TREATIES AND OTHER INTERNATIONAL AGREEMENTS TO WHICH SPAIN IS A PARTY INVOLVING QUESTIONS OF PRIVATE INTERNATIONAL LAW, 1992

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This survey covers the treaties and other international agreements published in the *Boletín Oficial del Estado* during 1992. Its purpose is to record the legal consequences of such agreements and instruments for Spain, such as signature, ratification or adhesion, entry into force, provisional application, reservations or declarations, territorial application, personal sphere of application, material scope, termination, abrogation and relations with other treaties or agreements.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

II. INTERNATIONAL JURISDICTION

— Convention between Spain and Uruguay on conflicts of law in matters relating to child maintenance and the recognition and enforcement of judicial judgments and decisions related to maintenance, Montevideo, 4 November 1987.
Exchange of instruments of ratification: 16 January 1992
Entry into force: 19 February 1992.
(*BOE* n. 31, 5.2.92).
Note: Title II. On jurisdictional authority.

> "*Article 7.* The courts competent to hear cases on maintenance are:
> a) those corresponding to the habitual residence of the child;
> b) those corresponding to the habitual residence of the debtor;
> c) those corresponding to the place in which the debtor has assets or income.
>
> The same courts that heard the case in which maintenance was granted will be competent to hear cases on the cancellation or reduction of maintenance as well as those having to do with adopting measures to

ensure support is paid. Any of the above-mentioned courts can hear cases related to increasing maintenance amounts.
Article 8. Independent of the provisions of the previous article, judges who hear divorce, separation or paternity cases will also be competent to grant provisional maintenance to children when it is so mandated by the applicable law".

III. PROCEDURE AND JUDICIAL ASSISTANCE.

— Convention between Spain and Uruguay on conflicts of law in matters relating to child maintenance and the recognition and enforcement of judicial judgments and decisions related to maintenance, Montevideo, 4 November 1987.

Note: See above II (*BOE* n. 31, 5.2.92).
Title III. On judicial assistance.
"*Article 9.* All matters relating to the issuance and processing of letters rogatory, as well as the recognition and enforcement of judicial judgments and decisions granting maintenance, are subject to the provisions of the Agreement on Judicial Assistance between the Kingdom of Spain and the Eastern Republic of Uruguay".

— Convention between the Kingdom of Spain and the Republic of Chile on judicial assistance, Santiago de Chile, 14 April 1992, (*BOE* n. 144, 16.6.92).
Note: See section on Treaties Involving Questions of Public International Law.

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND DECISIONS

— Convention between Spain and Uruguay on conflicts of law in matters relating to child maintenance and the recognition and enforcement of foreign judgments and decisions related to maintenance, Montevideo, 4 November 1987.

Note: Title V. Various dispositions.
"*Article 12.* If the child was granted free legal assistance in the State where the case was brought before the court, he will also be granted this assistance in the proceedings for recognition and enforcement.

Article 13. Recognition and enforcement will proceed irregardless of the date of the judgment. If the judgment predates the entry into force of the Convention, it will only be applicable to overdue payments".

— Exchange of notes between the Kingdom of Spain and the Federal Republic of Germany for the purpose of correcting an error found in the Spanish version of art. 13.2 of the Convention dated 14 November 1983 on the recognition and enforcement of judicial judgments and decisions and public documents that are enforceable in civil and commercial matters, Madrid, 31 October 1991 and 6 April 1992.
(*BOE* n. 230, 24.9.92).
Note: The German text of art. 13.2 remains unchanged and the Spanish text is worded in the following way:

"If the request for an exequatur is rejected, such a decision will be recognized and enforced in the other contracting State without an examination of competence".

V. INTERNATIONAL COMMERCIAL ARBITRATION

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

VII. ALIENS, REFUGEES AND CITIZENS OF THE EUROPEAN COMMUNITY

— Exchange of Notes between Spain and Australia on 25 March and 2 October 1991, on the granting of licenses to amateur radio operators.
Entry into force: 1 December 1991.
(*BOE* n. 23, 27.1.92).
Note: "1. Any Spanish or Australian citizen who holds an amateur radio license issued by the competent authorities of his country, can obtain an equivalent license from the competent authorities of the other country granting permission to operate an amateur radio station within its territory based on the principle of reciprocity and in accordance with the conditions established in this Agreement and in the table of equivalencies found in the annex.

2. Competent authorities in each country will issue licenses in accordance with their respective domestic legislation and with the

procedure estahlished by that country's laws and regulations, with the understanding that said licenses will be subject to modification, suspension or cancellation upon well-grounded resolutions.

3. The competent authorities of both countries can deny issuance, modify the conditions of use of the station or cancel the license once it is issued, without having to notify the competent authorities of the other State of its actions.

(...)

5. Any Spanish or Australian amateur radio operator who obtains a license in accordance with the conditions established in this Agreement, is required to comply with the specific legislation in force as regards this subject in the country in which he finds himself and with the general regulations on radio communications of the International Telecommunications Union".

