

N° 3354.

BRÉSIL ET SUISSE

Traité d'extradition. Signé à Rio-
de-Janeiro, le 23 juillet 1932.

BRAZIL AND SWITZERLAND

Extradition Treaty. Signed at Rio
de Janeiro, July 23, 1932.

TEXTE PORTUGAIS. — PORTUGUESE TEXT.

N^o 3354. — TRATADO¹ DE EXTRADIÇÃO ENTRE O BRAZIL E A SUISSA. ASSIGNADO EM RIO DE JANEIRO, EM 23 DE JULHO DE 1932.

French official text communicated by the Swiss Federal Council.

Portuguese official text communicated by the Government of the United States of Brazil.

The registration of this Treaty took place February 28, 1934.

O CONSELHO FEDERAL SUISSO e o CHEFE DO GOVERNO PROVISORIO DA REPUBLICA DOS ESTADOS UNIDOS DO BRASIL, animados do desejo de apoiar a causa da assistencia internacional contra o crime, resolveram celebrar um Tratado de Extradicação, e, para esse fim, nomearam seus Plenipotenciarios respectivos, a saber :

O CONSELHO FEDERAL SUISSO :

Ao Senhor Albert GERTSCH, Enviado Extraordinario e Ministro Plenipotenciario junto ao Governo dos Estados Unidos do Brasil ;

O CHEFE DO GOVERNO PROVISORIO DA REPUBLICA DOS ESTADOS UNIDOS DO BRASIL :

Ao Senhor Doutor Afranio DE MELLO FRANCO, Ministro das Relações Exteriores ;

Os quaes, depois de se haverem comunicado seus plenos poderes, achados em bõa e devida fórma, convieram nos artigos seguintes :

Artigo Primeiro.

As Partes contractantes obrigam-se a entregar, uma á outra, mediante pedido de accôrdo com as leis em vigor em cada um dos dois paizes e segundo as regras estabelecidas no presente Tratado, as pessoas accusadas ou condemnadas pelas autoridades competentes de um dos dois Estados, que se encontrarem no territorio do outro.

Artigo II.

Autorizam a extradicação os seguintes factos, quando puniveis pela lei do paiz requerido com pena de prisão de um anno ou mais :

1^o homicidio, comprehendidos o assassinato com ou sem violencia, o parricidio, o infanticidio, o envenenamento e o aborto voluntario ;

2^o lesões ou ferimentos voluntarios, que tenham causado a morte ou enfermidade duradoira, incapacidade permanente de trabalho ou mutilação grave de um dos membros ou órgãos do corpo ;

¹ The exchange of ratifications took place at Berne, January 24, 1934.

¹ TRADUCTION. — TRANSLATION.

No. 3354. — EXTRADITION TREATY BETWEEN BRAZIL AND SWITZERLAND. SIGNED AT RIO DE JANEIRO, JULY 23, 1932.

THE SWISS FEDERAL COUNCIL and THE HEAD OF THE PROVISIONAL GOVERNMENT OF THE REPUBLIC OF THE UNITED STATES OF BRAZIL, being desirous of promoting international assistance against crime, have resolved to conclude an Extradition Treaty and have appointed for this purpose as their respective Plenipotentiaries :

THE SWISS FEDERAL COUNCIL :

M. Albert GERTSCH, Envoy Extraordinary and Minister Plenipotentiary to the Government of the United States of Brazil ;

THE HEAD OF THE PROVISIONAL GOVERNMENT OF THE REPUBLIC OF THE UNITED STATES OF BRAZIL :

Dr. Afranio DE MELLO FRANCO, Minister for Foreign Affairs ;

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article I.

The Contracting Parties agree to surrender to one another, upon a request being made in accordance with the laws in force in each of the two countries and with the rules laid down in the present Treaty, persons charged or convicted by the competent authorities of one of the two States who are permanently or temporarily resident in the territory of the other State.

Article II.

Extradition shall be granted in respect of the following offences, provided that under the legislation of the country to which application is made the offence is punishable with one year's imprisonment or more :

- (1) Homicide, including murder, assassination, parricide, infanticide, poisoning, and wilful abortion ;
- (2) Malicious striking or wounding, resulting in death or permanent injury to health, permanent disability for work, or grievous injury to a limb or organ ;
- (3) Rape, indecent assault with violence, procuring, traffic in woman and children ;
- (4) Indecent assault, with or without violence, on a child of either sex under 14 years of age ;
- (5) Bigamy ;

