of the matters that have been regulated by this source of creation of international rules and, where applicable, the reasons why the States that go to comprise the extensive Latin American community have resorted to this avenue of law-making (that of international treaties) to regulate areas which constitute the core of the notion of sovereignty in International Law.[6]

II. ORIGINS AND CURRENT STATUS OF THIS SPHERE OF INTERNATIONAL COOPERATION: NEED FOR THE REGULATION OF AN EXPANDING AREA

As pointed out above, and taking the classical concept of sovereignty as our basic premiss, the sole and exclusive jurisdiction of States in criminal matters is

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[5] Jurisdiction modelled around the basic principle of territoriality, the underlying tenet of Criminal Law whereby criminal laws, both in their substantive and procedural forms, are applied within the territory of each State and judicial decisions have no effect beyond the boundaries of the State.

[6] The same applies to the exercise of the so-called *jus puniendi*, inasmuch as it is a fundamental aspect of the notion of sovereignty, in the opinion of Gómez-Robledo Verdusco, A., *Extradición en Derecho Internacional. Aspectos y tendencias relevantes*, Mexico, 2000, pp. 234–6.

circumscribed by the spatial scope of their territory. Nevertheless, this principle of territoriality has shown itself to be obsolete and inadequate to meet the current needs of an international and increasingly interdependent global society.

In this context, States have gradually become interested in preventing individuals from being able to escape the consequences of the crime committed, regardless of the place where the punishable offence may have occurred, the motive behind it, or the nationality of the culprit or culprits. There has been increasing awareness that the exercise of sovereign jurisdiction, whereby the principal subject under international law may initiate proceedings against a party accused of having committed a crime within its jurisdiction or require any party tried by its courts to serve a sentence, should not encounter an insuperable obstacle in the fact that such power – implicit in the idea of sovereignty – might coexist with other powers of like nature.

Moreover, this trend is moving in parallel with the emergence of new forms of criminality that breach national frontiers, favoured, among other things, by the development of communications and means of transport. The phenomenon of globalisation has led to a growing internationalisation of crimes, whether because their commission would be inconceivable without the cross-border phenomenon – as is the case with smuggling, counterfeiting, human trafficking, drug trafficking, skyjacking, etc. – or because the instantaneity of communications and the disappearance of State borders do away with the internal or international nature of the commission of certain crimes, such as computer crime or money laundering.[7]

In the face of these challenges, States have been forced to abandon territorialist stances and attempt to find adequate answers in the sphere of international cooperation in criminal matters. The origin of and recent rise in this sector of international law is, therefore, closely connected with States' interest in affording effective protection to their citizens against newly emerged and undoubtedly international criminal phenomena.

Accordingly, the criterion of the so-called "impenetrability of the national legal system" which grew out of the exercise of the state's *jus puniendi*, has undergone a profound transformation as a consequence of what could be termed a process of universalisation or internationalisation of justice, involving traditional instruments of cooperation in criminal matters as well as more novel and functional formulae.

In the context of this process, there has been a spectacular increase in the conclusion of international treaties seeking to regulate different mechanisms of international cooperation in criminal matters, which has generated a noteworthy treaty practice of an essentially bilateral nature, despite the undeniable trend towards multilateralisation that is to be seen in the international regulation of this field.

In this connection, it should be stressed that a substantial number of treaty instruments of a multilateral nature on judicial penal cooperation have been concluded, due to the progressive harmonisation of state laws governing the definition

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[7] As contended by Rodríguez Carrión, A.J., "*Derecho Internacional Penal y Derecho Penal Internacional*", in *Pacis Artes. Obra homenaje al profesor Julio D. González Campos*, t. I, Madrid, UAM, Eurolex ed., 2005, pp. 563–587, at p. 572.

of offences, imposition of sanctions and serving of sentences. At the same time, however, it has to be conceded that such agreements, rooted, as they are, in the existence of similar legislation and legal values, have essentially been restricted to regional areas and to the European continent in particular.

It is no surprise, therefore, that the first multilateral conventions should arise as the result of the pioneering initiative of the Council of Europe,[8] which led to the following being concluded: the European Convention on Judicial Assistance in Criminal Matters;[9] the European Convention on the International Validity of Criminal Judgments and the European Convention on the Transfer of Proceedings in Criminal Matters;[10] the European Convention on Extradition;[11] and the European Convention on Transfer of Sentenced Persons,[12] among others.

In addition, most of the above texts served as the models used by Latin American States to achieve adoption of the Inter-American Convention on Extradition,[13] and the Convention on Mutual Assistance, along with its Optional Protocol,[14] open to signature by Members of the Organisation of American States.

On another level, it should be pointed out that the advances made in the necessary harmonisation or, at least, coordination of state laws governing extradition, judicial and police cooperation, serving of criminal sentences, and transfer of sentenced persons, are likewise due to the adoption of international agreements that address such matters from a dual standpoint, namely: on the one hand, by focusing on the regulation of these mechanisms of cooperation *per se*;[15] and the other, by introducing express provisions relating to these mechanisms into treaties that suppress

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[8] It is thanks to this that the historic advances were made in the field of judicial cooperation in criminal matters, within the process of Community construction based on the Maastricht Treaty.

[9] As early as 20 April 1959; this convention entered into force on 12 June 1962.

[10] Adopted on 28 May 1970 and 15 May 1972, and entered into force 26 July 1974 and 30 March 1978 respectively.

[11] Signed in Paris on 13 December 1957 and entered into force on 18 April 1960; this text was followed by the adoption on 15 October 1975 and 17 March 1978 of identical, additional Protocols, which entered into force on 20 August 1979 and 5 June 1983 respectively.

[12] Done at Strasbourg on 21 March 1983; entered into force on 1 July 1985.

[13] Adopted on 25 February 1981, at the conclusion of the Inter-American Specialized Conference on Extradition, held in Caracas; the text is to be found in *Serie de Tratados de la OEA*, No. 60; it entered into force on 28 March 1992, and has only been ratified by six States.

[14] Signed in Nassau on 25 May 1992, and its Optional Protocol was adopted in Managua on 11 June 1993; in this regard, see *Serie de Tratados de la OEA*, No. 75; it entered into force on 14 April 1996, and at 30 June 2007, 21 States were a party thereto.

[15] Together with the treaties on extradition and judicial assistance in criminal matters adopted by above-mentioned countries in Europe and America, in this connection it is interesting to note the efforts made at the UN to adopt an extradition treaty of universal scope, finally resulting in the adoption by the UN General Assembly, on 14 December 1990, of Resolution 45/116, the annexe to which includes a Model Treaty on Extradition.

and sanction given crimes of international interest, to enable the perpetrators to be brought to trial and their sentences subsequently enforced.[16]

Judging by the most recent international practice, however, one must acknowledge the continued existence of the essentially bilateral nature of treaty regulation of international penal cooperation. Equally evident, though, is the influence exerted by this body of multilateral treaties, in terms both of the content and number of bilateral treaties through which an effort is being made to coordinate the various penal or criminological State policies that address the phenomenon of transnational crime.

We feel that these general reflexions are a fitting backdrop against which the most relevant aspects of international cooperation between Spain and Latin America in criminal matters and the singularities of such cooperation should be examined, an aspect that will be discussed in the next section.

III. INTERNATIONAL COOPERATION WITH LATIN AMERICA IN CRIMINAL MATTERS: AN APPROACH TO INTERNATIONAL PRACTICE IN THIS FIELD

As indicated in the introduction above, our intended approach to international practice in international cooperation between Spain and Latin America follows an essentially inductive line, centred on analysis of the considerable number of bilateral treaties in existence. We have endeavoured to systematise these treaties in the annexes below,[17] showing data relating, not only to their date of adoption and the States with which they have been concluded, but also to the matters or mechanisms of penal cooperation targeted for regulation via this source of creation of international law.

After overcoming the difficulties inherent in compiling and systematising such a sizeable body of treaty law, we find ourselves in a situation that allows for a series of conclusions to be drawn about the features currently characterising international cooperation between Spain and Latin America.

1. Quantitative increase in bilateral agreements in recent decades

From an historical stance, one has only to go back to the end of the 19th century to ascertain the existence of bilateral treaties which, duly concluded between Spain

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[16] As occurs in, among other treaty instruments of universal scope, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 20 December 1988 (entered into force on 11 November 1990), or the United Nations Convention Against Organized Transnational Crime of 15 November 2000 (entered into force on 29 September 2003), and its additional Protocols, to combat illicit traffic in migrants by land, sea and air, and prevent, suppress and sanction trafficking in human beings, particularly women and children, of 15 November 2000, which entered into force on 15 December 2003 and 28 January 2004 respectively.

[17] Drawn up using data available as of June 2007.

and some of the States that emerged after the accession to independence by territories subjected to Spanish colonisation,[18] focused exclusively on regulating a classic institution in the context of international cooperation in criminal matters, viz., extradition.[19]

During a great part of the 20th century, however, following the adoption of a relatively large and representative number of treaties with States on this continent, these countries directed their attention towards regulation of this mechanism of international cooperation within a strictly regional area.