— Temporary suspension of the Exchange of Notes between Spain and Peru on the suspension of visas, dated 14 April 1959.
Announcement made by the General Office of the Ministry of Foreign Affairs: 7 February 1992.
Effects of the temporary suspension: from 15 February 1992.
(*BOE* n. 38, 13.2.92).

— Exchange of Notes between Spain and the United States of America regarding an amendment to the Agreement dated 21 January 1952 on the suppression of visas in ordinary passports. Madrid, 27 May and 10 June 1992.
Provisional application: from 10 July 1992.
(*BOE* n. 88, 6.8.92).

— Entry into force of the Exchange of Notes which constituted an Agreement on the suppression of visas between the Kingdom of Spain and the Czech and Slovak Republic. Madrid, 12 December 1990.
Announcement made by the General Office of the Ministry of Foreign Affairs: 1 April 1992.
Entry into force: 30 April 1992.
(*BOE* n. 93, 17.4.92).

— Agreement between the Kingdom of Spain and the Kingdom of Morocco on the movement of persons and the transit and readmission of foreigners who had entered illegally. Madrid, 13 February 1992.
Provisional application: from 13 February 1992.
(*BOE* n. 100, 25.4.92).

Note: Chapter I. Readmission of foreigners

"*Article 1.* Border authorities of the State being petitioned, upon formal request by the petitioning State, will readmit into its territory those nationals from third countries who illegally entered the petitioning State's territory from the State being petitioned.

Article 2. Readmission will be granted if it is proven by any means that the foreign individual whose readmission is being sought did indeed come from the State being petitioned.

The petition for readmission should be presented within 10 days of the illegal entry into the territory of the State being petitioned. This petition must include all available data on the identity of the individual and the personal documentation found in his possession as well as information on the circumstances surrounding his illegal entry into the petitioning State and any other information that is available about him.

When readmission is granted, it will be documented by means of the issuance of a certificate or similar document by the border authorities of the State being petitioned in which the identity and, when required, the documentation held by the foreign individual in question are clearly stated.

Article 3. Readmission is not required:

a) for nationals of third States that have a common border with the petitioning State;

b) for foreign individuals who were granted the right to stay in the territory of the petitioning State after entering illegally;

c) for foreign individuals who, at the time of their entrance into the territory of the petitioning State, held a visa or residence permit granted by said State or who, after their entrance, obtained a visa or residence permit;

d) for those individuals who have been recognized as refugees by the petitioning State in according with the Geneva Convention dated 28 July 1951.

Article 4. The petitioning State will readmit those foreign individuals into its territory whose readmission was applied for and obtained from the State being petitioned, when, through investigations done after their expulsion, it was found that they met one of the requirements of article 3 at the time of their entry into the territory of the State being petitioned.

(...)

Chapter II. Transit for expulsion of foreign individuals.

Article 6. Each of the contracting parties, upon request by the other party, can approve the entrance of a national from a third country into and his transit through its territory in order to expulse him, when the

continuation of the trip and the admission of the individual in the State indicated as his final destination are completely assured.

Each of the contracting parties, upon request by the other party, can also approve transit — for purposes of expulsion — of nationals of third countries through the international zone of those airports that are indicated given the same circumstances as stated in the previous paragraph. When necessary, the transit of an individual by air can be carried out under the custody of the police of the petitioning State.

The petitioning State will immediately admit foreign individuals whose expulsion is being processed into their territory when the country indicated as their final destination rejects their admission.

Article 7. A request for transit for purposes of expulsion of nationals from third countries will be processed by the authorities that are indicated for these purposes by the Ministries of the Interior of both parties. These petitions for transit for purposes of expulsion will include information on the foreign individual in question such as his identity, the personal documentation in his possession, information relative to his stay in the territory of the petitioning State and the conditions of his passage through the territory of the State being petitioned.

Article 8. Transit for purposes of expulsion can be denied:

a) when the foreign individual is prohibited from entering into the State being petitioned;

b) when the foreign individual can be accused of or has been convicted of crimes that took place prior to the transit by a criminal court in the State being petitioned;

c) when the foreign individual can be accused of or has been convicted of crimes that took place prior to the transit by a criminal court in the State indicated as his final destination;

d) when the foreign individual runs the risk of receiving inappropriate treatment in the State indicated as his final destination;

e) when the transit that is being requested for purposes of expulsion is for a national of one of the Maghreb countries that belongs to the Arabian Maghreb Union.

Chapter III. Other dispositions

Article 9. This agreement is understood to be independent of the obligations to readmit nationals from third countries that arise from the application of the dispositions of other bilateral or multilateral agreements.

(...)

Article 12. In accordance with Spanish legislation and with the international conventions on matters of free movement of individuals

to which Spain is a party, Moroccan citizens who legally reside in the member States of the European Community can, without a visa, enter into and circulate freely through Spanish territory for a period not to exceed three months".

