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**BRAZIL
and
ARGENTINA**

**Treaty on extradition. Signed at Buenos Aires on
15 November 1961**

Authentic texts : Portuguese and Spanish.

Registered by Brazil on 22 February 1969.

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et
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**Traité d'extradition. Signé à Buenos Aires le
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Enregistré par le Brésil le 22 février 1969.

[TRANSLATION — TRADUCTION]

TREATY OF EXTRADITION¹ BETWEEN BRAZIL AND ARGENTINA

The President of the Republic of the United States of Brazil and the President of the Republic of Argentina, desiring to render more effective the collaboration of their respective countries in combating crime, have decided to conclude an Extradition Treaty and for that purpose have appointed as their Plenipotentiaries :

The President of the Republic of the United States of Brazil : Mr. Francisco Clementino de San Tiago Dantas, Brazilian Minister for Foreign Affairs ;

The President of the Republic of Argentina : Mr. Miguel Angel Cárcano, Argentine Minister for Foreign Affairs and Worship ;

who, having exchanged their full powers, found in good and due form, have agreed as follows :

Article I

The High Contracting Parties undertake, in conformity with the present Treaty and with the laws in force in the State to which application is made, to surrender to each other any persons who are being proceeded against or have been convicted by the judicial authorities of one of the Parties and who are in the territory of the other Party.

1. However, should the person in question be a national of the State to which application is made, the said State shall not be obliged to surrender him. In such cases, where extradition has been refused, the person shall be proceeded against and tried in the State to which application is made for the act which gave rise to the application for extradition, unless such act is not punishable under the laws of that State.

2. In such cases the applicant Government shall supply the necessary evidence for the prosecution and trial of the accused and it shall be incumbent upon the other Government to communicate to it the final sentence or decision in respect of the case.

3. The status of national shall be determined by the laws of the State to which application is made.

¹ Came into force on 7 July 1968 by the exchange of the instruments of ratification, which took place in Rio de Janeiro, in accordance with article XX.

Article II

Extradition shall be granted in respect of offences which, under the laws of the State to which application is made, are punishable by imprisonment of two years or more, and may be granted not only in respect of persons committing the offence and their accomplices, but also in cases where there have been attempts to commit an offence and complicity in the said offence.

1. In the case of a conviction by default, extradition may be granted if the applicant State undertakes to reopen the proceedings so as to enable the convicted person to be defended.

Article III

Extradition shall not be granted ;

- (a) When the State to which application is made is competent under its own laws to try the offence ;
- (b) When the accused has already been or is being tried for the same offence in the State to which application is made, or has been granted amnesty or pardon in the applicant State or in the State to which application is made ;
- (c) When proceedings or punishment are barred by reason of time limitation under the laws of the applicant State or of the State to which application is made ;
- (d) When the person whose extradition is applied for is to be brought before an extraordinary court or judge in the applicant State ;
- (e) When the offence in respect of which extradition is applied for is of a strictly military or religious character, or constitutes a political offence or an act related to a political offence ; however, an attack on the person of a foreign Head of State or on members of his family shall not be regarded as a political offence, or an act related to a political offence, if the attack constitutes homicide, even if it is unsuccessful for reasons beyond the will of the person attempting to perpetrate it.

1. The authorities of the State to which application is made shall be the sole judges of the character of the offence in each case.

2. The fact that a political motive or object is alleged shall not prevent extradition if the act committed is primarily an offence under ordinary law.

3. In such case, the granting of extradition shall be subject to an undertaking by the applicant State that the political object or motive will not entail any increase in the penalty.

4. For the purposes of this Treaty, breaches of the law involving acts or actions not covered by ordinary law and which derive solely from special legislation applying to military personnel and designed to ensure order and discipline in the armed forces shall not be regarded as strictly military offences.

Article IV

The application for extradition shall be made through the diplomatic channel, or in exceptional cases, in the absence of diplomatic representatives, direct, that is to say, from Government to Government. Extradition shall be granted on presentation of the following documents, duly translated :

- (a) In the case of a person merely accused of an offence : the original or a certified copy of the warrant of arrest or equivalent document of criminal procedure issued by the competent foreign authority ;
- (b) In the case of convicted persons : the original or a certified copy of the sentence.

1. Such papers must contain an exact description of the charge and indicate the date and place at which the offence was committed, and must be accompanied by a copy of the texts of the laws applicable to the case in question, together with the data or records necessary to establish the identity of the person whose extradition is applied for.

2. Presentation of an application for extradition through the diplomatic channel shall constitute sufficient proof of the authenticity of the documents submitted for that purpose, which shall thus be deemed to have been certified.

Article V

The person whose extradition is applied for by either Contracting Party shall be entitled to all legal recourses and rights authorized by the legislation of the State to which application is made. The person sought shall be assisted by defence counsel and, where necessary, by an interpreter.

Article VI

Whenever they consider it desirable, the Contracting Parties may request one another, through their respective diplomatic representatives or, in their absence, direct from Government to Government, to place the accused under preventive detention and to seize objects relating to the offence.

1. Such requests shall be complied with provided they include a statement of the existence of one of the documents listed in paragraphs (a)

and (b) of article IV and indicate that the offence committed gives rise to extradition under the present Treaty.

2. In such cases if, within a period not exceeding forty-five days from the date on which the State to which application is made received the request for preventive detention of the accused, the applicant State fails to make an official application for extradition accompanied by the necessary official papers, the accused shall be released and a further request for his detention for the same offence shall only be accepted together with the official application for extradition accompanied by the documents referred to in article IV.