This seems to be confirmed by the drawing-up of the so-called Bustamante Code in 1928,[20] as well as the adoption, after the Seventh International American Conference held in Montevideo, of the 1933 Convention on Extradition.[21] In addition, sight should not be lost of the many projects which arose after the Second World War thanks to the efforts of various committees of experts, and which finally found governmental support at the Inter-American Specialized Conference on Extradition that was held in the city of Caracas in February 1981 and ended with the adoption of the above-mentioned Inter-American Convention on Extradition.

The scant number of ratifications achieved by this treaty instrument could, however, be interpreted as a relative failure of this avenue of multilateral regulation. This, coupled with Spain's interest in re-establishing traditional trans-Atlantic ties after the arrival of democracy, favoured the resurgence of and progressive acceleration over the last three decades of the 20th century in traditional bilateral activity, which, moreover, responds to the new needs of contemporary international society.

It is no coincidence, in our opinion, that after a wait of close on one hundred years, this treaty activity was to be renewed with the adoption of the Treaty on Extradition and Mutual Judicial Assistance in Criminal Matters between the Kingdom of Spain and the United Mexican States,[22] followed, during the 1980s, by the

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[18] In this area, mention should be made of the pioneering 1881 Extradition Treaty between the Kingdom of Spain and the Republic of Argentina, which was to be followed by other similar treaties with the Republics of Costa Rica (1896), Guatemala (1895), Chile (1895) and Colombia (1892), and lastly – already at the turn of the century – with Cuba, in 1905.

[19] A phenomenon that, in our opinion, is in no way divorced from the pioneering spirit of the Latin-American-led legislative initiatives that culminated in efforts to regulate the institution of extradition from as early as the Congress of Panama, in 1826, and saw their most outstanding example in the adoption of the 1889 Montevideo Treaty on International Penal Law.

[20] Although in reality this constituted a Code of Private International Law, with an important number of rules devoted to extradition (particularly Articles 344 to 381), the effective application of which was made dependent on the incorporation of its content into the internal legal systems of the State Parties.

[21] A task that was to be completed during the Second South American Congress on Private International Law, also held in Montevideo in 1940, which reviewed and revised the 1889 Montevideo Treaty on International Penal Law, and gave rise to a new standard text in which some provisions on extradition were included.

[22] On 21 November 1978. In the preamble to this treaty, the parties declare themselves to be "aware of the close ties existing between both peoples, desirous of fostering closer

conclusion of numerous treaties on international penal cooperation, mostly, though not exclusively,[23] dealing with the concepts of extradition and judicial assistance in criminal matters.[24]

It was, however, necessary to wait until the last decade of the 20th century to witness a genuine burgeoning in this field, with the adoption of a significant number of bilateral treaties on judicial cooperation in criminal matters[25] and extradition,[26] along with a no less important number of treaties on the transfer of sentenced persons[27] and prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances,[28] ratification of which was to extend well into the new century.[29]

Furthermore, it is of interest to note that in the last thirty years Spain has concluded bilateral treaties on the topic with practically all of the countries in Latin America. This aspect, relating to the spatial scope of these international laws on penal cooperation, thus highlights the fact that these instruments of inter-state cooperation enjoy the blessing of the immense majority of the States on this continent.

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cooperation between the two countries in all areas of common interest and convinced of the need to furnish mutual assistance to ensure a better administration of justice".

[23] As would be borne out by the adoption of the first Treaties on Transfer of Sentenced Persons, concluded by Spain with Peru and Bolivia in 1985 and 1987 respectively.

[24] With a predominance of those on extradition versus those on judicial assistance in criminal matters, this latter facet of international cooperation in criminal matters being only addressed as part of the extradition treaties entered into with the Dominican Republic and Argentina in 1981 and 1987.

[25] The signature on 19 November 1991 of the Treaty on Mutual Judicial Assistance in Criminal Matters with the Republic of Uruguay was indeed followed by other treaties on the topic with Chile, El Salvador, Colombia, Bolivia, Panama, Paraguay and Peru, the last-mentioned on 8 November 2000.

[26] Insofar as this type of treaty is concerned, the sole instrument recorded during the early 1990s (concluded between the Republic of Chile and the Kingdom of Spain on 14 April 1992) was followed, from 1996 onwards, by the swift conclusion of as many as eight extradition treaties with Uruguay, El Salvador, Costa Rica, Panama, Nicaragua, Paraguay and Honduras.

[27] As would be the case of treaties on serving criminal sentences, concluded between Spain and Nicaragua or Ecuador, or alternatively those entered into with Venezuela, Cuba or the Dominican Republic, on enforcement of criminal judgements.

[28] Although the signing of treaties on this matter began relatively late, with the conclusion on 24 September 1996 of the Agreement between Spain and Venezuela on Cooperation in the Prevention of Consumption of and Suppression of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, it has nevertheless experienced an unabated process of ratification, which has lasted until the present.

[29] Hence, to the Agreement between the Kingdom of Spain and the Republic of Paraguay on Cooperation in the Prevention of Consumption of and Suppression of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1 August 2003, must be added the Agreement with the Dominican Republic on Enforcement of Criminal Judgements, reached on 15 September of that same year.

To a certain degree, therefore, the bilateral nature of these treaty laws can be assumed to be diluted, not only by their similarity of content (as we shall have occasion to see), but also because their effective application ranges from the far south, through the so-called Andean countries, the Spanish-speaking countries of the Caribbean and, of course, the countries making up Central America, to the very north of the continent.[30]

In the light of these elements of analysis, international cooperation between Spain and Latin America in criminal matters can be said to have undergone a profound transformation, due to the spectacular increase in treaties and, one might add, to the substantial qualitative changes that this area has experienced, something that will be addressed in the following section.

2. Principal qualitative changes in the manner of concluding these standard instruments

Bilateral agreements on international penal cooperation concluded in recent years display relevant aspects of treaty practice owing: firstly, to the changes involved in the very evolution of traditional institutions, such as extradition and judicial assistance in criminal matters; secondly, to the incorporation of new goals and concepts, such as the transfer of sentenced persons; and lastly, to the development and creation of forms of cooperation aimed at rendering the prosecution and punishment of certain transnational crimes by States more effective.

All of these are worthy of note and lead one to ask oneself what areas are regulated via this source of International Law, and, where applicable, the reasons for which the States that go to make up the extensive Latin American community have decided to resort to this precise method of law-making, namely, that of international treaties, to regulate some of the criminal phenomena occupying centre stage on the international scene.

a) Modifications to traditional mechanisms of cooperation

The conclusion of bilateral extradition treaties between Spain and practically all Latin American countries confirms that this is the instrument of international penal cooperation enjoying the greatest approval among States on either side of the Atlantic. The historical roots of this classic institution have not, however, prevented it from experiencing substantial amendments, in the attempt to adapt it to the changing reality of international contemporary society and, in particular, to the interests of the signatory States in such agreements.

An example of the most recent development in this institution is to be found in the replacement of the classic closed-list system by a *numerus apertus* system, whereby, rather than reciting the crimes or offences that are to lead to extradition,

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[30] On this aspect, please see the Annexes below.

the minimum sanction required for extradition is instead stipulated.[31] Thus, use is made of forms of wording similar to that contained in Article 2.1 of the Treaty on Extradition and Judicial Assistance in Criminal Matters between Spain and the Republic of Argentina, by virtue of which:

> The acts sanctioned shall lead to extradition, in accordance with the laws of both parties, with a punishment or other measure involving deprivation of liberty of a maximum duration of not less than one year.

In a same vein, mention should be made – along with the retention of the express prohibition on granting extradition in respect of political crimes or the like, which has historically characterised this institution –[32] of forms of wording such as that used in Article 5 of the above-mentioned treaty, where it stipulates that

> (…) in no case shall the following be deemed political crimes: a) any attempt against the life of the Head of State or Government, or a member of his family; b) acts of terrorism; c) war crimes and such crimes as may be committed against the peace and security of mankind.[33]

The express mention of terrorist acts as cases that can never give rise to the extradition of those who commit such crimes, has become a constant in treaty practice between Spain and Latin American States. This then marks a break with the traditional tendency of the authorities in the latter countries, both judicial and governmental, to lean towards a lax interpretation of the concept of political crime for extradition purposes.[34]

Underlying this change is Spain's undoubted interest in expressly regulating a phenomenon that had become a genuine social evil for this country long before the terrible events of 11 September 2001. Indeed, in some of the treaties concluded

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[31] Even the closed-list system used in the Treaty between the Kingdom of Spain and the Republic of Colombia, of 23 July 1892, which was retained following its amendment pursuant to the instrument of 19 September 1991, was subsequently abandoned with the adoption of the Protocol of 16 March 1999 amending the Extradition Treaty between the Kingdom of Spain and the Republic of Colombia of 23 July 1892. On this particular, see García Rico, E.M., "*Los instrumentos de cooperación internacional penal en las relaciones bilaterales hispano-colombianas*", *Derecho Internacional Contemporáneo. Lo público, lo privado, los derechos humanos. Liber Amicorum en Homenaje a Germán Cavelier*, Bogotá D.C., editorial Universidad del Rosario, 2006, pp. 382–408.

[32] Likewise present in Articles 3.1 and 4.4 of the European Convention on Extradition and the Inter-American Convention on Extradition respectively.

[33] Which also appears, with practically identical wording, in the extradition treaties entered into by Spain with Paraguay, Costa Rica, Nicaragua, Panama, Peru, Bolivia and Chile, among others.