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

- (6) Abduction or unlawful detention of persons, concealment of birth or substitution of children ;
- (7) Exposure or abandonment of children or helpless persons, kidnapping of minors ;
- (8) Counterfeiting or altering of coin or paper-money, banknotes or other credit notes in circulation as legal tender, or bonds or other scrip issued by the State or by corporations, companies or private individuals ; counterfeiting or altering postage stamps, dies, marks or seals of the State or public administrations ; fraudulent use of such counterfeit or altered objects, or their importation, issue or utterance with intent to defraud ; fraudulent or improper use of seals, stamps, or approved marks ;
- (9) Forgery of public or private documents, falsification of official documents or commercial papers of any kind ; fraudulent use of such forged or falsified documents ; abstraction of documents ;
- (10) Perjury, subornation of witnesses, or false swearing, in civil or criminal cases ;
- (11) Corruption of public officials ;
- (12) Embezzlement or malversation of public funds, peculation by officials or trustees ;
- (13) Arson ; improper use of explosives ;
- (14) Malicious acts resulting in the destruction of, or damage to, railways, steamships, mail vans, or electrical apparatus or conduits (telegraphs, telephones), or endangering their working ;
- (15) Robbery, extortion, larceny, receiving stolen goods ;
- (16) Piracy, malicious acts designed to sink, wreck, destroy, render unseaworthy or damage a vessel, when this may result in danger to another party ;
- (17) Obtaining money or goods by false pretences ;
- (18) Breach of trust and misappropriation ;
- (19) Fraudulent bankruptcy ;
- (20) Deliberate breach of the legal provisions concerning narcotic drugs.

The above-mentioned classes of offence shall include the committing of the offence, attempts to commit the offence or complicity in such acts, and instigating and abetting the commission of the same.

The enumeration of the above-mentioned offences shall not prevent either Contracting Party from demanding or granting to the other, on terms of reciprocity, the extradition of persons charged with or convicted of other offences, provided that the law of the State applied to contains no provision to the contrary.

Article III.

Extradition shall not be granted :

- (a) If the offence was committed in the territory of the State applied to ;
- (b) If the request for extradition is in respect of an offence for which the person in question has already been tried, sentenced or acquitted in the country applied to ;
- (c) If, under the laws of the country applied to or under those of the applicant country, immunity from prosecution or punishment has been acquired by prescription before the request for arrest or extradition reaches the Government of the State applied to ;
- (d) If the person claimed is to be brought before an extraordinary court or judge in the country making the application ;
- (e) If the offence is of a political or strictly military character or is an offence against religion or the press laws.

Nevertheless, the fact that a political object or motive is alleged shall not prevent extradition, if the act committed is primarily an offence at ordinary law.

In this case, and if extradition is granted, the surrender of the person claimed shall be conditional on an undertaking by the applicant State that the political object or motive will not entail any increase in the penalty. The authorities of the country to which application is made shall be the sole judges as to the character of the offence in each case.

Article IV.

The Contracting Parties shall not be obliged to surrender their own nationals.

In cases in which a national is not surrendered, the authorities of the country in which the offence was committed may, on producing proofs, notify the judicial authorities of the country of asylum, who shall then bring the accused before their own courts if their legislation so permits.

Proceedings shall not be opened in the country in which the offence notified was committed, if, in the country of origin, the person charged has been finally acquitted or convicted, and in the latter case if he has served his sentence or acquired immunity through prescription.

Article V.

A person whose extradition has been granted may only be proceeded against or punished for an offence committed prior to extradition and, in respect of which extradition has not been applied for, after the State applied to has consented to further proceedings being taken.

This restriction shall not apply if the accused expressly and freely agrees to be tried for other offences or if he does not leave the territory of the State to which he has been surrendered thirty days after he has been discharged or if he returns to the said territory after having left it.

The original or a certified copy of the declaration of consent mentioned above shall be forwarded to the other State.

The same provisions shall apply in case of re-extradition to a third State.

Article VI.

The Contracting Parties agree that if the penalty applicable to a person whose extradition is demanded is corporal punishment or death, extradition shall be granted only on condition that the country making the application undertakes to commute the said penalty to one of imprisonment.

Article VII.

The request for extradition shall be made through the diplomatic channel.

The request for extradition shall be accompanied by the original or a certified copy of the judgment in the case of a convicted person or of a decision to take proceedings under penal law or of a warrant of arrest issued by the competent judge or Public Prosecutor, giving documentary proof that penal proceedings against the accused have been opened and that provisional arrest is ordered under the legislation in force.

A document submitted in virtue of the previous paragraph shall contain a detailed statement of the offence which is charged; it shall also give the date and place at which the offence was committed, and shall quote the legal provisions which are or may be applied in the country making the request and those connected with prescription in respect of the penalty or of the legal proceedings.

The request for extradition shall further be accompanied by all information and documents necessary to establish the identity of the person claimed.

In the case of requests for the extradition of escaped prisoners, it shall be sufficient to submit a document issued by the competent administrative or judicial authority reproducing the sentence

and the penal provisions in virtue of which sentence was pronounced, the length of the term still to be served, the date and circumstances of the escape and such information as may be necessary to establish the identity of the person claimed.

It is desirable that requests for extradition and documents accompanying the same should be accompanied by a French translation, unless they were drawn up in that language.

The submission of the request for extradition through the diplomatic channel shall be regarded as sufficient proof of the authenticity of the documents presented, which shall be treated as if they had been legally certified.

Article VIII.