Article VII

Once extradition has been granted, the State to which application is made shall immediately notify the applicant State that the person to be extradited is at its disposal.

1. If within thirty days of the date of such communication the person in question has not been handed over, the State to which application is made shall release him and shall not arrest him again for the same offence.

Article VIII

The applicant State may send to the State to which application is made, with the previous consent of the latter, duly authorized agents either to assist in establishing the identity of the person to be extradited or to conduct him to the territory of the applicant State. These agents may not exercise authority in the territory of the State to which application is made and shall be subordinate to the authorities of that State. Their expenses shall be defrayed by the Government responsible for sending them.

Article IX

The handing over of a person whose extradition is applied for shall be postponed, without prejudice to the validity of the order for his extradition, if he becomes so seriously ill as to be unable to travel without endangering his life or if he is liable to prosecution in the State to which application is made for another offence. In the latter case, if the person is being proceeded against, his extradition may be postponed until the case is concluded and, in the event of conviction, until the sentence has been served.

Article X

Should the extradition of a person be refused, no further application in respect of the same offence may be made.

1. Nevertheless, if the application for extradition was rejected for reasons of incorrect form and with the express reservation that the application may be renewed, the documents in the case shall be returned to the applicant State together with a statement giving the reasons for the refusal to grant extradition and mentioning the reservation made.

2. In such a case, the applicant State may renew its application, always provided that it is drawn up in due form, within a period of forty-five days, no extension of this period being allowed, from the date on which, either directly or through its diplomatic representative, it has received the communication in which its application is rejected.

Article XI

When the extradition of a person is applied for by several States, the procedure shall be as follows :

(a) If the applications relate to the same offence, preference shall be given to the State in whose territory the offence was committed ;

(b) If there are several offences, preference shall be given to the State in whose territory the State to which application is made holds that the most serious offence has been committed ;

(c) If there are several offences which the State to which application is made considers to be of equal gravity, preference shall be given to the application which was received first.

Article XII

Allowing for the rights of third persons, which shall be duly respected, and subject to compliance with the laws in force in the territory of the State to which application is made, all objects, securities or documents connected with the offence and found at the moment of arrest in the possession of the person whose extradition is applied for shall be handed over to the applicant State with the said person.

1. Objects or securities found in the possession of third parties and also connected with the offence shall likewise be seized, but they shall be handed over only after any objections raised by those concerned have been dealt with.

2. Save for the exceptions stated above, the said objects, securities or documents shall be handed over to the applicant State even if extradition has been granted but cannot be carried out by reason of the escape or death of the accused.

Article XIII

The expenses arising out of an application for extradition shall be defrayed by the State to which application is made up to the time when the accused is handed over to guards or agents duly accredited by the applicant Government in the port or at the frontier point of the State to which application is made, as indicated by the Government of that State ; expenditure subsequent to such handing over, including the cost of conveyance in transit, shall be defrayed by the applicant State.

Article XIV

A person handed over under the present Treaty may not be proceeded against or tried in respect of any offence committed prior to the application for extradition, nor may he be handed over to a third country claiming him, unless the State to which application is made consents thereto or unless the person himself agrees, expressly and freely, to be proceeded against and tried in respect of another offence, or unless, after his release, he voluntarily remains in the territory of the applicant State for more than thirty days after the date of his release.

1. In the latter case, the extradited person shall be advised of the possible consequences of his decision to remain in the territory of the State in which he was tried beyond the above-mentioned period.

Article XV

The conveyance in transit through the territory of one of the High Contracting Parties of a person handed over by a third State to the other party and who is not a national of the country of transit shall be permitted, without any legal formality, on a simple request made through the diplomatic channel and accompanied by the original or a certified copy of the document by which the State of refuge granted extradition.

1. Such conveyance in transit may be refused for serious reasons connected with public order or if the act which determined the extradition is an act which, under this Treaty, does not warrant extradition.

Article XVI

A person who, after having been handed over by one of the Contracting States to the other, escapes from justice and takes refuge in the territory of the State to which application is made, or passes through it in transit, shall be arrested on a simple request, made through the diplomatic channel or direct from Government to Government, and handed over again without further formality to the applicant State whose request for his extradition was originally granted.

Article XVII

When the offence giving rise to the application for extradition is punishable by death or corporal punishment under the laws of the applicant State, the Government to which application is made may, before granting extradition, require the applicant Government to provide a guarantee, through diplomatic channels, that in the event of a sentence carrying either of these penalties the sentence will not be carried out.

Article XVIII

If, in the case which gave rise to the application for extradition, the accused person is found not guilty, the State which obtained the extradition shall communicate the final verdict to the State granting extradition.

Article XIX

Any dispute between the High Contracting Parties regarding the interpretation or execution of this Treaty shall be settled by peaceful means recognized in international law.

Article XX

The present Treaty shall be ratified after the customary legal formalities in each of the Contracting States have been complied with, and shall come into force upon the exchange of the instruments of ratification, which shall take place at Rio de Janeiro as soon as possible.

Either High Contracting Party may denounce it at any time, but it shall only cease to have effect one year after denunciation.

IN FAITH WHEREOF the above-mentioned Plenipotentiaries have signed the present Treaty in duplicate Portuguese and Spanish texts, both texts being equally authentic, and have thereto affixed their seals, at Buenos Aires on 15 November 1961.

For the Government
of the Republic of Argentina :

Miguel Angel CÁRCANO
Minister for Foreign Affairs
and Worship

For the Government
of the United States of Brazil :

Francisco C. SAN TIAGO DANTAS
Minister for Foreign Affairs