— Entry into force of the Exchange of Notes which amend the Agreement dated 21 January 1952 between Spain and the United States of America relating to the suppression of visas in diplomatic or official passports. Madrid, 16 and 17 September 1991.
Announcement of the General Office of the Ministry of Foreign Affairs: 26 June 1992.
Entry into force: 10 June 1992.
(*BOE* n. 168, 14.7.92).

— Convention between the Kingdom of Spain and the Soviet Union on equivalency and the mutual recognition of academic certificates and degrees, Madrid, 26 October 1990.
Entry into force: 23 May 1991.
(*BOE* n. 277, 18.11.92).
Note: "*Article I.* For the purposes of this Convention, the term 'convalidation' will be understood to mean the recognition of partial studies and the term 'harmonization' to mean the recognition of degrees. 'Equivalence' is the concept behind all convalidations or harmonizations in that it makes sense to declare the convalidation of studies or the harmonization of degrees when there exists equivalency between them. 'Recognition' is the generic term which encompasses both the convalidation of studies and the harmonization of degrees.
Article II. Certificates that serve as proof of a candidate having passed General Secondary Education courses which lead to higher education in the USSR and Spain are equivalent.
The recognition of these degrees or certificates does not exempt the holder of these from meeting the requirements that, in accordance with the respective domestic legislation of each State, were established for admission to institutions of higher education.
Article III. The degree of equivalency of the certificates which serve as proof of having passed specialized secondary school programs in the USSR will be determined on a case by case basis. The final convalidation of these studies will not exempt the candidate from the requirement of concluding these studies in order to meet the requirements indicated in the previous article for admission to institutions of higher education.
Article IV. Official degrees of higher education issued by the universities

or other institutions of higher education by one party will be harmonized as equivalent degrees issued by the other party.
Harmonization will be done in accordance with a table of equivalencies agreed to by a joint committee made up of experts representing both parties ...".

VIII. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

— Convention of the C.I.E.C. (*Comisión Internacional del Estado Civil* - International Commission on Civil Status) on the recognition and updating of civil status records, Madrid, 5 September 1990.
Deposit of the instrument of ratification: 27 April 1992.
Entry into force: 1 July 1992.
(*BOE* n. 127, 27.5.92 and *BOE* n. 187, 5.8.92 [s.e.]).

IX. FAMILY LAW

— Convention between Spain and Uruguay on conflicts of law in matters relating to child support and the recognition and enforcement of judicial judgments and decisions related to support, Montevideo, 4 November 1987.
Note: See above II, III, and IV (BOE n. 31, 5.2.92).
Title I. On scope and applicable law
"*Article 1.1.* When the habitual residence of a minor is in the territory of one of the parties and the habitual residence of the individual required to make support payments is in the territory of the other party, the law applicable in cases of conflict, is determined in accordance with this Convention.
2. For the purposes of this Convention, the term 'minor' refers to any person who is classified as such according to the law of his habitual place of residence.
Article 2. The applicable law — which can be chosen by the creditor — is the law of his habitual place of residence or the law of the habitual residence of the debtor in one of the party States, or the law of the party State in which the debtor has assets or income.
Article 3.1. The rules of this Title only regulate conflicts of law in matters relating to child support.

2. The decisions adopted in application of this Convention do not prejudge the filiation and family relations between a minor and tbe individual who owes support, although they can serve as evidence when pertinent.

Article 4. When there is a change in the minor's habitual residence, the law of the new State of residence will be applicable from the point at which the change is made.

Article 5. The law applicable to support rights also regulates:

a) the amount of support and the time frame and conditions for its payment:

b) the determination of who can bring a suit for support in the name of and as a representative of the minor;

c) which individuals and entities are required to cover support obligations.

Article 6. The law designated by this Convention is not applicable when its application is clearly incompatible with the public policy of the State in which the claim for support is brought".

X. SUCCESSION

XI. CONTRACTS

XII. TORTS

XIII. PROPERTY

1. Cultural assets

— Protocol for the protection of cultural assets in situations of armed conflict, The Hague, 14 May 1954 (*BOE* n. 178, 25.7.92).

Note: See Section on Treaties Involving Questions of Public International Law.

2. Industrial property

— Convention between Spain and Hungary on the reciprocal protection of denominations of origin, denominations of certain agricultural and industrial products, and indications of origin, Budapest, 22 December 1987.
Entry into force: 7 November 1991.
(*BOE* n. 18, 21.1.92 and *BOE* n. 89, 13.4.92 [s.e.]).
Note: According to Article 2:

"1. Protection of denominations of origin, of denominations of certain agricultural and industrial products and of the indications of origin included in this Convention, will be guaranteed against all types of usurpation or imitation, even if the true origin of the product is included, if the designation is a translation or if words such as 'class', 'type', 'manner', 'method' or 'imitation' are used.

2. This protection covers the use of the denominations or indications mentioned in the previous paragraph on the label, display, packaging, bills or in manuals and documentation as well as in any advertising of the product or merchandise.

3. In order to ensure the protection guaranteed in the previous paragraphs, use will be made of all judicial and administrative means stipulated in the legislation of the contracting party in whose territory an infraction takes place, including confiscation.

