

No. 32466

**BRAZIL
and
ITALY**

**Treaty concerning extradition. Signed at Rome on 17 October
1989**

Authentic texts: Portuguese and Italian.

Registered by Brazil on 31 January 1996.

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et
ITALIE**

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[TRANSLATION — TRADUCTION]

TREATY¹ CONCERNING EXTRADITION BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE ITALIAN REPUBLIC

The Federative Republic of Brazil and

The Italian Republic

(Hereinafter referred to as “the Parties”),

Desiring to develop judicial cooperation between them in the matter of extradition,

Have agreed as follows:

Article 1

OBLIGATION TO EXTRADITE

Each Party agrees to surrender to the other Party, upon request and in accordance with the rules and conditions set forth in this Treaty, any persons who are present in the territory of that Party who are sought by the judicial authorities of the other Party in connection with criminal proceedings that have been instituted against them or for the enforcement of a sentence involving deprivation of liberty.

Article 2

EXTRADITABLE OFFENCES

1. Extradition shall be granted in respect of acts punishable under the laws of both Parties by deprivation of liberty for a maximum period of at least one year.

2. When extradition is requested for the enforcement of a sentence, the part of the term remaining to be served must be greater than nine months.

3. When the request for extradition refers to more than one offence and some of the offences do not meet the requirements of paragraph 1, extradition may also be granted for those offences if it is granted for an offence which does meet those requirements. Extradition shall also be granted for the enforcement of sentences involving deprivation of liberty imposed in respect of more than one offence, if the total term remaining to be served is greater than nine months.

4. In the matter of taxes, duties, customs and foreign exchange controls, extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain the same tax, duty, customs or exchange regulation as the law of the requesting Party.

¹ Came into force on 1 August 1993, i.e., the first day of the second month following the exchange of the instruments of ratification, which took place at Brasília on 14 June 1993, in accordance with article 22 (2).

Article 3

REFUSAL TO EXTRADITE

Extradition shall not be granted:

(a) If the person sought is liable to prosecution or has already been tried for the same offence by the judicial authorities in the requested Party;

(b) If, on the date on which the request is received, the offence or sentence is subject to the law of limitations under the law of either Party;

(c) If an amnesty has been granted in the requested Party for the offence for which the request has been made and that offence lies within the criminal jurisdiction of that Party;

(d) If the person sought has been, or will be tried before a tribunal of special jurisdiction of the requesting Party;

(e) If the requested Party considers the offence for which extradition is requested to be political in nature;

(f) If the requested Party has substantial reasons for believing that the request for extradition has been made for the purpose of prosecuting or discriminating against the person sought on account of that person's race, religion, gender, nationality, language or political opinion, or that that person's position may be prejudiced for any of those reasons;

(g) If, according to the law of the requested Party, the offence for which extradition is requested is purely military in nature. For the purposes of this Treaty, offences shall be considered to be purely military when they involve acts that are covered and punishable by military law which do not constitute offences under ordinary criminal law.

Article 4

CAPITAL PUNISHMENT

If the offence for which extradition is requested is punishable under the law of the requesting Party by death, extradition may be granted only if that Party gives such assurance as the requested Party considers sufficient that the death penalty will not be imposed, or, if imposed, will not be carried out.

Article 5

FUNDAMENTAL RIGHTS

Extradition shall also not be granted:

(a) If the person sought has been or will be subject, in respect of the offence for which extradition is requested, to proceedings that do not guarantee respect for the basic right to a defence. The fact that the person has been convicted in absentia shall not in itself constitute a violation of fundamental rights;

(b) If there is good reason to believe that the person sought will be subjected to punishment, penalty or treatment that in any way represents a violation of fundamental rights.

Article 6

OPTION TO REFUSE EXTRADITION

1. Extradition may be refused if, on the date on which the request is received, the person sought is a national of the requested Party. In the case of refusal, the requested Party shall, at the request of the other Party, submit the case to its own competent authorities for the institution of any criminal proceedings. The requesting Party shall supply relevant evidence for that purpose. The requested Party shall provide information in a timely manner concerning the action taken pursuant to the request and the final verdict.

2. Extradition may also be refused:

(a) If the offence for which it is requested was committed, in whole or in part, within the territory of the requested Party or in a territory considered as such under the law of that Party;

(b) If the offence for which it is requested was committed outside the territory of the Parties and there is no provision under the law of the requested Party for the punishment of such an offence when it has been committed outside its territory.

Article 7

LIMITS TO EXTRADITION

1. The person extradited shall not be subject to deprivation of personal liberty in the enforcement of a sentence or to any other such measures for an offence committed prior to surrender, other than the offence for which extradition has been granted, unless:

(a) The requested Party consents thereto; or

(b) The person extradited has had an opportunity to leave the territory of the Party to which surrender has been made and has not done so within 45 days of final discharge or has voluntarily returned thereto.

