

**No. 757**

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**BRAZIL  
and  
PERU**

**Treaty on the extradition of criminals. Signed at Rio de Janeiro on 13 February 1919**

*Authentic texts: Portuguese and Spanish.*

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

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**BRÉSIL  
et  
PÉROU**

**Traité relatif à l'extradition des criminels. Signé à Rio de Janeiro le 13 février 1919**

*Textes authentiques : portugais et espagnol.*

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

[TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> BETWEEN THE REPUBLIC OF THE UNITED STATES OF BRAZIL AND THE REPUBLIC OF PERU ON THE EXTRADITION OF CRIMINALS

The Governments of Brazil and Peru, having decided to conclude a treaty regulating the extradition of criminals, have for that purpose appointed as their plenipotentiaries:

His Excellency the Vice-President of the Republic of the United States of Brazil: Mr. Domicio da Gama, Minister for Foreign Affairs of Brazil; and

His Excellency the President of the Republic of Peru: Mr. Felipe de Osma y Pardo, Envoy Extraordinary and Minister Plenipotentiary of Peru to Brazil;

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

*Article I.* The two High Contracting Parties undertake to surrender to each other offenders of any nationality, including their own nationals who have taken refuge in or are in transit through their respective territories, provided that:

1. the applicant State has jurisdiction to try and render judgment on the offence giving rise to the application;
2. the applicant State submits documents constituting evidence, under its laws, that an order for detention in custody was issued by a competent judge before or after the accused was charged and prosecuted, or documents certifying that a competent court has pronounced a sentence;
3. proceedings or punishment are not barred by reason of time limitation under the laws of the applicant State;
4. the accused has not already been sentenced for the same offence and has not served the sentence in either of the two countries; and
5. the accused does not have to appear before any special court or judge in the applicant State.

*Article II.* Extradition shall be granted in respect of any offence—including any attempt to commit the offence and complicity in the same—which, under the law of the State to which application is made, carries a penalty of at least one year's imprisonment.

*Article III.* Persons who are presumed or who have been found to have committed purely military offences, in other words offences which are not analogous to offences against the ordinary law, offences against the press laws and offences against freedom of religion, shall not be subject to extradition. However, persons accused of committing offences against the ordinary law which are related to those referred to in this article shall be subject to extradition.

*Article IV.* Extradition shall not be granted in respect of purely political offences. Nor shall extradition be granted in respect of offences combined with or

<sup>1</sup> Came into force on 22 May 1922 by the exchange of the instruments of ratification, which took place at Lima, in accordance with article XX.

related to political offences unless they are very serious offences against morality and the ordinary law, such as murder, homicide, poisoning, mutilation, serious injury inflicted wilfully and with premeditation, or attempts to commit such crimes, attacks on public or private property by means of arson, use of explosives or flooding, and robbery, particularly armed robbery and robbery with violence.

Acts committed during an insurrection or civil war by any of the parties involved in the conflict in furtherance of their cause shall not give rise to extradition unless they constitute acts of cruelty and vandalism prohibited by the rules of war, and then only once the insurrection or civil war is over.

For the purposes of the application of the above rules, criminal or anarchistic acts directed against the foundations of any society shall not be considered political offences.

The nature of the offence shall be determined by the State to which application is made.

*Article V.* Persons who have been extradited shall not be tried or punished for political offences committed prior to extradition, or for related offences under ordinary law. However, they may be tried and sentenced, with the prior consent of the State to which application is made, in accordance with this treaty, for an offence which, although constituting grounds for extradition, is not the offence in respect of which the extradition was granted.

*Article VI.* When pursuant to a treaty, a request is made by another State or by other States for the surrender of the same individual for the same offence, preference shall be given to the request of the country where the offence was committed. If several offences are involved, the request of the country in which was committed the offence considered to be the most serious one by the State to which application is made, shall be granted. If all the offences are considered to be of equal gravity, preference shall be given to the State which requested the extradition first. If all the requests bear the same date, the State to which application is made shall determine to which State surrender shall be made.

*Article VII.* When the penalty which is to be, or which has been, imposed is the death penalty or corporal punishment, the State to which application is made shall grant the extradition on condition that penalty is commuted to one of imprisonment.