4. Claims made in response to actions that violate the dispositions of this Convention can be filed with the government or before the courts of justice of either party in accordance with their respective legislation by individuals or corporate persons or by legally recognized associations, groups, or organisms that have headquarters in the territory of one of the contracting parties and that represent producers, manufacturers, entrepreneurs or consumers.

5. The protection guaranteed in paragraph 1 is equally applicable to cases of utilization of denominations of origin, denominations of certain agricultural and industrial products and indications of origin when the manner in which they are used causes confusion on the part of the consumer as to the true origin or nature of the products.

6. The denominations included in annexes A and B, as well as the indications of origin of both contracting parties, cannot, under any circumstances, be considered generic names.

(...)

Article 7. This Convention does not affect the obligations that derive from the parties' participation in any other international convention or agreement that they have already signed. As regards conventions and

agreements that might be entered into in the future, their terms may contradict the dispositions of this Convention.

XIV. COMPETITION LAW

XV. INVESTMENTS AND FOREIGN EXCHANGE

— Agreement between the Kingdom of Spain and the Kingdom of Morocco on the reciprocal promotion and protection of investment, Madrid, 27 September 1989, (*BOE* n. 32, 6.2.92).
Note: See Section on Treaties Involving Questions of Public International Law.

— Agreement between the Kingdom of Spain and the Federative Czech and Slovak Republic on the reciprocal protection and encouragement of investment, Madrid, 12 December 1990. (*BOE* n. 33, 7.2.92).
Note: See Section on Treaties Involving Questions of Public International Law.

— Agreement between Spain and Bolivia on the reciprocal promotion and protection of investment, Madrid, 24 April 1990, (*BOE* n. 143, 15.6.92).
Note: See Section on Treaties Involving Questions of Public International Law.

— Convention between Spain and Hungary on the reciprocal promotion and protection of investment, Budapest, 9 November 1989, (*BOE* n. 217, 9.9.92).
Note: See Section on Treaties Involving Questions of Public International Law.

— Agreement and Protocol between Spain and Argentina on the reciprocal promotion and protection of investment, Buenos Aires, 3 October 1991, (*BOE* n. 277, 18.11.92).
Note: See Section on Treaties Involving Questions of Public International Law.

XVI. FOREIGN TRADE LAW

— Convention on mutual administrative assistance in customs matters between the Kingdom of Spain and the Kingdom of Norway, Oslo, 17 September 1991.
Entry into force: 23 July 1992.
(*BOE* n. 163, 8.7.92).

Note: *"Definitions. Article 1.* For the purposes of this Convention the following terms are understood to mean:

1. 'Customs legislation' refers to the set of legal and reglamentary dispositions that are applicable to imports, exports and the transit of merchandise, including that legislation related to customs duties, taxes or any other type of charge or fee, or prohibitive, restrictive or control measures.
2. 'Customs authorities' in the Kingdom of Spain refers to the General Customs and Special Taxes Office of the Ministry of Finance and for the Kingdom of Norway, to the General Customs and Special Taxes Office (Toll-og avgiftsdrektoratet).
3. 'Customs infringement' refers to any violation or attempted violation of customs legislation.

Scope of the Convention. Article 2.

1. According to the conditions defined in this Convention, the contracting parties agree to offer mutual assistance through their custom officials to prevent, investigate and repress the infringement of customs laws.
2. According to this Convention, this assistance will also cover the determination of customs fees and other fees and charges levied by customs authorities when this assistance is so requested.
3. The assistance stipulated in sections 1 and 2 is applicable to all types of proceedings, be they judicial, administrative or investigative, and includes classification, appraisal and other aspects derived from the application of customs law.
4. This Convention does not include assistance in collecting customs fees, taxes or any other type of charge or assistance with matters that fall within the sphere of the legislation on currency exchange controls.
5. The assistance stipulated within the framework of this Convention will be given in accordance with the legislation of the Party being petitioned and within the limits of the competence and resources of custom authorities.
6. The purpose of this Convention is to improve and expand the mutual assistance that already exists between both parties.

Exemptions from assistance. Article 3.

1. If the Party being petitioned feels that giving the assistance requested would in some way affect its sovereignty, security, public order or any other essential national interest, it can refuse to lend the assistance or agree to assist under certain conditions or with certain reservations.
2. When the petitioning Party makes a petition for assistance that it could not comply with if the petition were made of it by the other party, the petitioning party will so state in its petition. In these cases, the government being petitioned will be totally free to grant or deny the petition.
3. When it is impossible to accept a request for assistance, the petitioning customs authority should be notified as quickly as possible and should be informed of the reasons for the refusal of assistance.

(...)

Obligation to respect confidentiality. Article 9.

