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MEXICO
and
BRAZIL

Extradition Treaty. Signed at Rio de Janeiro on 28 December 1933

Additional Protocol to the above-mentioned Treaty. Signed at Rio de Janeiro on 18 September 1935

Authentic texts: Spanish and Portuguese.

Filed and recorded at the request of Mexico on 30 October 1984.

MEXIQUE
et
BRÉSIL

Traité d'extradition. Signé à Rio de Janeiro le 28 décembre 1933

Protocole additionnel au Traité susmentionné. Signé à Rio de Janeiro le 18 septembre 1935

Textes authentiques : espagnol et portugais.

Classés et inscrits au répertoire à la demande du Mexique le 30 octobre 1984.

[TRANSLATION — TRADUCTION]

EXTRADITION TREATY¹ BETWEEN MEXICO AND BRAZIL

The President of the United Mexican States and the head of the Provisional Government of the Republic of the United States of Brazil, desiring to support the cause of international co-operation against crime, have decided to conclude an extradition treaty and have for that purpose appointed as their respective Plenipotentiaries:

The President of the United Mexican States, Dr. José Manuel Puig Casauranc, Minister for Foreign Affairs;

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 undertake to surrender to each other, upon request, in conformity with this Treaty and with the laws in force in each of the two countries, any persons who are being proceeded against or have been convicted by the competent judicial authorities of one of the States and who are in the territory of the other.

Article II. Application for extradition may be made in respect of any offence which, under the laws of the State applied to, is punishable by imprisonment of one year or more, and not only with regard to 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 attempts.

Article III. Extradition shall not be granted:

(a) If the State applied to would be competent under its own laws to try the offence with which the accused is charged;

(b) If, for the same offence which gives rise to the application for extradition, the person applied for is being tried or has been definitively convicted, acquitted, granted amnesty or pardoned in the State applied to;

(c) If prosecution or punishment has been barred by lapse of time under the law of the applicant country or of the country applied to before the request for preventive detention or extradition is received by the Government of the country applied to;

(d) If the person applied for is to be brought before an exceptional court or judge in the applicant country;

(e) If the application is based on a political offence or an act connected therewith, an offence of a strictly military character, or an offence against religion or connected with the press.

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

In this case, if extradition is granted, the surrender of the person applied for shall be conditional on a commitment by the applicant State that the political objective or motive will not entail any increase in the penalty.

¹ Came into force on 23 March 1938, i.e., one month after the exchange of the instruments of ratification, which took place at Mexico City on 23 February 1938, in accordance with article XVI.

The authorities of the country applied to shall be the sole judges of the nature of the offence in each case.

Article IV. The application for extradition shall be made through the diplomatic channel and shall be accompanied by the following:

- (a) In the case of accused persons: an arrest warrant or equivalent document issued by the competent judge or authority;
- (b) In the case of convicted persons: the text of the enforceable sentence.

1. The original or a certified copy of the requisite document shall be submitted. It shall contain an exact description of the charge and state the place and date of the offence, and shall be accompanied by a copy of the texts of the laws applicable to the case, and of the laws concerning the barring of the criminal proceedings or the sentencing by lapse of time.

2. Whenever possible, this document shall be accompanied by an indication of the distinguishing marks and a photograph of the person whose extradition is applied for, in addition to any other information which might facilitate that person's identification.

3. Whenever possible, the documents produced in justification of the application for extradition shall be accompanied by a translation into the language of the State applied to.

4. The transmission, through the diplomatic channel, of the application for extradition shall constitute adequate proof of the authenticity of the supporting documents, which shall thus be considered authentic documents.

Article V. In urgent cases, either Contracting Party may request the other, directly, through the post or by a telegram, or through their respective diplomatic or consular representatives, to place the accused under preventive detention and to seize such articles as may be connected with the alleged offence.

The request for preventive detention must contain a reference to the existence of one of the documents referred to in sub-paragraphs (a) and (b) of the previous article and an indication of the offence giving rise to extradition under this Treaty.

If, within 90 days from the date on which the preventive detention began, the State applied to does not receive the formal application for extradition accompanied by the necessary documents, the accused shall be released, without prejudice to the extradition process.

Article VI. Once extradition has been granted, the representative of the applicant State shall be notified that the accused is at his disposal.

If, after 80 days from the date of this notification, the accused has not been handed over to the applicant State, he shall be released and may not be arrested again for the same offence which gave rise to the application for extradition.

Article VII. All articles, securities or documents connected with the offence and found in the possession of the person whose extradition is applied for, either in that person's luggage or at his domicile, shall be seized and handed over, at the same time as the accused, to the representative of the applicant State.

Objects of the same nature found subsequently shall likewise be handed over to the applicant State.

Articles and securities of the types specified found in the possession of third parties shall likewise be seized and turned over to the applicant State, if the State applied to is able to dispose of them in accordance with its domestic legislation.

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

The said articles and securities shall be handed over to the applicant State even if extradition, although granted, cannot be carried out by reason of death or the escape of the accused or any other impediment to the extradition.

Article VIII. Should the death penalty or corporal punishment be applicable to the accused, under the legislation of the applicant State, extradition will be granted only if the applicant Government gives an undertaking, through the diplomatic channel, that the penalty will be commuted to a prison sentence.

Article IX. The Contracting States undertake not to hold the accused criminally liable for a crime committed prior to the extradition and different from the offence which has given rise to that extradition, unless the State applied to has agreed to subsequent proceedings.