[34] Even the wording of Article 4 of the pioneering Treaty on Extradition and Mutual Assistance in Criminal Matters concluded in 1978 between Spain and Mexico has been changed significantly, after ratification of the Amending Protocol signed on 23 June 1995, to make provision for express inclusion of acts of terrorism among the crimes that are not to be deemed political.

prior to this date,[35] non-standard provisions had already been introduced, relating to the definition of the respective types of conduct that constitute acts of terrorism and participation in same.[36]

The standard presence in the internal legal systems of Latin American States of provisions, at times of a constitutional type, which bar the extradition of their nationals, explains, at an altogether different level, the inclusion in bilateral treaties entered into by Spain with such countries, of specific rules that envisage the possibility of requested States refusing to countenance the extradition of their nationals.

Nevertheless, a trend can be discerned in such provisions, in that the traditional principle of non-extradition of nationals is couched as a right or power to refuse extradition,[37] rather than as an absolute prohibition.[38] However, what strikes us as more interesting in this connection, is the fact that seems to indicate the imposition in such cases of the principle of *aut dedere aut iudicare*, present in the European Convention on Extradition.[39] This is to be deduced from the literal tenor of some

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[35] In particular, those entered into with Central American countries, as well as with Paraguay and Uruguay.

[36] With respect to terrorist acts, it is increasingly common to find provisions such as that contained in Article 4.2 of the Extradition Treaty with the Republic of El Salvador, which lays down that "the following shall not be deemed a political crime, connected to a political crime or a crime inspired by political motives: (…) any serious act of violence directed against the life, bodily integrity or freedom of persons; c) any offence implying abduction, the taking of hostages or arbitrary kidnapping; d) any offence implying the use of bombs, grenades, rockets, firearms, or letters or packages containing concealed explosives; e) any serious act directed against goods or objects, where such act may pose a danger to persons; f) conduct by any person which may contribute to the commission, by a group of persons acting together for a common purpose, of the above-mentioned crimes, even if said person has not taken part in the material execution of the offence or offences in question (…); g) any attempt to commit some of the above-mentioned offences or participation in the capacity as co-perpetrator or accomplice of a person who commits or attempts to commit said offences".

[37] Hence, Article 7.1 of the Treaty between Mexico and Spain provides that "both parties shall have the power to refuse extradition of their nationals", in practically identical wording to that which appears in the remaining bilateral treaties examined, with some variations, such as the provision contained in Article 6 of the Treaty with Nicaragua, which lays down that, "where the person sought is of the nationality of the requested party, *the latter shall be under no obligation to extradite him*", or in the extradition treaty with Costa Rica, in which refusal of extradition in such cases is defined as a right (Article 6).

[38] In line with the example set, in its time, by the European Convention on Extradition and, subsequently, by the Inter-American Convention on Extradition, Article 7 of which provides that the nationality of the person sought to be extradited (the *extraditurus*) may not be pleaded as grounds for refusal of extradition, "save where the legislation of the requested State provides otherwise", in clear reference to standard Latin American practice in this regard.

[39] Not so in the Inter-American Convention on Extradition, which contains no mention whatsoever of the *aut dedere aut iudicare* principle.

of the bilateral treaties examined, in which it is increasingly frequent for denial of extradition based on this ground to be linked to the obligation on the part of the State of the national in question to bring him to trial and impose a criminal sentence upon him, where so required by the requesting State.[40]

Along the lines indicated in regional extradition treaties,[41] there is also evidence of the interest of State Parties to bilateral treaties in protecting fundamental human rights in the regulation of this mechanism of international penal cooperation, thanks to the introduction of guarantees, both procedural[42] and substantive, which, on this occasion, assume an absolute rather than a discretionary nature. A sufficiently graphic example of this is afforded by the prohibition, established under Article 4.3 of the Extradition Treaty between Spain and Nicaragua, against granting extradition if

> (…) the requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of that person's race, religion, nationality, ethnic origin, political opinions, or that that person's position may be prejudiced for any of those reasons.

Yet in the treaty practice under review, we nevertheless observed the persistence of a discretionary rather than an obligatory refusal to extradite, save for guarantees of commutation of sentence,

> where the offence for which extradition is requested might be punished by the death sentence, life imprisonment, torture or cruel, inhuman or degrading treatment (…).[43]

With respect to another of the classic means of international cooperation in criminal matters, namely, international judicial assistance,[44] the number of international treaties concluded to date between Spain and Latin American countries might lead to the conclusion that there is less interest in regulating this by treaty than there is in the

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[40] In this regard, see Articles 4 of the Treaty with Paraguay, and 7 of the extradition treaties entered into with Mexico and the Dominican Republic, among others.

[41] In particular, Articles 3.2 and 11 of the European Convention on Extradition, and 4, 5 and 9 of the Inter-American Convention on Extradition respectively.

[42] Such as those that bar extradition, if the person to be extradited could be tried by special courts [*Translator's Note*: i.e., emergency courts dispensing summary justice], present in Articles 4.1.d, 5.6 and 12 of the Extradition Treaties concluded with Brazil, Paraguay and the Dominican Republic, respectively; and even, as provided by the Extradition Treaty between Spain and Mexico, "for the enforcement of a sentence imposed by any court of this type" (Article 13, at end).

[43] Article 6.2 of the Extradition Treaty with Brazil, the content of which appears in most of the treaties examined.

[44] Which must not be confused with internal judicial assistance, referring to cooperation or judicial help between the different jurisdictional organs of a State, as pointed out by Arenas García, R., "*Fundamento, condiciones y procedimiento de la asistencia judicial internacional*", in *Cooperación Jurídica Internacional, op. cit*., pp. 61–124.

case of extradition. However, any assertion of this nature would, to say the least, be rash, bearing in mind, firstly, that bilateral treaties on cooperation or judicial assistance in criminal matters concluded in recent decades have been entered into with a representative number of States throughout the American continent.

Secondly, the scope of application *ratione materiae* of these treaties displays an interpretation of the notion or concept of judicial assistance that is far broader than the usual one, which restricts this to two types of acts, namely, notice and service of documents, and the obtaining of evidence for the purposes of court proceedings in the requesting State.[45]

Accordingly, in the treaties analysed there is frequent use of provisions whereby the parties undertake to provide mutual assistance, "for the investigation and trial of offences, as well as court proceedings relating to criminal matters",[46] or even "the widest possible judicial assistance in all the proceedings relating to crimes, the suppression of which, at the date of requesting assistance, comes within the competence of the judicial authorities of the requesting Party".[47]

Lastly, we feel that the importance of this mechanism of cooperation is also evident in the desire manifested by the State Parties to these bilateral treaties to regulate it specifically[48] by means of international instruments, which guarantee the legal commitment to provide judicial assistance, and establish the appropriate channels to ensure that such cooperation materialises through the conduct of preliminary enquiries outside the State where the court sits, without the need for specific authorisations.

In this regard, it is interesting to note that, while the first treaties on international penal cooperation between Spain and some Latin American countries jointly regulated extradition and judicial assistance, from the 1990s onwards all bilateral treaties on

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[45] In the opinion (which we share) of Bueno Arús, F., and Miguel Zaragoza, J., *Manual…, op. cit.*, p. 269.

[46] As in Article 1 of the Treaty on Judicial Cooperation in Criminal Matters between Spain and the Republic of El Salvador, or the Treaty on Mutual Judicial Assistance in Criminal Matters entered into by Spain and Uruguay, among others.

[47] See Article 1 of the Treaty between the Kingdom of Spain and the Republic of Panama on Legal Assistance and Judicial Cooperation in Criminal Matters.

[48] Aside from other means of international penal cooperation, such as extradition. This no idle matter because, while judicial assistance in criminal matters and extradition share a common goal, which generally is that of cooperation, they nevertheless constitute distinct institutions. As Reus Martínez states, "Whereas judicial assistance in international criminal matters has a more general scope (to make enquiries in another country in which the items of evidence are to be found), extradition has a more restricted field (to seek from another country the person sought or pursued, so that he might be brought to trial or serve the sentence imposed upon him)"; furthermore, extradition constitutes a mechanism of cooperation chronologically subsequent to judicial assistance, and does not necessarily presuppose judicial assistance or *vice-versa*: in Reus Martínez, N., "*Cooperación jurídica…*", *op. cit.*, p. 240.

judicial penal cooperation expressly stipulate that they shall not be applicable "to the detention of persons for extradition purposes or to extradition requests". [49]

At all events, treaty practice in this field has also undergone changes in no small measure linked to concern to ensure respect for the rights of the accused in criminal proceedings, at the same time as possible differences between the respective internal legal systems have dwindled.