1. Any information, document or other type of communication received during the course of mutual assistance cannot be used for any other purpose than those specified in this Convention, including their use in judicial or administrative proceedings. This information and these documents or other types of communications can only be used for other purposes if the Party that has provided them has expressly consented to such a use.
2. Consultations, reports, documents and other communications received by either party will be considered confidential.
3. Any report, document or other data communicated or obtained as a result of the application of this Convention will enjoy the same protection of their confidential nature and professional secret in the receiving State as would the same type of report, document or data obtained within that State's territory.
4. Any use that might be made of said reports or documents as proof in courts of law as well as any value that they might be given, is determined in accordance with national legislation.

(...)

Administrative channels. Article 13.

1. Assistance will be offered through direct communication between the civil servants designated by the respective customs officials.
2. If the customs officials of the petitioned party is not the appropriate organ to respond to the request, the request should be transmitted to the competent organ. Any assistance provided will be transmitted through the petitioned customs officials.

(...)

Scope of application of the Convention. Article 15.
This Convention is applicable throughout the territory of the Kingdom of Spain and the territory of the Kingdom of Norway, except for Svalbard and Jan Mayen".

XVII. BUSINESS ASSOCIATION CORPORATION

XVIII. BANKRUPTCY

XIX. TRANSPORT LAW

Note: See Section on Treaties Involving Questions of Public International Law.

XX. LABOUR LAW AND SOCIAL SECURITY

— Convention number 165 of the International Labour Convention (ILO) on Social Security for seaman (revised), Geneva, 9 October 1987.
Deposit of instrument of ratification: 2 July 1991.
Entry into force: 2 July 1992.
(*BOE* n. 75, 27.3.92).
Note: Statement:
"Spain accepts the following branches of Social Security mentioned in its article 3: a) health care; b) economic assistance during illness; c) unemployment benefits, d) workman's compensation; g) maternity leave payments.
Spain promises to apply the following rules for each of these branches:
1) Minimal level rules found in article 9 for branches a) and c)
2) Maximum level rules (article 11) for branches b), e) and g)".

— Spain's denunciation of the International Labour Organization Convention regarding night-shift work done by women employed in industry, Geneva, 9 July 1949.
Announcement made by the General Office of the Ministry of Foreign Affairs:

26 March 1992.
Effects of the complaint: 27 February 1992.
(*BOE* n. 93, 17.4.92).
Note: The Convention had been in force in Spain since 24 June 1959.

XXI. CRIMINAL LAW

— Protocol for the repression of illicit acts of violence in airports that service international civil aviation, Montreal, 24 February 1988, addendum to the Convention for the repression of illicit acts against the security of civil aviation, Montreal, 23 September 1971.
Deposit of the instrument of ratification: 8 May 1991.
Entry into force: 7 June 1991.
(*BOE* n. 56, 5.3.92 and *BOE* n. 134, 4.6.92 [s.e.]).

— Agreement between the Kingdom of Spain and the Republic of Italy on cooperation in the fight against terrorism and organized crime, Madrid, 12 May 1987.
Entry into force: 12 May 1987.
(*BOE* n. 63, 13.3.92).
Note: "*Article 1.* By mutual agreement between the Spanish Ministry of the Interior and the Ministry of the Interior of the Republic of Italy, a bilateral committee is constituted to encourage cooperation in the fight against terrorism and organized crime.
This bilateral committee will be presided over by the two Ministers and will be comprised of representatives of the competent Ministries, heads of state security forces and experts in specific fields.
Representatives of other ministries and institutions can also be invited to participate when the two Parties mutually agree that it is beneficial to do so.
The bilateral committee will meet at least once a year and whenever necessary to discuss matters of great urgency.
Article 2. In order to make it possible to have more efficient and specific collaboration between the two countries, cooperation between the interested sectors should touch upon the following points:
a) Terrorism
Exchange of information on terrorist groups, events and techniques.
Updating information on possible terrorist threats, techniques and organizational structures available for combating terrorism by

formalizing an exchange of experts.
Exchange of experience and technological know-how as regards air, maritime and rail transport safety in order to continually improve the security measures adopted in airports, shipping ports and railway stations, and adjusting these measures to the level of the threat of international terrorism.
b) Organized crime
Permanent exchange of information and data related to organized criminal activity within the limits allows by the respective legal systems.
Exchange of experts from the police forces in order to develop joint activities.
Preparation of shared measures meant to impede the recycling of illegally acquired money".

— Exchange of Notes on the inclusion of Gibraltar in the Agreement between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on the prevention and repression of the illicit trafficking in and incorrect use of drugs, 26 June 1989, Madrid, 3 April 1991.
Entry into force: 11 March 1992.
(*BOE* n. 78, 31.3.92).

— Convention for the repression of illicit acts against the security of maritime navigation and Protocol for the repression of illicit acts against the security of fixed platforms located on the continental shelf, Rome, 10 March 1988.
Entry into force: 1 March 1992.
(*BOE* n. 99, 5.4.92).