In urgent cases, either Contracting Party may demand of the other direct by post or telegraph or through its diplomatic or consular representatives in the State applied to the provisional arrest of the accused and the confiscation of the objects connected with the offence.

The application must certify the existence of one of the documents enumerated in paragraph 2 of the preceding Article and state which of the offences mentioned in the present Treaty has been committed.

The provisional arrest shall be effected in accordance with the formalities and rules established by the legislation of the country applied to ; if the country applied to has not received the formal request for extradition accompanied by the documents mentioned in Article VII, paragraph 2, within sixty days from the date on which the arrest was effected, the person arrested shall be released, unless there be some other reason for maintaining the arrest.

Article IX.

If the person claimed is being proceeded against or is serving a sentence for another offence committed in the country of asylum, extradition may be granted, but the person claimed shall only be surrendered after he has complied with all the requirements of criminal justice in the State applied to.

Article X.

If the person whose extradition is applied for under the present Treaty is also claimed by one or more other Governments, the procedure shall be as follows :

(a) If extradition is requested in respect of the same offence, preference shall be given to the application from the country on whose territory the offence was committed ;

(b) In the case of different offences, preference shall be given to the application which in the opinion of the State applied to relates to the offence punishable with the heaviest sentence ;

(c) In the case of offences which the State applied to considers equally serious, preference shall be given to the application submitted first.

In the case of (b) and (c), the State applied to may, when granting extradition, make it conditional on the person claimed being re-extradited later.

Article XI.

If extradition is granted, the person claimed shall be placed at the disposal of the representative of the applicant State for surrender to the latter State.

If within twenty days as from the date on which notification was given for this purpose the said representative has not arranged for the conveyance of the person claimed, the latter shall be set free and may not be re-arrested on the grounds adduced in support of the request for extradition.

Article XII.

The surrender of the accused may be postponed without prejudice to his extradition if for any unavoidable reason he cannot be conveyed to the other State within the period mentioned in paragraph 2 of the present Article.

Article XIII.

All articles, monies or securities and documents connected with the offence that gave rise to the request for extradition and which were at the time of arrest found in the possession of the person claimed, in his baggage or at his domicile, shall be seized and surrendered to the representative of the applicant State at the same time as the accused.

The foregoing provision shall apply to all articles of the same nature discovered later.

Articles and monies or securities of the above-mentioned nature in the possession of third parties shall also be seized ; they shall be surrendered to the applicant State, provided that the State applied to is entitled by its own legislation to assume possession thereof.

In all cases, the rights of third parties shall be reserved.

Articles and monies or securities shall be surrendered even if extradition cannot take place by reason of the escape or death of the accused or of any other event preventing extradition.

Article XIV.

A person who, after having been surrendered to the applicant State, absconds and again takes refuge in the territory of the State applied to or passes through it, shall be held in custody upon diplomatic or consular application being made and shall be handed over again without further formality.

Article XV.

The conveyance in transit through the territory of one of the Contracting Parties of a person extradited by a third State to the other Party shall be permitted on the simple presentation through the diplomatic channel of the original or a certified copy of one of the documents mentioned in Article VII, paragraph 2, of the present Treaty, provided that the accused is not a national of the country of transit and that the offence for which extradition is granted is covered by the present Treaty and is not included among the exceptions enumerated in Article III.

Such conveyance in transit shall be effected under the supervision of the authorities of the country of transit and at the expense of the applicant State.

Article XVI.

The expenses occasioned by the detention, maintenance and conveyance of the person claimed and by the safe keeping and transport of the objects and moneys or securities to be handed over, shall be borne by the two States within the limits of their respective territories.

The transport and other expenses in the territory of intermediate States shall be borne by the applicant State.

Any expense resulting from the extradition proceedings shall be borne by the State to which application is made.

Article XVII.

If, in a criminal case concerning an offence which may give rise to extradition under the present Treaty, it should be found necessary to take evidence from or subpoena witnesses residing in or

passing through the territory of one of the Contracting Parties, or should any other measures of investigation be necessary, the other Party may send for this purpose through the diplomatic channel letters rogatory issued by the competent authority and accompanied by a French translation when not drawn up in that language.

The Contracting Parties hereby renounce any claim to the reimbursement of costs resulting from the execution of letters rogatory, save in the case of criminal, commercial or medico-legal expert evidence.

Article XVIII.

The present Treaty shall be ratified and the ratifications shall be exchanged at Berne as soon as possible.

The Treaty shall come into force one month after the exchange of ratifications and shall remain in force six months after denunciation, which may take place at any time.

The Treaty shall be drawn up in French and Portuguese, and the two texts shall be equally authentic.

In faith whereof the above-mentioned Plenipotentiaries have signed the present Act and have affixed thereto their seals.

Done at Rio de Janeiro on July twenty-third, one thousand nine hundred and thirty-two.

(L. S.) (*Signed*) Albert GERTSCH.

(L. S.) (*Signed*) Afranio DE MELLO FRANCO.