This transformation could, in our opinion, account for the fact that most of the treaties examined[50] lay down a wider list of grounds for refusing assistance than that contained in the European Convention on Mutual Assistance in Criminal Matters, the pioneering enactment in this area and the model that inspired the Spanish authorities in their negotiation of bilateral treaties with Latin America States.[51] In the latter, it will be observed that, in addition to the grounds for refusal envisaged in the above-mentioned regional treaty in the case of military, fiscal or political offences, there are other grounds of objection, such as *res judicata, lis pendens* or discriminatory persecution.[52]

On the other hand, the advances seen in these matters may yet turn out to be negligible, if one bears in mind that the limits to the forms of assistance envisaged under these treaties[53] are in no way absolute. On the contrary, refusal of assistance is defined in all such treaties as a State-held power in circumstances where any of the listed causes should arise. This wide range of discretion granted to requested States is likewise reinforced by the inclusion in all treaties of a general safeguard clause, whereby assistance may be withheld where "compliance with the request

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[49] Under the terms of Article 1 of the Treaties on Judicial Cooperation in Criminal Matters between Spain and the Republics of El Salvador, Colombia, Bolivia and Paraguay, among others.

[50] With the exception of the initial bilateral treaties on the topic, such as the Treaty on Extradition and Mutual Assistance in Criminal Matters between Spain and the United Mexican States, or the Treaties on Extradition and Judicial Assistance in Criminal Matters concluded with the Dominican Republic, Argentina and Uruguay.

[51] See Article 2 of the Convention, done in Strasbourg on 20 April 1959 (BOE: *Boletín Oficial del Estado* – Official Government Gazette of 24 April 1992), and its Additional Protocol of 17 March 1978.

[52] Namely, where "the investigation has been initiated with the aim of prosecuting or discriminating in any way against a person or group of persons for reasons of race, sex, social status, nationality, religion, ideology or any other form of discrimination", as laid down by Article 6 of the Treaty on Judicial Cooperation in Criminal Matters between Spain and the Republic of El Salvador, a provision that is repeated in subsequent bilateral treaties.

[53] Such as: notice of documents; official service of documents; return of documents and items of evidence; giving of evidence in the requested or requesting State; temporary transfer of persons cited in the proceedings; location or identification of persons; search, embargo, attachment and delivery of items; seizure, confiscation and transfer of goods; as well as authentication of documents and certificates.

should prove contrary to the security, *ordre public* or other essential interests of the requested party".[54]

Furthermore, we consider it relevant to underscore the fact that the possibility of refusing assistance envisaged in this group of international laws if "the request concerns an offence which the requested State considers a political offence or an offence connected with a political offence or pursued for political reasons", is often not accompanied by provisions similar to those contained in the bilateral extradition treaties mentioned above, in which terrorist acts are expressly excluded from the definition of a "political crime".

In this respect, treaty practice is seen to vary because, while the first bilateral treaties clearly establish the impossibility of considering the following as political crimes, namely,

> a) any attempt against the life of the Head of State or Government, or a member of his family; b) acts of terrorism; c) war crimes and such crimes as may be committed against the peace and security of mankind,[55]

most of the treaties concluded during the 1990s contain no reference whatsoever to this topic.

This state of affairs tends to highlight the decisive influence which, as a mechanism of judicial cooperation, extradition can come to exert on judicial assistance in criminal matters when both concepts are jointly regulated in the same treaty – an influence that disappears or wanes when specific bilateral treaties are concluded on international judicial assistance or cooperation.[56] However, this could also be due to the State Parties to such treaties being less interested in delimiting the notion of political crime to the purpose of refusing assistance; accordingly, when the society of a country is regularly plagued by phenomena such as terrorism, its authorities are more readily disposed to establish treaty links that enable the prosecution and punishment of such crimes.

While not wishing to make categorical statements in this regard, we nevertheless feel that our conclusions may prove valid, on turning to the latest bilateral treaty concluded to date and signed in November 2000 between Spain and the Republic of Peru, where it provides that,

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[54] See Article 6.1.d) of the Treaty on Judicial Cooperation in Criminal Matters between Spain and the Republic of Paraguay, among others.

[55] As laid down by Article 29, by reference to Article 5.1 of the Treaty on Extradition and Judicial Assistance in Criminal Matters between Spain and the Republic of Argentina, of 3 March 1987; along the same lines as provided for by Article 27 (by reference to Article 4.3) of the Treaty on Extradition and Judicial Assistance in Criminal Matters between Spain and the Dominican Republic, signed on 4 May 1981.

[56] As is the case in the Treaty on Mutual Judicial Assistance in Criminal Matters between Spain and the Republic of Uruguay, done on 19 November 1991, as well those concluded in this connection with Chile, Colombia, Panama and Paraguay, in 1992, 1997, 1998 and 1999 respectively.

> Judicial assistance may be refused: (…) b) if the request refers to offences deemed by the requested State to be political or exclusively military crimes. *The crime of terrorism shall not be deemed a political crime*.[57]

b) Incorporation of new concepts and goals

On examining the main changes undergone by traditional mechanisms of international penal cooperation and their regulation by treaty,[58] one would have to ask oneself about the underlying reasons for what could be described as the "frenetic" treaty activity between Spain and Latin America in recent years, essentially and almost exclusively centred on the regulation of very specific and novel areas of international penal cooperation, such as transfer of sentenced persons and combating illicit traffic in narcotic drugs and psychotropic substances.

Insofar as the former of these two areas is concerned, we share the view of those who state that "in the last third of the 20th century, new legal responses to new problems began to emerge, deriving from the international mobility of persons, for occupational or touristic reasons, with a statistically relevant fact being the number of offences committed by foreigners and the ensuing alteration of the sociological composition of prison facilities".[59] Hence, the phenomenon of internationalisation of crime referred to in the previous section has also led to an increase in the population of foreign inmates being held in many countries' prisons.

This new reality poses a challenge to States, in the face of which they began to consider the need and advisability of mutually cooperating in order to enable foreigners sentenced to sanctions involving deprivation of liberty to be transferred to their country of nationality. The adoption of international conventions and treaties on this matter thus opened the way to an area of international cooperation in criminal matters, which was unknown until recent times and "which marks a break with territorialist conceptions of the sanctioning capacity of States"[60] and, by extension, the limit of the basic principle of state sovereignty.[61]

It would be as well, however, not to forget that, unlike other forms of cooperation, the transfer of sentenced persons is intended to decrease the harmful effect of the sanction to the extent that, by its very nature, this is indispensable. This innovative concept pursues it own aims, which are not necessarily those that char-

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[57] See Article III.1.b) of the Treaty on Judicial Assistance in Criminal Matters between the Kingdom of Spain and the Republic of Peru, done "ad referendum" in Madrid on 8 November 2000. The italics are ours.

[58] Although it has to be said that, from an essentially substantive stance, without procedural aspects having been the subject of our attention.

[59] Bueno Arús, F., and Miguel Zaragoza, J., *Manual…, op. cit.*, p. 275.

[60] In the words (which we fully share) of Rodríguez Carrión, A.J., *Lecciones de Derecho Internacional*, Madrid, 2002, p. 406.

[61] Accordingly, for the State whose courts issue the criminal sentence, this form of cooperation in criminal matters means waiving the right to verify directly that such a sentence is served, whilst for the administering State this means becoming a mere enforcer of decisions handed down by another State.

acterise other areas of international penal cooperation, targeted at prosecuting and punishing forms of criminality that flourish heedless of borders or nationalities, or targeted at preventing criminals finding refuge in a State other than that in which they committed the crime.

The body of treaty obligations whereby criminally punished individuals are permitted to serve their sentences in the country of which they are a national, rather than in the country where the crime was committed, seeks above all to favour their social rehabilitation. This is expressly stated in most of the bilateral treaties examined and, in particular, in the latest of these concluded in 2003, in which the parties express their desire to

> improve the administration of justice and enable the social rehabilitation of the sentenced persons, by affording them the opportunity to serve their sentences in the country of which they are nationals.[62]

Even so, it has to be acknowledged that, in addition to the reasons of a humanitarian nature which underlie the adoption of international treaties governing the matter, there are other equally relevant considerations, such as those: of a financial type, in the case of countries with a lower level of development, for which cooperation may prove favourable in cases where more foreign prisoners are transferred than national prisoners received;[63] or even of a political type, by virtue of which the more developed States would prefer to see their nationals serve their sentences in their own penitentiaries.[64]

In the context of these reflexions, the recent interest shown by Spain in the conclusion of international treaties on transfer of sentenced persons, is in great part due to its situation as recipient of a large number of foreigners each year, whether in the capacity of tourists or migrant workers.

A mere glance at the policing, judicial and penitentiary reality enables one to detect an appreciable percentage of foreigners who, at some time during their stay on Spanish territory, are bound to come up against the country's judicial system, culminating, in some cases, in a stay of certain duration in its prisons. Conversely, sight should not be lost of the increase in the number of Spanish citizens who are travelling around third States and may well find themselves in an identical situation of being incarcerated in foreign prisons.[65]

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[62] See the Treaty on Enforcement of Criminal Judgements between the Kingdom of Spain and the Dominican Republic, done on 15 September 2003.

[63] With the ensuing savings made in the inevitably high costs inherent in maintaining their prison systems.

[64] Perhaps due to a lack of trust in other countries' legal and prison systems and the safeguards that these offer to prisoners.

[65] These data, furnished in 2003 by the Spanish Foreign Ministry's Diplomatic Information Office, put the number of Spanish citizens detained abroad at approximately one thousand five hundred, whilst the percentage of the foreign prison population in Spanish prisons already stands at around 20%.