— Convention between the Kingdom of Spain and the Republic of Argentina on the transfer of convicts, Buenos Aires, 29 October 1987.
Entry into force: 30 June 1992.
(*BOE* n. 127, 27.5.92 and *BOE* n. 141, 12.6.92 [s.e.]).
Note: The sentences and security measures imposed in one party State (the State of the conviction) can be served in the other party State (State of execution).
"Article 4. This Treaty is only applicable under the following circumstances:
1. When the acts or omissions that have brought about the criminal sentence are also punishable in the State of execution even though the classification is not identical.
2. When the convicted party is a national of the State of execution at the time the request for transfer is made.

3. When the sentence is final.
4. When the convicted party consents to the transfer, or if the convicted party is incapacitated, when consent is given by his legal representative.
5. When the term of the sentence or security measure that must be served is at least one year at the time the request is made, as stated in art. 9. In exceptional cases, the Parties can admit a request even when the sentence or security measure to be served does not meet this minimum.
6. When a solvent convicted party has paid all of the fines, court fees, or civil damages of any type that he has been sentenced to pay, in accordance with the provisions of the conviction; or when he can guarantee their payment to the satisfaction of the State of the conviction.
(...)
Article 10. Once the transfer is completed, the sentence will be served in accordance with the laws of the State of execution.
2. As regards the enforcement of the sentence, the State of execution
a) must respect the duration of the sentence or security measure;
b) is bound by the facts proven in the judgment
c) cannot convert the sentence or security measure into a fine.
Article 11. Only the convicting State can grant amnesty, pardons or the commutation of sentences or security measures in accordance with its constitution and its laws.
However, the State of execution can request the convicting State to grant a pardon or commutation by means of a well-grounded petition which will be benevolently studied.
Article 12. 1. The convicting State will maintain exclusive jurisdiction as regards all procedures of any type that are meant to revise the judgment that was issued.
2. The State of execution must terminate the enforcement of the sentence when the convicting State informs it of any resolution or measure that annuls the executionary force of the sentence or security measure.
Article 13. 1. A convict who is handed over to a State in order to serve a sentence or security measure in accordance with this treaty, cannot be arrested, tried or sentenced in the State of execution for the same criminal acts for which he was sentenced.
2. In order for the convicted party to be judged, convicted and subjected to any type of restriction of his personal freedom for prior acts that had nothing to do with the reasons for his transfer, the State must proceed according to the provisions of the extradition treaty that is in force between the two countries.

(...)

Article 17. This treaty will apply to the sentences issued before and after its entry into force".

— Exchange of Notes between the Kingdom of Spain and the Republic of Colombia constituting an Agreement for the development of the Convention on extradition dated 23 July 1892, Madrid, 19 September 1991.
Entry into force: 25 May 1992.
(*BOE* n. 159, 3.7.92).
Note: In order to develop the Reos Convention on Extradition signed in Bogotá on 23 July 1892, in application of article 2, including illicit trafficking in drugs and psychotropic substances, it is proposed that the judicial authorities of the petitioning State use the appropriate channels to process any documents, reports and effects on their own nationals who cannot be extradited, that are needed in order to go to trial in tbe State being petitioned, without the State having to previously formulate a request for extradition.

XXII. TAX LAW

— Convention between Spain and the People's Republic of China to prevent double taxation and prevent tax evasion in matters relating to income and estate taxes, Peking, 22 November 1990.
Entry into force: 20 May 1992.
(*BOE* n. 152, 25.6.92; *BOE* n. 251, 19.10.92 [s.e.]; *BOE* n. 126, 27.5.93 [s.e.]).
Note: "Article 1. Personal sphere

1. This Convention applies to residents of one or both contracting States.

Article 2. Taxes covered.

1. This Convention applies to income and estate taxes that are required by either of the contracting States or by their political subdivisions or local entities, regardless of the system used to levy them.
2. Income or estate taxes shall be understood to be those that are levied against an individual's entire income or estate or any part of them, including the taxes on earnings derived from the disposal of movable or immovable goods and taxes on capital gains.
3. Current taxes to which this Convention can be specifically applied are:
a) In Spain:
(I) Personal Income Taxes
(II) Corporation Taxes
(III) Estate Taxes

(IV) Local Income and Estate Taxes
(Here in after 'Spanish taxes')
b) In the People's Republic of China:
(I) Personal Income Taxes
(II) Taxes on the Income from Joint Ventures that have foreign and Chinese capital.
(III) Taxes on the Income of Foreign Companies
(IV) Local Income Taxes.
(Here in after 'Chinese taxes')

4. This Convention also applies to identical or analogous taxes that are established after the date on which this Convention is signed. These will be added to or replace the current taxes listed in paragraph 3. Competent authorities from each contracting State will inform the other State of any significant modification that has been made in their respective fiscal law within a reasonable time after the modification is made.

(...)

Article 4. Residents.

1. For the purposes of this Convention, the expression 'resident of a contracting State' means anyone who, by virtue of the legislation of the State in question, is subject to taxation in that State due to his domicile, residence, headquarters, or central office, or any other criteria of a similar nature.