2. For the purpose of obtaining the consent referred to in paragraph 1 (a), the Party to which the person has been extradited shall submit a request, attaching the documentation referred to in article 11. The request shall also be accompanied by the statements made by the person concerned before a judicial authority of that Party in a hearing on the request for the extension of extradition.

3. If the legal characterization of the offence for which extradition is requested is altered in the course of proceedings, the person concerned may be subject to deprivation of liberty only insofar as the offence under its new characterization is an offence for which extradition may be granted.

4. The person extradited shall not be surrendered to a third State for an offence committed prior to surrender, unless the requested Party consents thereto or the circumstances described in paragraph 1 (b) apply.

5. For the purpose of obtaining the consent referred to in the preceding paragraph, the Party to which the person has been extradited shall submit a request, attaching the application for extradition of the third State and the relevant documents. Such request shall also be accompanied by the statements made by the

person concerned before a judicial authority of that Party in a hearing on the request for surrender to the third State.

Article 8

THE RIGHT TO A DEFENCE

The person sought shall be guaranteed the right to a defence under the law of the requested State, including the assistance of counsel and, if necessary, of an interpreter.

Article 9

CALCULATION OF THE PERIOD OF DETENTION

The period of detention of the person extradited in the requested Party for the purposes of extradition proceedings shall be taken into account in the sentence to be enforced in the requesting Party.

Article 10

CHANNELS AND LANGUAGES OF COMMUNICATION

1. For the purposes of this Treaty, communications shall be transmitted, on behalf of the Federative Republic of Brazil, by the Ministry of Justice and, on behalf of the Italian Republic, by the Ministry of Justice, or through the diplomatic channel.

2. Applications for extradition and other communications shall be written in the language of the requesting Party, and shall be accompanied by a translation into the language of the requested Party.

3. In case of urgency, the translation may be omitted in the case of a request for provisional arrest and related documentation.

4. Documentation submitted pursuant to this Treaty shall not require any form of legal authentication.

Article 11

SUPPORTING DOCUMENTATION

1. The application for extradition shall be accompanied by the original or an authenticated copy of the order for the deprivation of personal liberty, or, in the case of a person found guilty of an offence, of the irrevocable sentence with an indication of the term remaining to be served.

2. The documentation shall contain a precise description of the offence, the date and place of its commission and its legal characterization, together with all the evidence required to identify the person sought, including, where possible, identification marks and a photograph. The documents shall include a copy of the legal provisions of the requesting Party which apply to the case in point, and of those relating to the prescription of the offence and the penalty.

3. The requesting Party shall also provide evidence or proof of the presence of the person sought in the territory of the requested Party.

Article 12

ADDITIONAL INFORMATION

When the information provided by the requesting Party is found to be insufficient for a decision to be taken on the application for extradition, the requested Party shall request additional information, establishing a time limit for that purpose. In response to a reasoned request, the time limit may be extended.

Article 13

PROVISIONAL ARREST

1. Prior to the receipt of the application for extradition, either Party may, at the request of the other Party, take steps to secure the provisional arrest of the person or apply other coercive measures.

2. In the request for provisional arrest the requesting Party shall state that a warrant has been issued for the deprivation of the person's liberty or that an irrevocable sentence involving deprivation of liberty has been imposed and that it intends to submit an application for extradition. The requesting Party shall also provide a description of the offence, including its legal characterization, the penalty imposed and the term remaining to be served, together with the information required to identify the person and, where possible, his whereabouts. The request for provisional arrest may also be forwarded to the requested Party through the International Criminal Police Organization (Interpol).

3. The requested Party shall inform the other Party without delay of any action taken pursuant to the request, including the date of the arrest or of the application of other coercive measures.

4. In the event that the application for extradition and the documentation mentioned in article 11 do not reach the requested Party within 40 days of the date of the communication referred to in paragraph 3, the provisional arrest and other coercive measures shall cease to have effect. This shall not, however, preclude a second arrest, the further application of coercive measures or extradition, if the application for extradition is received after the time limit has elapsed.

Article 14

DECISION AND SURRENDER OF THE PERSON

1. The requested Party shall inform the requesting Party without delay of its decision concerning the application for extradition. Reasons shall be given for any complete or partial refusal.

2. If extradition is granted, the requested Party shall inform the requesting Party of the place of surrender and the date with effect from which it will be possible to proceed, and shall provide precise indications regarding the restrictions that have been placed on the liberty of the person concerned under the extradition procedure.

3. The time limit for surrender shall be 20 days from the date referred to in the previous paragraph; in response to a reasoned request from the requesting Party, the time limit may be extended for an additional 20 days.