It comes as no surprise, therefore, that Spain has encouraged the setting-up of a wide network of bilateral treaties with Latin American countries and taken the initiative to negotiate treaty texts, which are clearly inspired by the Convention on Transfer of Sentenced Persons of 21 March 1983,[66] concluded within the ambit of the Council of Europe.[67] As a result of this situation, in February 1985 Spain and Peru adopted the Treaty on Transfer of Persons Sentenced to Sanctions involving Deprivation of Liberty,[68] followed in subsequent years by other treaty instruments which display a very similar mutual structure and content, and will be more fully dealt with below.

In this regard, the first aspect to which we should like draw attention concerns the fact that the coincidence in time between the conclusion of specific treaties on transfer of sentenced persons and other bilateral treaties governing connected, albeit different, institutions within the framework of international cooperation in criminal matters, provides yet further proof of the substantial differences between this concept and other forms of cooperation. It is thus illuminating that the Treaties on Judicial Cooperation in Criminal Matters between Spain and the Republics of El Salvador, Colombia, Bolivia and Paraguay should establish that such agreements "shall not be applicable to: (…) b) enforcement of criminal judgements, including the transfer of sentenced persons for the purpose of serving their prison sentences".[69]

Accordingly, it must be stressed that, despite the use of the expression "enforcement of criminal judgements" in some of the treaties perused,[70] these are confined to regulating the transfer of convicted foreigners to their country of nationality, so that, once there, they may then serve the sentence imposed by the Sentencing State, "in cases of sanctions involving deprivation of liberty or other measures imposed for the commission of an offence". It follows therefore that their scope of application coincides no more than marginally with that of other international

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[66] Published in the BOE of 10 June 1985.

[67] Although its scope of application extends beyond the confines of Europe: indeed, the Convention was opened for signature in Strasbourg both for Council of Europe Member States and for the United States and Canada, which took an active part in its drafting. Following its entry into force, other non-Member States may, subject to consultation with the signatory States, accede to the Convention at the invitation of the EU Committee of Ministers.

[68] Which, at the time, represented a new, more technically advanced, model treaty and has been a source of inspiration for subsequent treaties in the Latin American area, in the opinion of Bueno Arús, F., and Miguel Zaragoza, J., *Manual…, op. cit*., p. 279.

[69] In identical terms to those of Article 1 of each of these treaties.

[70] e.g., the Treaty on Enforcement of Criminal Judgements between Spain and Venezuela of 17 October 1994, the Treaty on Enforcement of Criminal Judgements between Spain and the Republic of Cuba of 23 July 1998, or the recently adopted Treaty on Enforcement of Criminal Judgements between the Kingdom of Spain and the Dominican Republic of 15 September 2003. Likewise, the treaties on this same matter concluded with El Salvador and Nicaragua in 1995, are entitled, "Serving of Criminal Sentences".

conventions which govern the validity and enforcement of criminal judgements,[71] and relate, not only to the serving of sentences, but also to the recognition of their validity for the purposes of identifying recidivism or applying the international principle of *ne bis in idem*.[72]

Indeed, like the European Convention on the Transfer of Sentenced Persons,[73] bilateral treaties between Spain and Latin America on this matter are targeted at fostering the social rehabilitation of offenders, by enabling their transfer to their countries of origin via the creation of a simple, swift-moving procedure, the subject of detailed regulation in these treaty provisions.[74]

It should be made clear, however, that these treaties solely lay down rules of conduct as between the signatory States, relating to the processing of the transfer request and its examination in the light of the conditions of applicability envisaged thereunder. There is no obligation as to outcome, inasmuch as "the Administering State and the Sentencing State shall have discretionary power to refuse to transfer the convicted person". This means that both States are free to grant or deny transfer in each specific case, and that there is no need for the decisions adopted, whether positive or negative, to be reasoned.[75]

Bilateral treaties are thus restricted to providing an adequate procedural framework for rendering transfers effective, without State Parties being under any obligation to accede to any demands in this respect. Hence, the possibility envisaged under these international instruments whereby the prisoner may request a transfer, is in no way to be taken to mean that he is vested with a subjective right, compliance with which may be demanded of the signatory States. The terms in which Article 9 of Treaty on Transfer of Sentenced Persons between Spain and Colombia is couched, leave no doubt as to this particular, on stipulating that,

> No provision contained in this Treaty may be construed in the sense of attributing a right of transfer to the sentenced person.

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[71] As would be the case of the Council of Europe Convention on the International Validity of Criminal Judgements of 28 May 1970, which, apart from regulating other matters, allows for the transfer of sentenced persons, albeit by means of a far more complicated procedure than that specifically laid down in the 1983 Convention on the Transfer of Sentenced Persons.

[72] As indicated by Bueno Arús, F., and Miguel Zaragoza, J., *Manual…, op. cit.*, p. 301.

[73] See in particular the text of the Preamble to this Convention.

[74] To the extent that some authors talk of the "carácter *self-executing* en sentido material" of these treaties: see Bueno Arús, F., and Miguel Zaragoza, J., *Manual…, op. cit.*, p. 276.

[75] It thus usual for provisions to be included in such treaties, which expressly state that "notice to the other State of a decision denying transfer need not be reasoned", under the terms contained in Article 6.2 of the Treaty with the Dominican Republic. On these lines, mention must be made of the Treaties on the same topic entered into with Peru, Argentina, Colombia and Paraguay (Articles 5.7, 3.4, 10 and 3.4 respectively). However, Article VI of the Treaty on Enforcement of Criminal Judgements between Spain and the Republic of Nicaragua envisages the possibility of explanation of the grounds "where this should prove possible and fitting".

An altogether different matter is, as already envisaged under Article 3.1.d) of the 1983 Convention, that where the express consent of the sentenced person is set as a condition *sine qua non* for proceeding with the transfer under all the bilateral treaties under review. To this end, the sentenced person must be informed by the authorities of the Sentencing and Administering States of the possibility of serving his sentence in the country of which he is a national, and of any possible legal consequences that would flow from his transfer.

Along these same lines, there is obligation laid on governmental authorities to report on the transfer request submitted by the prisoner, the formalities undertaken for the purpose, and "(…) any decision taken by either State with respect to a transfer request".[76] In the light of this, it can be said that, though the convicted person does not enjoy a right of transfer, these treaties *do* confer upon him the right: to express his wish to be transferred; to have his request officially processed; and to be informed of its processing and outcome.

The relevance accorded to this requirement is to be seen, in another context, in the interest shown in the first treaties addressing the matter to ensure that everything concerned with the giving of consent was hedged by sufficient guarantees. This is to be found in the obligation placed on the Sentencing State to provide the Administering State, if so required by the latter, proof that the sentenced person is fully aware of the legal consequences attaching to his transfer and has given his voluntary consent, without being subjected to coercion, threat or error of any type whatsoever.[77]

However, the misgivings or straightforward distrust about other countries' judicial and penitentiary systems which lurks behind these provisions has lessened with the passage of time, so much so indeed that, in the latest treaties on the transfer of sentenced persons entered into by Spain with Latin American countries, no mention is made of these types of guarantees.

The changes detected between the earliest and the most recent bilateral treaties also affect another of the requirements traditionally deemed essential for effective treaty application. By virtue of this condition, one that relates to the nationality of the sentenced person, said individual must be a national of the Administering State at the date of the transfer request.

The relevance in contemporary international law of the legal bond between individual and State tends, however, to be accompanied by the problems inherent in the non-existence of an international rule that defines said tie, so that it is for

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[76] In this respect, see Article 5.5 of the Treaty on Transfer of Sentenced Persons concluded between Spain and Colombia, as well as Articles IV.2, 10 and 5.1 of the Treaties adopted between Spain and the Republics of Nicaragua, Ecuador and Mexico, and the Dominican Republic, respectively.

[77] Along the lines laid down by the European Convention on Transfer of Sentenced Persons, at Article 7, similar provisions are included in Article 6.8 of the Treaty between Spain and Peru on Transfer of Persons Sentenced to Sanctions involving Deprivation of Liberty, as well as Articles 11.3, 5.2 and 9.3 of the treaties concluded between Spain and Bolivia, Costa Rica and Cuba respectively.

each State to establish the rules that determine who its nationals are. It should come as no surprise, therefore, that some of the treaties examined were found to contain an express definition of what was understood by "national" for the purposes of the transfer of the sentenced person,[78] or alternatively, that the requirement of nationality of the Administering State was defined as necessary but not sufficient, with the sentenced person being additionally required to reside permanently in the State of which he was a national.[79]

Insofar as enforcement of sentences is concerned, it should be stressed that, for the State whose courts delivered the criminal judgement, this form of penal cooperation entails a waiver of the right to verify directly that the sentence is served because, once the transfer has taken place, the sentence will be served according to the terms established under the internal legal system of the Administering or recipient State.[80] Here, one is thus confronted by one of the aspects of this mechanism of international cooperation which displays a major break with the dogma of territoriality in the exercise of *jus puniendi* by States.

At the same time, however, it has to be said that enforcement of the sentence in accordance with the legal system of the Administering State is subject to certain limitations, expressly regulated by treaty, which convert the Administering State into a mere enforcer of decisions handed down by the Sentencing or transferring State.

