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**BRAZIL
and
URUGUAY**

Treaty on the extradition of criminals. Signed at Rio de Janeiro on 27 December 1916

Authentic texts: Portuguese and Spanish.

Filed and recorded at the request of Brazil on 16 December 1976.

**BRÉSIL
et
URUGUAY**

Traité relatif à l'extradition des criminels. Signé à Rio de Janeiro le 27 décembre 1916

Textes authentiques : portugais et espagnol.

Classé et inscrit au répertoire à la demande du Brésil le 16 décembre 1976.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE REPUBLIC OF THE UNITED STATES OF BRAZIL AND THE EASTERN REPUBLIC OF URUGUAY ON THE EXTRADITION OF CRIMINALS

His Excellency the President of the Republic of the United States of Brazil and His Excellency the President of the Eastern Republic of Uruguay, in the interest of facilitating and ensuring the effective and speedy operation of justice in the territory of the two countries, have decided to conclude a treaty on the extradition of criminals and, for that purpose, have appointed as their plenipotentiaries:

His Excellency the President of the Republic of the United States of Brazil: Brigadier-General Lauro Müller, Minister for Foreign Affairs of Brazil; and

His Excellency the President of the Republic of Uruguay: Dr. Baltasar Brum, Minister for Foreign Affairs of Uruguay;

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

Article 1

The High Contracting Parties shall surrender to each other offenders who are passing through or are fugitives in their respective territories, under the following conditions:

- (a) the applicant party must be competent to prosecute and try the offence giving rise to the application;
- (b) the offence, whether committed before or after the conclusion of this Treaty, must be an offence under ordinary law;
- (c) the criminal must already have been prosecuted or convicted as a principal, co-principal or accessory;
- (d) the penalty imposed or to be imposed under the laws of the country to which application is made must be not less than one year's imprisonment, for both accused and convicted persons;
- (e) the applicant party must present documents which, under its laws and the laws of the party to which application is made, establish the criminality of the person whose extradition is sought or justify a single trial.

The foregoing subparagraphs shall also apply to attempts to commit offences in respect of which extradition may be granted.

Article 2

Extradition shall not be granted:

- (a) when proceedings or punishment are barred by reason of time limitation under the laws of the applicant State, or when the accused has already been tried in the

¹ Came into force on 21 January 1919, i.e., 10 days after the date of the exchange of the instruments of ratification, which took place at Rio de Janeiro on 11 January 1919, in accordance with article 19.

On 7 December 1921, at Montevideo, the Parties concluded an Additional Protocol to the Treaty for the Extradition of Criminals of 27 December 1916. The said Additional Protocol, which entered into force on 20 November 1926, was registered with the Secretariat of the League of Nations under number 1492 and published in League of Nations, *Treaty Series*, vol. LXIII, p. 223.

applicant State or in the State to which application is made for the same offence in respect of which the application is made;

- (b) when the subject of the application is a national of either country by birth or by naturalization obtained before the commission of the offence; in such cases, however, the authorities of the country in which the offence was committed may report it to the judicial authorities of the country of refuge, providing particulars and evidence, and the latter authorities shall, to the extent possible, apply their own laws to the perpetrator of the offence so reported;
- (c) in the case of military or political offences, offences against religion or the press laws, or related offences;
- (d) when the accused would have to appear in the applicant State before a special tribunal or court.

Sole paragraph. The fact that a political object or motive is alleged shall not prevent extradition if the act committed is primarily an offence under criminal law. The country to which application is made shall in each case determine the nature of the offence.

Article 3

In urgent cases, the signatory Governments may request, by means of a communication transmitted by post or by telegraph, that administrative action should be taken to detain the accused in custody and to seize the objects connected with the offence; the request shall be granted provided that reference is made to the existence of a sentence or the nature of the offence for which the accused is to be punished or prosecuted is clearly stated in the committal decision. Detention in custody shall be effected in the manner and in accordance with the regulations laid down in the legislation of the State to which application is made and shall be terminated if, within 60 days from the date of the detention, the documents referred to in the following article have not been submitted to the country to which application is made.

Article 4

Applications for detention in custody and extradition shall be made direct from Government to Government, or through their respective diplomatic agents, and shall be accompanied by the following documents:

- (a) in the case of persons charged with an offence, in order to justify detention in custody, at least a certified copy of the arrest warrant or committal decision where the individual was caught *in flagrante delicto*;
- (b) in the case of persons tried for an offence, a certified copy of the sentence or a record of the criminal proceedings issued by the competent judge, containing an exact description of the offence giving rise to the application, the place and date of its commission, and a copy of the text of the criminal law applicable to the case in question;
- (c) in the case of persons convicted of an offence, a certified copy of the final sentence, together with the information mentioned above;
- (d) in the case of escaped prisoners, it shall be sufficient, in order to obtain extradition, to present a document issued by the competent administrative or judicial authority reproducing the sentence and the court's notice of conviction to that authority, the amount of the sentence remaining to be served, the date and circumstances of the escape, a copy of the legal provisions on which the convic-

tion was based and particulars concerning the identity of the person whose extradition is sought;

- (e) wherever possible, the aforementioned documents shall be accompanied by a photograph of the individual sought, a record of his fingerprints or a description of his distinguishing features;
- (f) presentation of an application from Government to Government or through the diplomatic channel shall constitute sufficient proof of the authenticity of the documents relating to the extradition;
- (g) in all cases of detention in custody, the liabilities involved shall be borne by the Government which requested the detention.

Sole paragraph. In no case shall a request for surrender of the offender to the applicant State be granted before the documents necessary for the purpose have been submitted.

