

Signed at Seoul October 18, 2000  
Entered into force April 12, 2002

**TREATY ON EXTRADITION BETWEEN  
THE REPUBLIC OF KOREA AND THE PEOPLE ' S REPUBLIC OF CHINA**

The Republic of Korea and the People ' s Republic of China (hereinafter referred to as "the Parties"),

Desiring to make more effective the co-operation of the two countries in the prevention and suppression of crime, on the basis of mutual respect for sovereignty and equality and mutual benefit, by concluding a treaty on extradition,

Have agreed as follows:

**Article 1  
Obligation to Extradition**

Each Party undertakes, in accordance with the provisions of this Treaty and at the request of the other Party, to extradite to each other persons found in its territory and wanted by the other Party for the purpose of prosecution, trial or execution of punishment for an extraditable offence.

**Article 2  
Extraditable Offence**

1. For the purpose of this Treaty, extraditable offences are offences which, at the time of request, are punishable under the laws of both Parties by the penalty of imprisonment 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 the penalty of imprisonment by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months of the sentence remains to be served at the time when the request for extradition is made.
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 foreign exchange regulation of the same kind as the law of the Requesting Party.

5. 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 conditions set out in paragraph 1 or 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 Grounds for Refusal**

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 the extradition is requested is a political offence. Reference to a political offence shall not include 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/her family;
2. When the person sought has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which his/her extradition is requested;
3. When the person sought has, under the laws of either Party, become immune from prosecution or execution of sentence for any reason including lapse of time;
4. When the offence for which the extradition is requested is a military offence which does not constitute an ordinary offence;
5. When 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 sought on account of that person 's race, sex, religion, nationality or political opinion or that that person 's position may be prejudiced for any of those reasons.

### **Article 4**

#### **Discretionary Grounds for Refusal**

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

1. When the competent authorities of the Requested Party have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;
2. When a prosecution in respect of the offence for which extradition is requested is pending in the Requested Party against the person whose extradition is requested;
3. When the offence for which extradition is requested has been committed outside the territory of the Requesting Party and the law of the Requested Party does not provide for the jurisdiction over such an offence in similar circumstances;

4. When the offence for which extradition is requested is regarded under the law of the Requested Party as having been committed in whole or in part within that Party. Where extradition is refused on this ground, the Requested Party shall, if the other Party so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

5. When, 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.

## **Article 5**

### **Extradition of Nationals**

1. Each Party shall have the right to refuse extradition of its own nationals.
2. If extradition is not granted pursuant to paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, submit the case to its competent authorities for prosecution to the extent permitted by its law. For this purpose, the Requesting Party shall submit documents and evidence relating to the case to the Requested Party.

## **Article 6**

### **Channels of Communication**

For the purpose of this Treaty, the Parties shall communicate with each other through the diplomatic channels, unless otherwise provided for in this Treaty.

## **Article 7**

### **Request for Extradition and Required Documents**

1. A request for extradition shall be made in writing through diplomatic channels and shall include or be accompanied by:
  - (a) the name of the requesting authority;
  - (b) documents which are sufficient to establish the identity, the nationality and, if possible, the location of the person sought;
  - (c) a statement of the facts of the case;
  - (d) a statement of the laws describing the designation of the offence and the punishment for the offence; and
  - (e) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence.
2. When the request for extradition relates to a person who has not yet been found guilty, it shall be accompanied by a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting Party.
3. When the request for extradition relates to a person sentenced, it shall be accompanied by:

- (a) a copy of the final judgement by a court of the Requesting Party;
  - (b) a statement of period of sentence which has already been executed, if necessary.
4. All the documents submitted in support of a request for extradition shall be certified and accompanied by translations in the language of the Requested Party or in the English language.
5. A document is certified for the purpose of this Treaty, if:
- (a) it has been signed or certified by a judge or other officer of the Requesting Party; or
  - (b) it has been sealed by official seal of the competent authority of the Requesting Party.

## **Article 8**

### **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 forty-five days. At a due request by the Requesting Party, the time limit may be extended for fifteen days.
2. If the person whose extradition is sought is under arrest and the additional information required by the Requested Party is not received within the period referred in paragraph 1 of this Article, 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 of this Article, the Requested Party shall notify the Requesting Party as soon as possible.

## **Article 9**

### **Provisional Arrest**

1. In case of urgency, one Party may request the provisional arrest of the person sought to the other Party pending the receipt of the request for extradition. Such request shall be submitted in writing through the diplomatic channels or between the Ministry of Justice of the Republic of Korea and the competent authorities of the People 's Republic of China.
2. The request for provisional arrest shall contain the contents, as much as possible, indicated in paragraph 1 of Article 7 of this Treaty, a statement of the existence of documents indicated in paragraph 2 or 3 of that Article and a statement that formal request for extradition of the person sought will follow.
3. On receipt of such request, the Requested Party shall take necessary steps to secure the arrest of the person claimed, if granted.
4. The Requested Party shall promptly inform the Requesting Party of the result of its handling of the request.