2. When by virtue of the provisions of paragraph 1 an individual is a resident of both contracting States, his situation will be determined in accordance with the following rules:

a) This person will be considered a resident of the contracting State in which he has a permanent home at his disposition. If he has a permanent home at his disposition in both contracting States, he will be considered a resident of the contracting State with which he has the closest personal and economic ties (center of vital interests).

b) If it is impossible to determine in which State the individual has his center of vital interests, or if the individual does not have a permanent home at his disposition in either of the contracting States, he will be considered a resident of the contracting State in which he habitually lives.

c) If he habitually lives in both contracting States or he does not live in either of them, he will be considered a resident of the contracting State of which he is a national.

d) If he is a national of both contracting States or if he is not a national of either of them, the competent authorities of the contracting States will

come to a mutual agreement as to the resolution of his case.
3. When by virtue of the provisions of paragraph 1, a person other than a natural person is a resident of both contracting States, he will be considered a resident of the contracting State in which his main office is found. Competent authorities of the contracting States can come to a mutual agreement as to the resolution of any problem that arises in relation to this area.
Article 5. Permanent establishment.
1. For the purposes of this Convention, the expression 'permanent establishment' will be understood to mean a fixed place of business at which a company carries out all or part of its activities.
2. The expression 'permanent establishment' specifically includes:
a) headquarters
b) branch offices
c) offices
d) factories
e) workshops
f) mines, oil or gas wells, quarries or any other place of extraction of natural resources.
3. The expression 'permanent establishment' also includes:
a) a construction, installation or assembly project or inspection activities related to them, but only when the project or activity has a duration of at least six months,
b) the delivery of services, including consulting services, by a company from one of the contracting States that makes use of employees or other individuals contracted in the other contracting State, provided that these activities are carried out in relation to the same project or related projects during one or more periods that combined cover more than six months within any twelve month period.
4. In spite of the previous provisions of this article, the term 'permanent establishment' will not be understood to include:
a) The use of facilities for the sole purpose of storing, exhibiting or delivering goods or merchandise belonging to a firm.
b) The maintenance of a depository of goods or merchandise belonging to a firm for the sole purpose of storing, exhibiting or delivering them.
c) The maintenance of a depository of goods or merchandise belonging to a firm for the sole purpose of their being transformed by the firm.
d) The maintenance of a fixed place of business for the sole purpose of purchasing goods or merchandise or of gathering information for a firm.
e) The maintenance of a fixed place of business for the sole purpose of carrying out any other auxiliary or preparatory activity for the firm.

f) The maintenance of a fixed place of business for the sole purpose of any combination of the activities mentioned in sections a) through e), if the set of activities of the fixed place of business maintains its auxiliary or preparatory nature.

5. In spite of the provisions of paragraphs 1 and 2, when a person — as opposed to an agent who comes under an independent statute to which the provisions of paragraph 6 are applicable — acts in a contracting State on behalf of a company from the other contracting State, and when he regularly holds and exercises powers which authorize him to enter into contracts on behalf of the company, this firm will be considered to have a permanent establishment in the contracting State mentioned in the first place as regards all of the activities that this person carries out on behalf of the company, unless the activities undertaken by this person are limited to those mentioned in paragraph 4, or if these activities are carried out in a fixed place of business that is not considered a permanent establishment according to the provisions of this paragraph.

6. A company is not considered to have a permanent establishment in a contracting State simply because it carries out its activities through a dealer, a general agent or any other type of representative that would fall under an independent statute, provided that these individuals act within the normal framework of their activity. However, an agent is not considered to fall under an independent statute in the sense that this paragraph confers on this concept when his activities are carried out totally or almost totally on behalf of the company, if the transactions between the company and the agent are not carried out under conditions of free competition.

7. The fact that a company which is a resident of a contracting State controls or is controlled by a company that is a resident of the other contracting State, or carries out activities in the other State (whether it be through permanent establishment or in some other way), does not automatically convert either of the companies into a permanent establishment of the other one".

— Exchange of Notes between the Kingdom of Spain and the Republic of Finland which constitutes an agreement to modify the Convention dated 15 November 1967 related to avoiding double taxation in matters of income and estate taxes, Madrid, 27 April 1990.

Entry into force: 27 December 1991.

(*BOE* n. 180, 28.7.92).

Note: Paragraph 3 of article 2 of the Convention is abolished and replaced by the following:

"3. Current taxes to which the Convention are applicable are:
a) In Spain:
I. Personal Income Taxes
II. Corporation Taxes
III. Estate Taxes
IV. Local Income and Estate Taxes
(Here in after 'Spanish taxes')
b) In Finland:
I. Total Income and Estate Taxes (valtion tuloja varallisuusvero);
II. Local Taxes (funnallisvero);
III. Religion Tax (kirkollisvero);
IV. Taxes withheld at the source on the income of non-residents (lähdevero)".

A new paragraph 6 of article 10 of the Convention is also included, and paragraph 4 of article 23 of the Convention is abolished and replaced by a new text.