Article 5

If the escaped prisoner is liable to corporal punishment or the death penalty under the laws of the applicant State, extradition shall be granted on condition that the penalty shall be commuted to one of imprisonment by the competent authorities.

Article 6

In addition to cases in which the person whose extradition is sought has died or the applicant Government has withdrawn its application, detention in custody and extradition already granted shall be without effect in the following cases:

- (a) if, within 60 days from the date of detention of the person whose extradition is sought, the applicant State has not presented, in due form, the documents substantiating its application for extradition;
- (b) if the offender, having been placed at the disposal of the applicant State or its Mission or Consulate, is not transported within 20 days from the date of notification thereof;
- (c) if the prisoner applies for and obtains a writ of *habeas corpus* in Brazil or an order of release in Uruguay.

Sole paragraph. In any of the aforementioned cases, a person who is released shall not be arrested again for the same offence in respect of which his extradition was requested.

Article 7

The surrender of a person whose extradition is sought shall be postponed, without prejudice to the validity of the consent to the extradition:

- (a) during *habeas corpus* proceedings;
- (b) if he becomes so seriously ill after being detained that he cannot be transported to the applicant country without danger to his life;
- (c) if he is liable to criminal prosecution in the State to which application is made.

Article 8

Should an application for extradition made by one of the Contracting Parties be considered inadmissible by the other Contracting Party because of a defect of form or the inadequacy of the documents presented, the documents concerned shall be returned, together with a statement of the reasons preventing further action. In such a case, a new application in due form may be made, without prejudice to the liberty of the offender, unless the competent authorities decide otherwise.

Article 9

The processing of the application for extradition, the assessment of its admissibility and the acceptance of and decisions on objections which may be raised against it by the offender whose extradition is sought shall be the responsibility of the competent authorities of the country of refuge, which shall proceed in accordance with the legal provisions and practices applicable in that country. Fugitives shall be entitled to invoke the remedies of bail or *habeas corpus* in the circumstances and in accordance with the procedures determined by law in the State to which application is made.

Article 10

Persons who have been extradited shall not be tried or punished for political offences or related acts committed prior to extradition. They may, subject to free and express consent, be prosecuted and tried for ordinary offences in respect of which extradition may be granted in accordance with this Treaty other than the offence in respect of which extradition has already been granted; they may not, however, be surrendered to a third party which seeks their extradition unless the State to which application is made so agrees. Such agreement shall not be necessary if, after being acquitted or serving their sentence, the persons concerned remain of their own volition for more than one month in the territory of the applicant State.

Article 11

If the extradition of the same individual is requested simultaneously by one of the High Contracting Parties and by another State or States, the Government to which application is made shall be free to decide to which country extradition will be granted and shall set out the reasons for its decision in a note.

Article 12

An offender who, having been surrendered to the applicant State and while being prosecuted or tried, escapes from justice and again takes refuge in the territory of the State to which application was made, or passes through it in transit, shall be arrested on a request made direct from Government to Government or through the diplomatic channel, and surrendered again without further formality.

Article 13

Offenders to be extradited shall be embarked and surrendered in Brazil, at the port of Rio de Janeiro and, in Uruguay, at the port of Montevideo, unless otherwise agreed in individual cases; the State to which application is made may, however, on the request of the applicant State, send one or more of its security agents or law enforcement agents, whether of the military or the police force, for the purpose of escorting the offender to his destination. In such a case, the applicant State shall bear the travel costs of such agents for the outward and inward journeys.

Article 14

The costs of detention, subsistence and transport of persons whose extradition has been granted, and the costs of dispatching and transporting objects which, in accordance with article 15, must be handed over or returned, shall be met by the States within the limits of their respective territories. Transport and other costs incurred in the territory of third States shall be met by the applicant State.

Article 15

Any objects, valuables or documents having a bearing on the case which are found in the possession of the offender at the time of arrest or among his belongings shall be seized and handed over, together with the offender, to the applicant State. Objects or valuables in the possession of third parties shall also be seized, but shall not be handed over to the applicant State until a decision has been taken on any objections raised by such parties.

Article 16

The High Contracting Parties shall authorize the transit in custody through their territories or waters of offenders surrendered by a third party to the other Contracting Party, except where a national of the country of transit or an offence not covered by this Treaty is involved. For that purpose, it shall be sufficient to provide notification of the offence giving rise to the extradition and a copy of the arrest warrant.

Article 17

The signatory countries shall inform each other of, and revise whenever they deem appropriate, the telegraphic codes intended to facilitate confidentiality in urgent communications concerning the preventive surveillance of offenders whose extradition has been requested.

Article 18

Where appropriate for the success of investigations aimed at locating and arresting offenders whose extradition is requested, police officers and even approved private investigators may, subject to prior authorization, be sent from one country to another; such agents shall limit their activities to establishing the identity of the offender and shall be subordinate to the agents or authorities of the territory to which application is made or those of the territory of transit.

Article 19

This Treaty shall remain in force indefinitely and shall cease to have any effect one year after either High Contracting Party denounces it to the other.

This Treaty shall be approved and ratified in accordance with the Constitution and laws of each of the Contracting States and shall enter into force 10 days after the exchange of the instruments of ratification, which shall take place in Rio de Janeiro or in Montevideo as soon as possible.

IN WITNESS WHEREOF, the above-mentioned plenipotentiaries have signed this Treaty in duplicate, in the Portuguese and Spanish languages, and have thereto affixed their seals.

DONE at Rio de Janeiro on 27 December 1916.

LAURO MÜLLER
BALTASAR BRUM