No other interpretation can be put upon the retention of jurisdiction envisaged under many of the treaties examined,[81] the provisions of which contain a stipulation to the effect that the courts of the Sentencing State are the only bodies competent to review the sentence imposed in its day.[82] In the second place, and flowing from this, the Administering State is bound by the duration of the sentence or measure imposed under the sentence, which "may in no case be modified".[83]

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[78] On this, see Article 2.c) of the Treaty between Spain and the Republic of Cuba.

[79] Hence, the Treaty between Spain and Bolivia on Transfer of Sentenced Persons lays down that, in addition to the prisoner's nationality, said prisoner "(…) may not be domiciled in the Sentencing State", a condition also contained in Articles 4.7 and 2.c) of the Treaties with the Republics of El Salvador and Cuba respectively.

[80] In line with Article 9.3 of the 1983 European Convention, Article 9 of the Treaty between Spain and Peru on the matter provides – as do Articles 5.10 of the Treaty with Brazil, 9 of the Agreement with the Republic of Venezuela, and 18 of the Treaty between Spain and the Republic of Costa Rica – that, "enforcement of the sentence of the transferred prisoner shall be governed by the penal laws of the Administering State".

[81] Under the significant title, "retention of jurisdiction", as in Article 11 of the Treaty with Costa Rica, and in Article 10 of the most recent treaty, adopted by Spain and the Dominican Republic, among others.

[82] In this regard, see the provisions laid down by Articles 8, 12.2, 17, 3.3 and 12.1 of the Treaties entered into by Spain with Peru, Argentina, Bolivia, Colombia and Paraguay respectively.

[83] As laid down by Article 9 of the Treaty between Spain and the Dominican Republic, the latest instance of similar provisions contained in the Treaty with Peru, Venezuela, or the Republic of Honduras (Articles 9 and 10).

Moreover, insofar as the method of serving sentences is concerned, in its traditional relations with Latin America Spain has ended up by imposing the method of serving sentences for which it opted in the European sphere,[84] on excluding the possibility of the sentence being converted in line with the penal legislation of the Administering State. In this respect, therefore, Article 9 of the Treaty on Enforcement of Criminal Judgements between Spain and the Dominican Republic, does no more than reproduce provisions akin to those contained in treaties adopted at an earlier point in time and exemplifying this trend,[85] where it provides that,

> The convicted person shall continue serving in the Administering State the sentence or security measure imposed in the Sentencing State, in accordance with the legal system of the Administering State, without any need for *exequatur*.

Together with the creation of new forms of international cooperation such as those examined above, one can detect the presence of a significant number of bilateral treaties which, under the head of "cooperation in matters of prevention of consumption of, and control of illicit traffic in narcotic drugs and psychotropic substances", have been concluded in recent years with the aim of opening up new ways and means of international cooperation in the fight against drug trafficking.

This treaty practice is in no way disconnected from the increasing interest of the international community as a whole in crimes linked to narcotic drug-trafficking and, in particular, the growing links between these and other international criminal phenomena, such as organised crime, money laundering, arms trafficking and, even, terrorism.

A link that was already recognised in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[86] concluded in Vienna

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[84] Indeed, on ratifying the 1983 Convention, in which States were offered the possibility of choosing between proceeding with the application of the punishment imposed by the Sentencing State or, alternatively, converting the sentence to a punishment in accordance with their own penal legislation, Spain excluded the latter. Nevertheless, on 21 October 1994 it issued a new declaration, in the sense that it no longer objects to the State to which a transfer is made from Spain pursuing the conversion method, something that has not been extended to the bilateral treaties adopted with Latin America countries, a stance that could, at the very least, be seen as somewhat inconsistent.

[85] On this point, see Article 3.2 of the Treaty between Spain and Colombia, as well as Article 9.1 of the Treaty concluded with Venezuela.

[86] The preamble of which recognises "the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States", in line with what had already been underscored when the General Assembly, at its twentieth special session, recognised that "(…) the laundering of large sums of money derived from drug trafficking and other serious crime constitutes a global threat to the integrity, reliability and stability of financial and trade systems and even to the structure of government, and that countermeasures by the international community are required in order to deny safe havens to criminals": see UN publication E/CN.7/2001, para. 255.

on 20 December 1988,[87] and in respect of which this universal multilateral instrument acknowledges, "the importance of strengthening and intensifying effective legal means of international cooperation in criminal matters to suppress international criminal illicit trafficking activities".

Going from the universal to the regional, one also notes an increasing awareness on the part of governments on both sides of the Atlantic of the need to coordinate and improve regional strategies and actions adopted in this field. The first step in this direction is to be seen in the setting-up, following the 1995 Madrid European Council, of the so-called Coordination and Cooperation Mechanism on Drugs between the European Union, Latin America and the Caribbean, as well as the Panama Action Plan, approved in 1999.[88]

To the extent that this forum of permanent political dialogue has not yet succeeded in adopting a multilateral treaty of interregional scope on cooperation to combat illicit traffic in narcotic drugs and psychotropic substances, it has to be said, however, that the principal advances in this respect have been made thanks to the conclusion of numerous bilateral treaties, including those ratified by Spain with Latin American States in recent years. Indeed, in most of these treaty instruments, the parties have expressly manifested their desire to "cooperate by means of a bilateral agreement in the world-wide goal of prevention, control and elimination of the unlawful use of and illicit traffic in narcotic drugs".[89]

In this context, it should come as no surprise then that Spain, in its capacity as an EU Member State, gateway for the entry of narcotic drugs to the European continent and entrepôt for their onward shipment to the Mediterranean,[90] has promoted the adoption of a great number of bilateral treaties with most Latin American countries. Neither is it a coincidence that all of these were drafted after the creation of the above-mentioned Drug Cooperation Mechanism and display similar characteristics, owing to the interest shown by Spain during the negotiations in seeing advances made in the Mechanism's designated priority action areas.[91]

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[87] Published in the BOE of 10 November 1990.

[88] As stated by Torres Cazorla, M.I., "*La cooperación internacional en materia penal en las relaciones bilaterales hispano-colombianas: ámbitos sustantivos de cooperación*", in *Derecho Internacional contemporáneo…, op. cit*., pp. 409–436, at p. 423.

[89] An expression already contained in the preamble to one of the first international agreements on the topic, the Treaty between the Kingdom of Spain and the United Mexican States on Cooperation in Prevention of Consumption of and Control of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 6 November 1997; an expression that, moreover, is repeated *verbatim* in most of the remaining treaties with Latin American States.

[90] In this connection, see the 2003 Annual Report issued by the International Narcotics Control Board: UN Publication E/INCB/2003.

[91] In particular: reduction in demand for narcotic drugs and psychotropic substances in consuming countries; money laundering in its role as a crime linked to drug trafficking; sustainable development as the main instrument for achieving a reduction in supply in producing countries; as well as the increase in international cooperation insofar as illicit traffic on the high seas is concerned. In 2002, these goals were supplemented by others

Examination of this large body of treaty law shows that the above factor may perhaps account for the qualitative change observed in the goals pursued by current regulation of international penal cooperation in this area.[92] A transformation, behind which would appear to lie the fact that State Parties to these treaties are less interested in drug-related prevention, socio-healthcare or social rehabilitation measures, than they are in others aimed at setting up what are essentially police mechanisms of cooperation to achieve a greater level of effectiveness in the suppression of illicit traffic in narcotic drugs and psychotropic substances.

In this connection, it is significant that in some treaties the goal is recognised as being "to harmonise policies and coordinate the implementation of programmes for the education and prevention of unlawful drug use, rehabilitation of drug addicts, and for combating the production of and illicit traffic in narcotic drugs and psychotropic substances and related crimes",[93] while in others the principal purpose is stated as being "to promote cooperation between the parties so that they can combat with greater efficacy the unlawful use of and illicit trafficking in narcotic drugs and psychotropic substances, as well as money laundering and organised crime deriving from such traffic".[94]

In much the same way, mention should be made of the fact that, despite matters relating to the prevention of consumption and socio-healthcare being included among the areas in which cooperation is to be developed under all the treaties examined, it is not usual to find any reference to social rehabilitation,[95] control of illicit traffic, or areas associated with the novel aim of "alternative development"[96]

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relating to the strengthening of national institutions tasked with coordinating advances in this field, and drug traffic as a source of funding for terrorist activities.

92 Consisting of seventeen bilateral treaties on cooperation in the prevention of consumption of, and control of illicit traffic in narcotic drugs and psychotropic substances, systematically tabulated in the annexe below.

93 Under the terms contained in Article I of the Agreement between the Kingdom of Spain and the Republic of Uruguay on Cooperation in the Prevention of Unlawful Use of Drugs and Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances; whereas, in Article I of the Agreement between the Kingdom of Spain and the Republic of Cuba on this same matter, the purpose thereof is stated to be "(…) to further cooperation between the parties, to prevent and combat the consumption of and illicit traffic in narcotic drugs and psychotropic substances more effectively, to collaborate in the development of healthcare programmes linked to drug abuse".

94 As laid down in Article I of the Agreement between Spain and Mexico; along the same lines, the Agreement between Spain and the Republic of Colombia refers at Article 1 to the aim "(…) of preventing, controlling and suppressing activities of illicit production, manufacture, traffic, distribution and sale, and unlawful consumption of narcotic drugs and psychotropic substances".