5. Provisional arrest shall be terminated if, within a period of thirty days after the arrest of the person sought, the competent authority of the Requested Party has not received the formal request for extradition. At a due request by the Requesting Party, such time limit may be extended for fifteen days.

6. The termination of provisional arrest pursuant to paragraph 5 of this Article shall not prejudice the extradition of the person sought if the Requested party has subsequently received the formal request for extradition.

## **Article 10**

### **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, at its own discretion, 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) whether the requests were made pursuant to treaty;
- (b) the nationality and the ordinary place of residence of the person sought;
- (c) the time and place where each offence was committed;
- (d) the gravity of the offences;
- (e) the respective dates of requests.

## **Article 11**

### **Decision on the Request for Extradition**

1. The Requested Party shall deal with the request for extradition in accordance with the procedures provided for by its national law, and shall promptly inform the Requesting Party of its decision through the diplomatic channels.

2. If the Requested Party refuses the whole or any part of the request for extradition, the reasons for refusal shall be notified to the Requesting Party.

## **Article 12**

### **Surrender**

1. If the extradition has been granted by the Requested Party, 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. Meanwhile, the Requested Party shall inform the Requesting Party of the period of time for which the person to be extradited has been detained prior to the surrender.

2. 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.

3. 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 and location of surrender or removal, and the provision of paragraph 2 of this Article shall apply.

### **Article 13**

#### **Surrender of Property**

1. If the Requesting Party so requests, the Requested Party shall, to the extent permitted by its national law, seize the proceeds and instrumentality of the offence and other property which may serve as evidence found in its territory, and when extradition is granted, shall surrender this property to the Requesting Party.

2. When the extradition is granted, the property mentioned in paragraph 1 of this Article may nevertheless be surrendered even if the extradition can not be carried out owing to the death, disappearance or escape of the person sought.

3. The Requested Party may, for conducting any other pending prosecution or trial, postpone the surrender of above-mentioned property until the conclusion of such proceedings, or temporarily surrender that property on condition that it shall be returned by the Requesting Party.

4. The surrender of such property shall not prejudice any legitimate rights of the Requested Party or any third party to that property. Where these rights exist, the Requesting Party shall, at the request of the Requested Party, return the surrendered property without charge to the Requested Party as soon as possible after the conclusion of the proceedings.

### **Article 14**

#### **Postponed and Temporary Surrender**

1. If the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which the extradition is requested, the Requested Party may, after having made a decision to grant extradition, postpone the surrender until the conclusion of the proceedings or the service of the sentence. The Requested Party shall inform the Requesting Party of the postponement of the surrender.

2. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for purpose of prosecution to the Requesting Party in accordance with conditions to be determined between the Parties. The Requesting Party shall promptly return that person to the Requested Party upon conclusion of the relevant proceedings. A person who is returned to the Requested Party following a temporary surrender shall be finally surrendered to serve any sentence imposed in accordance with the provisions of this Treaty.

### **Article 15**

### **Rule of Speciality**

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting Party except for:

- (a) the offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided that such offence is extraditable, or is a lesser included offence;
- (b) an offence committed after the extradition of the person; or
- (c) an offence for which the Requested Party consents to the person's detention, trial, or punishment for an offence;

For the purpose of this subparagraph,

- (i) the Requested Party may require the submission of the documents called for in Article 7; and
- (ii) a legal record of statement made by the extradited person with respect to the offence, if any, shall be submitted to the Requested Party.

2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to his/her surrender unless the Requested Party consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

- (a) that person leaves the territory of the Requesting Party after extradition and voluntarily returns to it; or
- (b) that person does not leave the territory of the Requesting Party within forty-five days of the day on which that person is free to leave. However, this period of time shall not include the time during which that person fails to leave the territory of the Requesting Party for reasons beyond his/her control.

### **Article 16 Notification of the Results**

The Requesting Party shall notify the Requested Party in time of the information relating to the proceedings 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. Transportation of a person surrendered to either Party by a third State through the territory of the other Party shall, to the extent permitted by the law of the Party of transit, be authorized on request in writing made through the diplomatic channels.

2. Authorization for transit shall not be required when air transportation 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 for 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 Relationship with Other Treaties**

This Treaty shall not affect any right enjoyed and any obligation undertaken by the Parties under any other treaties.

## **Article 20 Consultation**

1. The Parties shall consult promptly, through diplomatic channels, at the request of either Party, concerning the interpretation, the application or the implementation of this Treaty.
2. The Ministry of Justice of the Republic of Korea and the competent authorities of the People's Republic of China may consult with each other directly in connection with the processing of individual cases.

## **Article 21 Entry into Force and Termination**

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Beijing. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
2. Either Party may terminate this Treaty by notice in writing through diplomatic channels at any time. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given. Termination of this Treaty shall not affect the extradition proceedings commenced prior to the termination.
3. This Treaty applies to any requests presented after its entry into force even if the relevant offences occurred before the entry into force of this Treaty.

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



DONE in duplicate at Seoul on this 18th day of October 2000, in the Korean, Chinese and English languages, all text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC  
OF KOREA

FOR THE PEOPLE ' S REPUBLIC  
OF CHINA