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TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND MONGOLIA

Signed at Ulaanbaatar May 31, 1999

Entered into force January 27, 2000

The Republic of Korea and Mongolia (hereinafter referred to as "the Parties")

Desiring to make more effective the judicial co-operation of the two countries in the field of extradition on the basis of mutual respect for sovereignty, equality and mutual benefit,

Have agreed as follows:

Article 1

Obligation to Extradite

Each Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution, trial or for the imposition or execution of punishment in the Requesting Party for an extraditable offence.

Article 2

Extraditable Offences

1. For the purpose of this Treaty, extraditable offences are offences which, at the time of the request, are punishable under the laws of both Parties by deprivation of liberty for a period of at least one year or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six(6) months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether an offence is an offence against the laws of both Parties:
 - (a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting Party.
5. Where the offence has been committed outside the territory of the Requesting Party extradition shall

be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. If the request for extradition refers to several offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

Mandatory Refusal of Extradition

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. when the Requested Party determines that the offence for which extradition is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:

- (a) the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of his or her family;
- (b) an offence in respect of which the Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both parties, including but not limited to such agreements relating to genocide, terrorism or kidnapping.

2. when the person sought is being proceeded against or has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which his extradition is requested;

3. when the prosecution or the punishment for the offence for which extradition is requested would have been barred by prescription of the lapse of time under the law of the Requested Party had the same offence been committed in the Requested Party. Acts or circumstances that would suspend the lapse of time under the law of the Requesting Party shall be given effect by the Requested Party, and in this regard the Requesting Party shall provide a written statement of the relevant provisions of its law relating to the lapse of the time;

4. when the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to persecuting or punishing the person sought, by reason of race, religion, nationality, sex or political opinion, or that that person's position may be prejudiced for any of those reasons.

Article 4

Discretionary Refusal of Extradition

Extradition may be refused under this Treaty in any of the following circumstances:

1. when the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within its territory;

2. when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;

3. when, in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations;

4. when the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law.

Article 5

Postponement of Extradition

When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceeding or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

Article 6

Extradition of Nationals

1. Neither of the Parties shall extradite its own nationals under this Treaty.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution.
3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7

Channel of Communication

Requests for extradition and any subsequent correspondence shall be communicated through the diplomatic channel.

Article 8

Extradition Procedures and Required Documents

1. The request for extradition shall be made in writing. For the purpose of this Treaty, a request for extradition and documents submitted in the original or certified copy shall be exempt from any form of authentication.
2. The request for extradition shall be accompanied by:
 - (a) documents which describe the identity, and, if possible, the nationality and location of the person sought;
 - (b) a statement of the laws describing the essential elements and the designation of the offence;
 - (c) a statement of the laws describing the punishment for the offence; and
 - (d) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence.
3. When the request for extradition relates to a person who has not yet been found guilty, it shall be accompanied by:
 - (a) a copy of the warrant of arrest or detention issued by a judge or other competent authority of the Requesting Party;
 - (b) information establishing that the person sought is the person to whom the warrant of arrest or detention refers; and
 - (c) a statement of the conduct alleged to constitute the offence such as would provide reasonable ground to suspect that the person sought has committed the offence for which extradition is requested.
4. When the request for extradition relates to a person found guilty, it shall be accompanied by:
 - (a) a copy of the judgement of finding guilt imposed by a court of the Requesting Party;
 - (b) information establishing that the person sought is the person found guilty; and
 - (c) a statement of the conduct constituting the offence for which the person was found guilty.
5. All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty

shall be accompanied by a translation in the language of the Requested Party or in the English language.

Article 9

Additional Information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted that Party may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.
3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 10

Provisional Arrest

1. In case of urgency a Party may request the provisional arrest of the person sought pending the presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Ministries of Justice of both Parties.
2. The application for provisional arrest shall be in writing and contain:
 - (a) a description of the person sought, including information concerning the person's nationality;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 - (d) a description of the laws violated;
 - (e) a statement of the existence of a warrant of arrest or detention, or a finding of guilt or judgment of conviction against the person sought; and
 - (f) a statement that a request for extradition for the person sought will follow.
3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the person claimed and the Requesting Party shall be promptly notified of the result.
4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 8, within forty five (45) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 11

Simplified Extradition

When a person sought advises a court or other competent authorities of the Requested Party that the person consents to an order for extradition being made, the Requested Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws.

Article 12

Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall consider all relevant factors, including but not limited to:

- (a) the nationality and the ordinary place of residence of the person sought;
- (b) whether the requests were made pursuant to treaty;
- (c) the time and place where each offence was committed;
- (d) the respective interests of the Requesting States;
- (e) the gravity of the offences;
- (f) the nationality of the victim;
- (g) the possibility of further extradition between the Requesting States; and
- (h) the respective dates of the requests.

Article 13

Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of a request for extradition.

2. Where possible under its law, the Requested Party shall surrender the person sought to the appropriate authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both Parties.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.

4. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender or removal, and the provisions of paragraph 3 of this Article shall apply.

Article 14

Surrender of Property

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death or escape of the person sought.

3. Where the law of the Requested Party or the protection of rights of third parties so requires, any property so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 15

Rule of Speciality

1. A person who has been extradited under this Treaty shall not be detained, prosecuted or tried for any offence committed before extradition other than that for which extradition has been granted, nor extradited to a third State for any offence, except in any of the following circumstances:

- (a) when that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;
- (b) when that person has not left the territory of the Requesting Party within forty-five (45) days after

being free to do so; or

(c) when the Requested Party consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 8 and a record of any statement made by the extradited person in respect of the offence concerned. Consent may be given when the offence for which it is requested is extraditable in accordance with the provisions of this Treaty.

2. Paragraph 1 of this Article shall not apply to offences committed after the extradition.

Article 16

Notification of the Results

The Requesting Party shall notify the Requested Party in time of the information relating to the proceeding against or the execution of punishment upon the person extradited or the re-extradition of that person to a third state.

Article 17

Transit

1. To the extent permitted by its law, transportation of a person surrendered to the other Party by a third State through the territory of either Party shall be authorized on request in writing made through the diplomatic channel.

2. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article.

Article 18

Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The Requested Party shall bear the cost incurred in its territory in connection with the seizure and surrender of property, or the arrest and detention of the person whose extradition is sought.

3. The Requesting Party shall bear the cost incurred in conveying the person whose extradition is granted from the territory of the Requested Party and the cost of transit.

Article 19

Consultation

The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.

Article 20

Entry into Force and Termination

1. This Treaty shall be subject to ratification. This Treaty shall enter into force upon the exchange of the instruments of ratification.

2. This Treaty shall apply to offences committed before as well as after the date it enters into force.

3. Either Party may terminate this Treaty by notice in writing at any time. Termination shall take effect six (6) months after the date on which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorized, by their receptive Governments have signed this Treaty.

DONE in duplicate at Ulaanbaatar on this 31st day of May 1999, in the Korean, Mongolian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA FOR MONGOLIA

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