95 Mentioned only in Article 1.c) of the Agreement between Spain and Venezuela, and 2.c) of the Agreements entered into by Spain with the Republics of Cuba and Uruguay.

96 Included among the matters in which cooperation is to be pursued under the bilateral Agreements governing cooperation in prevention of consumption of and control of traffic

in economies linked to drug production.[97] A goal in respect of which cooperation is to be undertaken "through technical or financial assistance for the different projects coming within the subprogrammes covering cadastral surveys and land use, land-use planning, strengthening of corporate and social organisations, development of continental aquaculture (fish farming), tourist sector support, and handicraft and mining development".

In contrast, special attention is paid to the fight against illicit drug trafficking and subsequent money laundering, with detailed regulation of the means through which these goals are to be attained,[98] and the following being singled out as especially relevant: exchange of information;[99] exchange of professionals as technical support for their training; and "provision of material and all manner of means to enhance the operational performance and effectiveness of professionals and technical staff".[100]

c) New mechanisms of international cooperation in criminal matters

The last aspect of treaty practice addressing international cooperation in criminal matters between Spain and Latin America in which qualitative changes can be seen, centres around the attention given by these countries to fostering and setting up forms of cooperation aimed at making prosecution and punishment of international crime linked to the phenomenon of illicit traffic in narcotic drugs, more effective.

Hence, aside from the transformations experienced by this wide range of bilateral treaties in terms of goals, there are those deriving from treaty regulation clearly

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cont.
in narcotic drugs and psychotropic substances adopted between Spain and the Republics of Bolivia and Peru: see Articles 2.b) and 2.f) respectively.

[97] In reference to one of the priority action areas established within the framework of the Cooperation Mechanism between the EU and Latin America, linked to sustainable development as an instrument for achieving a reduction in supply in producing countries.

[98] Insofar as money laundering is concerned, Article 2.f) of the Agreement entered into by Spain and the Republic of Honduras, refers to: developing intelligence units specialised in the investigation of suspicious money laundering transactions; and regulating the exchange of operational information of mutual interest vis-à-vis money laundering activities stemming from drug-trafficking.

[99] In particular, everything connected with the permanent exchange of information, along the lines indicated in Article II of the first bilateral agreement on the matter, between Spain and Mexico, which includes a detailed reference to exchange of information, publications and statistical data on illicit traffic, regular exchange of operational information of mutual interest, events and persons involved in these criminal activities, and exchange of information on means of transport, batches, postal dispatches, and routes and techniques used for illicit drug trafficking.

[100] As stated in Article 3.e) of the bilateral Agreement between Spain and Mexico, the Agreement between Spain and the Republic of Colombia, and in the most recent Agreement concluded to date, i.e., that adopted between Spain and the Republic of Paraguay on 1 August 2003, among others.

favouring the creation of mechanisms of police and administrative cooperation rather than those of a strictly judicial nature.

In this regard, stress should be laid on the scant references to traditional forms of international cooperation in criminal matters, such as judicial assistance,[101] contained in the treaties on prevention of unlawful use and control of illicit traffic in narcotic drugs and psychotropic substances which Spain has concluded with practically all Latin American States.

Moreover, when judicial assistance is mentioned as one of the areas in which the cooperation envisaged under these treaty instruments is to be implemented, the parties to these treaties confine themselves to stating that this will be effected "by exchange of witness or documentary evidence, statements, or any other judicial activity that contributes to establishing the facts",[102] a tautological definition that adds nothing to the matter. On other occasions, there is a provision to the effect that the rules pursuant to which this mechanism of cooperation is to be used, are to be adopted "in accordance with the legislation prevailing in each country and with its security and *ordre public*",[103] or, more accurately in our opinion, "within the legal framework established under international treaties governing the matter, and in particular under the United Nations Vienna Convention of 20 December 1988".[104]

In contrast to this Convention of universal scope,[105] and even to other bilateral treaties entered into by Spain and European countries,[106] these treaties contain no detailed regulation on the procedure and features of judicial assistance with respect to the crimes of drug-trafficking and the like. On the contrary, the treaties examined focus exclusively on establishing those other forms of cooperation mentioned in Article 9 of the 1988 United Nations Convention, as can be seen from the provision common to most of them, which lays down that:

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[101] Extradition, on the other hand, is not even mentioned in any of the seventeen bilateral treaties currently governing the matter.

[102] Contained in Article 2.f) of the Agreement on Cooperation in this field entered into by Spain and the Republic of Peru.

[103] Under the terms of Article 2.g) of the Agreement between Spain and the Republic of Uruguay.

[104] As laid down by Article 3.h) of the Agreement between Spain and the Republic of Cuba.

[105] See in particular the provisions laid down by Article 7 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, under the head of "Mutual Legal Assistance".

[106] Specifically, mention should be made of the Agreement of 26 June 1989 between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on the Prevention and Suppression of Illicit Traffic and Unlawful Use of Drugs (BOE of 15 December 1990), a good part of which is aimed at establishing mutual help in the investigation and bringing to trial of the alleged perpetrators of these crimes by the courts of both States, including the seizure of any goods liable to confiscation. Detailed regulation that is similarly to be seen in the Agreement between the Kingdom of Spain and the Republic of Turkey on Cooperation against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Like, done at Ankara on 9 May 1990 (BOE of 2 December 1991).

> Cooperation in matters of prevention of consumption of and suppression of illicit traffic in narcotic drugs and psychotropic substances shall be implemented by means of:
>
> a) setting up a permanent exchange of information and documentation; b) drawing up projects and programmes; and c) lending technical and scientific assistance in the implementation of all projects and programmes.[107]

Furthermore, it is interesting to note that nothing is said as to how and under what conditions these instruments are to be used, namely, how the goals set by the treaty are to be attained and how the designated instruments or means of cooperation are to be put into practice.

We are therefore witnessing what could be considered a delegalisation of these matters, inasmuch as implementation of these international treaties is left in the hands of "competent authorities", which the parties designate and which "may negotiate and conclude the necessary administrative accords and rules for the application hereof",[108] in accordance with the guidelines established in their day by the so-called Mixed Cooperation Commissions on Drugs.

Thus, once the bilateral treaty has been concluded, the parties make its effective application dependent on such decisions as may be taken in this regard by the above-mentioned Mixed Commissions, the target of detailed regulation by this amalgam of law and treaty,[109] and principal novelty introduced by these treaty instruments insofar as the incorporation of mechanisms of international penal cooperation to combat illicit traffic in narcotic drugs and psychotropic substances is concerned.

IV. CONCLUSIONS

This analysis of international cooperation in criminal matters between Spain and Latin America points to consolidation in very recent international practice of a trend

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[107] A form of wording which is repeated almost literally and with few variations in the initial clauses of most of the treaties examined.

[108] As laid down by Article IV of the Agreements governing the matter, adopted by the Republics of Peru and Paraguay, and Spain.

[109] To the extent to which a fundamental role in this matter is assigned to them, as can be seen from the functions assigned to them under Article IV of the Treaty between Spain and Mexico, and repeated in all the subsequent treaties concerning the matter, namely: "a) to aid communication between the competent authorities of both countries within the scope of application hereof; b) to propose to their respective governments such recommendations as they may deem pertinent for the better application hereof; c) to propose to the competent authorities of both countries the conditions of cooperation in the matters referred to in Articles one and two hereof; d) to propose to the competent authorities the administrative agreements and rules referred to in Article four hereof; e) to conduct the follow-up of the application of the programmes and exchanges envisaged hereunder".

favourable to the adoption of international treaties and use of institutions, such as extradition, to regulate and limit the sovereign competencies of States in this field.

Examination of the treaties adopted in recent decades, systematically listed in the various annexes below, highlights the fact that instruments of a bilateral nature are the general rule, compared to which multilateral instruments are no more than an exception. Nevertheless, the influence exerted on this vast body of treaty law by the conventions adopted in the Council of Europe during the second half of the 20th century is evident.

In the light of the data collected, the last third of the 20th century can be said to have been characterised by the adoption of a significant number of treaties governing judicial cooperation in criminal matters and extradition, as well as a no less relevant number of treaties on transfer of sentenced persons and prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances.

This quantitative increase was accompanied, on the one hand, by considerable qualitative changes, favoured: firstly, by the changes entailed in the evolution of traditional institutions *per se*, such as extradition and judicial assistance in criminal matters; secondly, by the incorporation of new goals and concepts, such as transfer of sentenced persons; and, lastly, by the creation of forms of inter-state cooperation aimed at rendering the prosecution and punishment of certain transnational crimes more effective.

In particular, extradition has been confirmed as being the instrument of international penal cooperation enjoying greatest approval among States on both sides of the Atlantic, though in the process it has undergone substantial modifications in line with the shifting reality of contemporary international society and, specially, with the interests of the State Parties to such treaties.

Similarly, treaties on cooperation or judicial assistance in criminal matters have seen their scope of application *ratione materiae* widened, thanks to a broader than usual interpretation of the notion or concept of judicial assistance aimed at guaranteeing the legal commitment to lend judicial assistance and establish appropriate channels, so as to ensure that such cooperation materialises between the signatory States.

In recent years, however, bilateral treaty activity between Spain and most Latin American States seems to have been centred almost exclusively on regulating very specific, novel areas of international cooperation in criminal matters, such as transfer of sentenced persons and combating illicit traffic in narcotic drugs and psychotropic substances.