The provision in the previous paragraph shall not apply if the accused, freely and expressly, consents to be judged for other offences, or if, after his release, he remains for more than one month in the territory of the State to which he was handed over, or if, having left that territory, he returns to it of his own accord.

The original or a certified copy of the statement of free and express consent of the accused, which is referred to in the second paragraph of this article, shall be transmitted to the other State through the diplomatic channel.

The provisions of this article shall be applicable in the case of re-extradition to a third State.

Article X. When the accused is the subject of criminal proceedings or is serving a prison sentence for a different offence committed in the country of refuge, extradition may be granted, but the handing over shall take place only upon termination of the proceedings or upon completion of the sentence.

Article XI. When the person whose extradition has been applied for, in conformity with this Treaty, is also subject to extradition claims from one or more other Governments, the following procedure shall be followed:

(a) In the case of the same offence, preference shall be given to the application for extradition from the country in whose territory the offence was committed;

(b) In the case of different offences, preference shall be given to the application for extradition from the State in whose territory the offence which the State applied to considers to be the most serious was committed;

(c) In the case of offences which the State applied to considers to be of equal gravity, preference shall be determined by the priority of the application.

Article XII. A person who, after being handed over by one of the Contracting States to the other, is able to avoid criminal proceedings and again flees to the territory of the State applied to or passes through that State, shall be arrested, upon a diplomatic or consular request, and shall be handed over again, without any other formalities, to the State to which the extradition has already been granted.

Article XIII. Permission for transit through the territory of one of the Contracting Parties of a person extradited by a third State to the other Party shall be granted, without any judicial formalities, upon a simple request through the diplomatic channel accompanied by a certified copy of one of the documents referred to in sub-paragraphs (a) and (b) of article IV of this Treaty, or of the decision of the Government which has granted the extradition.

The authorities of the country of transit shall, with respect to the accused, use any surveillance measures that may be necessary.

The Contracting Parties have the right to refuse permission for the transit, if there is a serious reason connected with public policy standing in the way of the transit, or if the offence which gave rise to the extradition does not authorize the extradition under the terms of this Treaty.

Article XIV. If, during criminal proceedings in one of the Contracting States, it is necessary to receive testimony from or to subpoena witnesses who are in the territory of one of the Contracting States, or to carry out any other legal procedure, a competent judicial authority of one of the Contracting States may, through the diplomatic channel, send to that of the other State letters rogatory which, whenever possible, shall be accompanied by a translation into Spanish or Portuguese, depending on whether the letters rogatory are to be complied with in Mexico or in Brazil.

Article XV. The expenses of extradition incurred up to the time when the accused is handed over shall be defrayed by the State applied to; any expenses incurred subsequent to such handing over shall be defrayed by the applicant State.

The cost of conveyance in transit shall also be defrayed by the latter.

The expenses incurred by compliance with the letters rogatory sent in accordance with the previous article shall be defrayed by the judicial authority applied to, except in the case of criminal, medico-legal or commercial expertise.

Article XVI. This Treaty shall be ratified after the legal formalities have been complied with in each of the Contracting States, and the instruments of ratification shall be exchanged at Mexico City as soon as possible.

It shall enter into force one month after the exchange of the instruments of ratification, and shall remain in force for six months after denunciation, which may take place at any time.

The Treaty has been drawn up in Spanish and Portuguese, both texts being equally authentic.

IN FAITH WHEREOF the above-mentioned Plenipotentiaries have signed this Treaty, in duplicate, and have thereto affixed their seals.

DONE at Rio de Janeiro on 28 December 1933.

[JOSÉ MANUEL PUIG CASAURANC]

[AFRANIO DE MELLO FRANCO]

[TRANSLATION — TRADUCTION]

ADDITIONAL PROTOCOL¹ TO THE BRAZILIAN-MEXICAN EXTRADITION TREATY OF 28 DECEMBER 1933²

Article 1. The Contracting Parties shall not be obliged to hand over to each other their respective nationals, nor shall they be bound to authorize the transit through their territories of a national of one of the Contracting Parties being handed over to the other by a third State.

Article 2. A national of one of the Contracting States who seeks refuge in his country after having committed an offence while under the jurisdiction of the other country may be denounced by the authorities of the State in which the offence was committed to the authorities of the country of refuge.

The denunciation shall be accompanied by proofs and the accused person shall be subject to criminal proceedings in his country in those cases where such action is permitted under its laws.

Article 3. Naturalization subsequent to the commission of an offence which has given rise to the application for extradition shall not preclude the handing over of the accused.

Article 4. The Contracting Parties agree to substitute the provisions of this Additional Protocol for the provisions referring to the nationality of persons subject to extradition contained in the Extradition Treaty signed by the same Parties at Rio de Janeiro on 28 December 1933, all the other provisions of which shall remain in effect.

Article 5. The provisions of article XVI of the above-mentioned Extradition Treaty shall apply to this Additional Protocol with respect to the conditions for its ratification, entry into force, duration and denunciation.

[ALFONSO REYES]

[JOSÉ CARLOS DE MACEDO SOARES]

Rio de Janeiro, 18 September 1935

¹ Came into force on 23 March 1938, i.e., one month after the exchange of the instruments of ratification, which took place at Mexico City on 23 February 1938, in accordance with article 5 of the Protocol and article XVI of the Treaty of 28 December 1933.

² See p. 296 of this volume.