*Article VIII.* Surrender of the accused may not be postponed on the grounds that he is liable to criminal prosecution by the State to which application is made if the offence committed in the latter State was committed after the request for his apprehension was submitted or if the penalty applicable is lighter than that applicable to the offence in respect of which extradition is sought. In any event, the extradition proceedings shall continue.

*Article IX.* Applications for extradition shall be made by diplomatic agents or, in the absence of such agents, direct from Government to Government, and shall be accompanied by the following documents:

- (a) in the case of persons charged with an offence: a certified copy of the criminal law applicable to the offence for which extradition is sought and of the relevant judicial documents referred to in article I, paragraph 2;

(b) in the case of persons convicted of an offence: a certified copy of the sentence together with a certified copy of documents showing that the accused has been summoned to and represented in court or that judgement by default has been pronounced against him.

*Article X.* When one of the contracting Governments deems the case to be urgent it may request, by post or by telegraph or through its diplomatic agent, that steps should be taken to detain the accused in custody and to seize the objects connected with the offence, indicating the existence of a sentence or arrest warrant or of a committal decision, where the individual was caught *in flagrante delicto*.

If, within 60 days from the date on which the accused was detained in custody, the Government to which application has been made has not received the application for extradition in due form or if, within 20 days from the date of the communication addressed to the applicant Government informing it that the accused is at its disposal, the latter's agents have not presented themselves at the place appointed for the surrender of the prisoner, the latter shall be released.

*Article XI.* If the Government to which application is made considers that the application for extradition is inadmissible because of a defect of form, it shall return the documents it has received, stating the reasons for which it cannot accede to the request.

*Article XII.* A refugee who is arrested shall be informed within 24 hours of the reasons for his arrest; he may avail himself of the right granted to him in the following article.

*Article XIII.* The processing of the application for extradition, the assessment of its admissibility and the acceptance of and decisions on objections that may be raised against it by the accused person or fugitive shall be the responsibility of the authorities of the country of refuge, which shall proceed in accordance with the relevant established legal provisions and practices of that country. The right of the accused person or fugitive, as the case may be, to invoke the remedy of *habeas corpus* or the remedy of protection (*amparo*) of his individual rights shall therefore be guaranteed.

*Article XIV.* The objects connected with the offence giving use to extradition which are found in the possession of the accused shall be handed over to the State to which surrender is made. Objects in the possession of third parties shall be seized but shall not be surrendered until the persons having possession have been heard and a decision has been taken on any objections they may raise.

*Article XV.* When the prisoner to be surrendered is to be transported by land, it shall be the responsibility of the State to which application is made to convey the accused to the most convenient point on its frontier.

When the prisoner is to be transported by sea or by river, he shall be surrendered to agents designated by the applicant State at the most convenient port of embarkation in the State to which application is made.

The applicant State may send one or more security agents or law enforcement agents, whether of the military or of the police force; they shall, however, be subordinate in their activities to the agents or authorities of the State to which application is made or those of the territory of transit.

*Article XVI.* When, in order for one of the High Contracting Parties to surrender a prisoner to the other, it is necessary to pass through a third country, authorization for transit shall be requested through the diplomatic channel by the applicant State, which shall present the extradition order issued by the Government that granted the extradition. If authorized, the transit shall be regulated by the final provisions of the preceding article, and the costs shall be borne by the applicant Government.

*Article XVII.* The expenses of the extradition incurred up to the time that the prisoner is surrendered shall be borne by the Government to which application is made and those incurred following the surrender shall be borne by the applicant Government.

*Article XVIII.* When extradition is granted and the individual involved is to be tried, the Government that obtained the extradition order shall inform the Government that issued the order of the final judgment rendered in the proceedings for which extradition was sought.

*Article XIX.* Extradition shall be granted, pursuant to this treaty, even in respect of acts committed prior to the conclusion of the treaty.

*Article XX.* This Treaty shall remain in force indefinitely and shall cease to have any effect one year after either High Contracting Party has denounced it to the other. It shall be ratified and the instruments of ratification shall be exchanged at Rio de Janeiro or at Lima within two months following the approval of the Treaty by the legislative assemblies of the High Contracting Parties.

IN WITNESS WHEREOF, we, the Plenipotentiaries of the United States of Brazil and of the Republic of Peru, have signed this treaty in duplicate, in the Portuguese and Spanish languages, and thereto have affixed our seals.

DONE at Rio de Janeiro on 13 February 1919.

DOMÍCIO DA GAMA  
FELIPE DE OSMA

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