As we have had occasion to witness, the phenomenon of the internationalisation of crime has led to an increase in the foreign prison population in Spanish penitentiaries, thereby favouring the creation of an extensive network of bilateral treaties, particularly with Latin American countries, clearly inspired by the Convention on the Transfer of Sentenced Persons passed by the Council of Europe on 21 March 1983.

Similarly, attention should be drawn to the existence of a significant number of bilateral treaties which, under the heading of "cooperation in the prevention of consumption of, and control of illicit traffic in narcotic drugs and psychotropic substances", have recently been concluded by this group of States with the intention of opening up new avenues and methods of international cooperation in this sphere.

A treaty practice that is in no way divorced from an increasing awareness among governments on both sides of the Atlantic of the need to coordinate and improve regional strategies and actions in this field through the so-called Coordination and Cooperation Mechanism on Drugs between the European Union, Latin America and the Caribbean.

Hence, the many bilateral treaties adopted after this body's creation display similar features, a result of the interest shown by Spain during the negotiations in seeing advances made in the Mechanism's designated priority action areas. The above factor would thus account for the qualitative change observed in this large body of treaty law, clearly favouring the creation of mechanisms of police and administrative cooperation rather than those of a strictly judicial nature.

BILATERAL TREATIES ON JUDICIAL ASSISTANCE IN CRIMINAL MATTERS CONCLUDED BETWEEN SPAIN AND LATIN AMERICAN STATES

STATE	TREATY TITLE	DATE OF ADOPTION	PUBLICATION
Mexico	Extradition and mutual assistance in criminal matters; amending protocols	21.11.1978; 23.1.1996; 6.12.1999	BOE* 17.6.1980; BOE 7.11.1986; BOE 7.8.1996; 7.8.1996; 27.8. 1996; 3.4.2001
Dominican Republic	Extradition and judicial assistance in criminal matters	4.5.1981	BOE 14.11.1984
Argentina	Extradition and judicial assistance in criminal matters	3.3.1987	BOE 17.7.1990; 15.9.1990; 22.5.1991
Uruguay	Mutual judicial assistance in criminal matters	19.11.1991	BOE 24.2.2000; 17.3.2000
Chile	Extradition and judicial assistance in criminal matters	14.4.1992	BOE 10.1.1995; 3.3.1995
El Salvador	Judicial cooperation in criminal matters	10.3.1997	BOE 31.7.1998
Colombia	Judicial cooperation in criminal matters	29.5.1997	BOE 17.11.2000
Bolivia	Judicial assistance in criminal matters	16.3.1998	BOE 2.3.2000
Panama	Legal assistance and judicial cooperation in criminal matters	19.10.1998	BOE 18.2.2000
Paraguay	Judicial cooperation in criminal matters	26.6.1999	BOE 25.4.2001
Peru	Judicial assistance in criminal matters	8.11.2000	BOE 2.3.2002

*BOE: *Boletín Oficial del Estado* – Official Government Gazette

BILATERAL EXTRADITION TREATIES CONCLUDED BETWEEN SPAIN AND LATIN AMERICAN STATES

STATE	TREATY TITLE	DATE OF ADOPTION	PUBLICATION
Colombia	Extradition of prisoners and ancillary Agreement	23.7.1892; 19.9.1991	GM 20.2.1894; *BOE 3.7.1992
Mexico	Extradition and mutual assistance in criminal matters; amending protocols	21.11.1978; 23.1.1996; 6.12.1999	BOE 17.6.1980; BOE 7.11.1986; BOE 7.8.1996; 7.8.1996; 27.8. 1996; 3.4.2001
Dominican Republic	Extradition and judicial assistance in criminal matters	4.5.1981	BOE 14.11.1984
Argentina	Extradition and judicial assistance in criminal matters	3.3.1987	BOE 17.7.1990; 15.9.1990; 22.5.1991
Brazil	Extradition	2.2.1988	BOE 21.6.1990
Venezuela	Extradition	4.1.1989	BOE 8.12.1990
Peru	Extradition	28.6.1989	BOE 25.1.1994
Ecuador	Extradition	28.6.1989	BOE 31.12.1997; 29.1.1998
Bolivia	Extradition	24.4.1990	BOE 30.5.1995; 6.7.1995
Chile	Extradition and judicial assistance in criminal matters	14.4.1992	BOE 10.1.1995, 3.3.1995
Uruguay	Extradition	28.2.1996	BOE 18.4.1997
El Salvador	Extradition	10.3.1997	BOE 13.2.1998
Costa Rica	Extradition	23.10.1997	BOE 23.7.1998; 24.9.1998
Panama	Extradition	10.11.1997	BOE 5.9.1998; 26.9.1998
Nicaragua	Extradition	12.11.1997	BOE 30.9.2000
Paraguay	Extradition	27.7.1998	BOE 13.4.2001 and 18.5.2001
Honduras	Extradition	13.11.1999	BOE 30.5.2002

*BOE: *Boletín Oficial del Estado* – Official Government Gazette

BILATERAL TREATIES ON ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES CONCLUDED BETWEEN SPAIN AND LATIN AMERICAN STATES

STATE	TREATY TITLE	DATE OF ADOPTION	PUBLISHED
Mexico	Prevention of unlawful use of and combating illicit traffic in narcotic drugs and psychotropic substances	6.11.1997	*BOE 26.6.1998
Venezuela	Prevention of consumption of and repression of illicit traffic in narcotic drugs and psychotropic substances	24.9.1996	BOE 27.3.1998
Chile	Prevention of unlawful use and control of illicit traffic in narcotic drugs and psychotropic substances	12.11.1996	BOE 21.5.1998; 13.6.1998
Bolivia	Prevention of consumption of and control of traffic in narcotic drugs and psychotropic substances	10.11.1997	BOE 3.4.1998; 24.11.1998
Cuba	Prevention of consumption of and combating illicit traffic in narcotic drugs and psychotropic substances	10.11.1998	BOE 30.12.98; 1.1.99; 6.10.00; BOE 1.8.01
Peru	Prevention of consumption, alternative development and control of illicit traffic in narcotic drugs and psychotropic substances	17.9.1998	BOE 25.6.1999
Panama	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	13.2.1998	BOE 20.7.1999
Argentina	Prevention of unlawful use and control of illicit traffic in narcotic drugs and psychotropic substances	7.10.1998	20.11.2000
Ecuador	Prevention of consumption of and control of illicit traffic in narcotic drugs, psychotropic substances and precursor chemicals	30.6.1999	BOE 22.2.2000
Costa Rica	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	24.11.1999	BOE 26.7.2001
Dominican Republic	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	15.11.2000	BOE 26.12.2001
Honduras	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	13.11.1999	BOE 31.1.2002
Guatemala	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	9.7.1999	BOE 19.2.2002; 4.4.2002

Table (*cont.*)

STATE	TREATY TITLE	DATE OF ADOPTION	PUBLISHED
Uruguay	Prevention of unlawful use of and combating illicit traffic in narcotic drugs and psychotropic substances	18.3.1998	BOE 26.3.2002
Paraguay	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	1.8.2003	BOE 7.10.2003
Colombia	Prevention of unlawful use and control of illicit traffic in narcotic drugs and psychotropic substances	14.9.1998	BOE 18.2.2004
Brazil	Prevention of consumption of and control of illicit traffic in narcotic drugs and psychotropic substances	11.11.1999	BOE 29.7.2004

*BOE: *Boletín Oficial del Estado* – Official Government Gazette

BILATERAL TREATIES ON TRANSFER OF SENTENCED PERSONS CONCLUDED BETWEEN SPAIN AND LATIN AMERICAN STATES

STATE	TREATY TITLE	DATE OF ADOPTION	PUBLICATION
Peru	Transfer of persons sentenced to sanctions involving deprivation of liberty	25.2.1985	*BOE 5.8.1987
Argentina	Transfer of sentenced persons	29.10.1987	BOE 12.6.1992
Bolivia	Transfer of sentenced persons	24.4.1990	BOE 30.5.1995
Colombia	Transfer of sentenced persons	28.4.1993	BOE 7.5.1998
Paraguay	Transfer of sentenced persons	7.9.1994	BOE 3.11.1995
Venezuela	Enforcement of criminal judgements	17.10.1994	BOE 18.11.1995
El Salvador	Transfer of sentenced persons	14.2.1995	BOE 8.6.1996
Nicaragua	Serving of criminal sentences	18.2.1995	BOE 12.6.1997
Ecuador	Serving of criminal sentences	25.8.1995	BOE 25.3.1997
Panama	Transfer of sentenced persons	20.3.1996	BOE 27.6.1997
Guatemala	Transfer of sentenced persons	26.3.1996	BOE 4.5.2007
Brazil	Transfer of prisoners	7.11.1996	BOE 8.4.1998
Costa Rica	Transfer of sentenced persons	23.10.1997	BOE 7.11.2000
Cuba	Enforcement of criminal judgements	23.7.1998	BOE 7.11.1998
Honduras	Transfer of sentenced persons	13.11.1999	BOE 10.5.2001
Dominican Republic	Enforcement of criminal judgements	15.9.2003	BOE 23.10.2003

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