— Convention and Protocol between the Kingdom of Spain and Australia to avoid double taxation and prevent tax evasion in matters relating to income taxes, Canberra, 24 March 1992.
(*BOE* n. 312, 29.12.92).
Note: "*Article I.* Personal sphere.
This Convention is applicable to residents of one or both of the contracting States.
Article 2. Taxes covered.
1. The current taxes to which this Convention is applicable are:
a) For Australia:
Income tax and resource leasing tax in relation to offshore exploration projects and the exploitation of oil resources established in accordance with the federal legislation of the Commonwealth of Australia.
b) For Spain:
i) Personal Income Tax
ii) Corporation Tax
2. This Convention will also be applied to identical or analogous taxes that are established in accordance with the legislation of the Commonwealth of Australia or Spanish legislation after the date on which this Convention is signed. These will be added to or replace current taxes.
(...)

Article 4. Residence
1. For the purposes of this Convention, a person is a resident of one of the contracting States:
a) in Australia, when the person is a resident of Australia for the purposes of Australian taxation, and
b) in Spain, when the person is a resident of Spain according to Spanish legislation on Spanish taxes.
2. A person is not a resident of a contracting State for the purposes of this Convention if he is subject to taxation by that State solely on income produced in that State,
3. When by virtue of the preceding provisions of this article an individual is a resident of both contracting States, his situation will be determined in the following manner:
a) The person will be considered exclusively a resident of the contracting State in which he has a permanent home at his disposition.
b) If he has a permanent home at his disposition in both contracting States, or does not have one in either, he will be considered a resident exclusively of the contracting State with which he has the closest personal and economic ties.
For the purposes of the preceding epigraphs, the fact that an individual is a citizen or national of one of the contracting States will be taken into account when determining the intensity of his personal and economic ties with this State.
4. By virtue of the provisions of section 1, a company that is a resident in both contracting States will be considered exclusively a resident of the contracting State in which his true headquarters are located.
Article 5. Permanent establishment.
1. For the purposes of this Convention, the expression 'permanent establishment', referring to a company, will be understood to mean a fixed place of business through which the company carries out all or part of its activities.
2. The expression 'permanent establishment' specifically includes:
a) headquarters
b) branch offices
c) offices
d) factories
e) workshops
f) mines, oil or gas wells, quarries or any other place of extraction of natural resources
g) agricultural or livestock properties or forests

h) construction, installation or assembly projects with last for more than twelve months

3. A company will not be considered to have a permanent establishment due to:

a) The use of facilities for the sole purpose of storing, exhibiting or delivering goods or merchandise belonging to a firm.

b) The maintenance of a depository of goods or merchandise belonging to a firm for the sole purpose of storing, exhibiting or delivering them.

c) The maintenance of a depository of goods or merchandise belonging to a firm for the sole purpose of their being transformed by the firm.

d) The maintenance of a fixed place of business for the sole purpose of purchasing goods or merchandise or of gathering information for a firm.

e) The maintenance of a fixed place of business for the sole purpose of carrying out any other auxiliary or preparatory activity for the firm.

f) The maintenance of a fixed place of business for the sole purpose of carrying out auxiliary or preparatory activities on behalf of the firm such as advertising or scientific research.

4. A company will be considered to have a permanent establishment through which it carries out activities in one of the contracting States if:

a) it carries out supervisorial activities related to a construction, installation or assembly project undertaken in this State for a period of at least twelve months, or

b) it uses structures, facilities, drilling platforms, ships or other similar substantial equipment:

i) for the exploration and exploitation of natural resources, or

ii) for activities related to this type of exploration or exploitation.

And, in either case, if the equipment is used continually or if the duration of these activities is at least twelve months.

5. A person other than an agent who falls under an independent statute to which section 6 is applicable, who acts in one of the contracting States on behalf of a company from the other contracting State, constitutes a permanent establishment for that company in the State mentioned in the first place if:

a) he regularly holds and exercises powers which authorize him to enter into contracts on behalf of the company, except when the activities of this person are limited to those mentioned in section 3, and when, having carried out these activities in a fixed place of business, it was determined that this place was not a permanent establishment according to the provisions of that section, or

b) when acting in this capacity, he manufactures or transforms goods or merchandise belonging to the company for that company in that State,

provided that this clause is applied only to goods or merchandise manufactured or transformed in this way.

6. A company from one of the contracting States is not considered to have a permanent establishment in the other contracting State simply because it carries out its activities in that State through a dealer, a general agent or any other type of representative that would fall under an independent statute, provided that these individuals act within the normal framework of their functions as dealers or agents.

7. The fact that a company which is a resident of one of the contracting States controls or is controlled by a company that is a resident of the other contracting State, or the fact that it carries out activities in the other State (whether it be through permanent establishment or in some other way), does not automatically convert either of the companies in a permanent establishment of the other one.

8. The principles established in the preceding sections of this article will be used to determine if there exists a permanent establishment outside of both contracting States for the purposes of section 5 of art. 11 (interest) and of section 5 of article 12 (royalties) of this Convention, and if a company other than a company from one of the contracting States has a permanent establishment in one of the contracting States".