4. The decision to grant extradition shall cease to have effect if the requesting Party has not taken steps, within the established period, to take surrender of the person being extradited. In that case, the latter shall be released and the requested Party may refuse to extradite that person for the same offence.

Article 15

POSTPONED OR TEMPORARY SURRENDER

1. If the person sought is subject to criminal proceedings or must serve a sentence in the territory of the requested Party for an offence other than the one for which extradition has been requested, the requested Party shall nevertheless take a decision, without delay, on the request for extradition, and shall communicate that decision to the other Party. If the request for extradition is granted, surrender of the person sought may be postponed until the criminal proceedings have been completed or the sentence has been served.

2. The requested Party may, however, in response to a reasoned request, temporarily surrender a person who is subject to criminal proceedings in its territory, to the requesting Party for the purpose of the institution of criminal proceedings against him in the requesting Party, in accordance with conditions and modalities to be determined. The person temporarily surrendered shall be detained while in the territory of the requesting Party and shall be returned to the requested Party on the conditions agreed. The duration of this detention, from the date of departure from the territory of the requested Party until the date of return to that territory, shall be taken into account in the sentence to be imposed or served in the requested Party.

3. The surrender of the person sought may also be postponed:

(a) If, because of a serious illness, that person's life would be endangered by his being transported to the requesting Party;

(b) If, for exceptional and sufficiently personal reasons, the transfer would be incompatible with humanitarian considerations and the consent of the requesting Party has been secured.

Article 16

COMMUNICATION OF THE DECISION

The Party to which extradition has been granted shall inform the other Party of the final verdict resulting from the proceedings for which extradition was granted.

Article 17

DISPATCH OF AGENTS

With the prior agreement of the requested Party, the requesting Party may send duly authorized agents to that Party to assist in the identification of the person sought or to escort that person to its territory. Such agents may not exercise authority in the territory of the requested Party and shall be subject to its laws. Any costs incurred shall be borne by the requesting Party.

Article 18

SURRENDER OF PROPERTY

1. To the extent permitted under its own law, the requested Party shall seize and, if extradition is granted, shall surrender as evidence to the requesting Party, if the latter so requests, any property against or with which the offence was committed or that constitutes the price or product of or profit made from that offence.

2. The property referred to in the preceding paragraph shall be surrendered even if the extradition granted cannot be carried out owing to the death or escape of the person claimed.

3. The requested Party may retain the property referred to in paragraph 1 for such time as may be required for ongoing criminal proceedings or may, for the same reason, surrender it on condition that it be returned.

4. The rights of the requested Party and of any third party to any of the property surrendered shall be safeguarded. If such rights exist, the property shall be returned to the requested Party without delay upon conclusion of the proceedings.

Article 19

TRANSIT

1. Where a person is to be extradited from a third State to a Party through the territory of the other Party, transit shall be authorized by a decision of the competent authorities upon receipt of a request accompanied by the originals or authenticated copies of the documents relating to the extradition procedure and details of the agents who are to accompany the person. Such agents shall be governed by the provisions of article 17.

2. Transit may be refused for the same reasons for which extradition may be refused under this Treaty, as well as for serious reasons of public order.

3. Where air transport is used and no landings are planned, no authorization shall be required from the Party whose territory is overflown. That Party must, however, be notified of the transit, in advance, by the other Party; the latter shall provide information concerning the identity of the person, including an indication of the offence committed, its legal characterization and any term remaining to be served, together with a statement attesting to the existence of a measure of restriction of personal liberty or an irrevocable sentence involving deprivation of personal liberty. In the event of an unscheduled landing, this communication shall have the same effect as a request for provisional arrest under article 13.

Article 20

CONCURRENT EXTRADITION REQUESTS

When extradition of a person is requested by one Party and by other States, the requested Party shall make its decision taking into account the circumstances of the case in point.

Article 21

COSTS

1. Costs relating to extradition shall be borne by the Party in whose territory they have been incurred; the cost of air transport for the purposes of surrender shall, however, be borne by the requesting Party.
2. Costs relating to transit shall be borne by the Party which has requested transit.

Article 22

FINAL PROVISIONS

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged in Brazil.
2. This Treaty shall enter into force on the first day of the second month following the date on which the instruments of ratification have been exchanged.
3. This Treaty is concluded for an indefinite period.
4. Each of the Parties may denounce it at any time. The denunciation shall take effect six months after the date on which the other Party receives the relevant notification.

DONE at Rome, on 17 October 1989, in two original copies, in the Portuguese and Italian languages, both texts being equally authentic.

For the Federative Republic
of Brazil:

ROBERTO DE ABREU SODRÉ

For the Italian Republic:

GIANNI DE MICHELIS