

[ENGLISH TEXT — TEXTE ANGLAIS]

TREATY ON EXTRADITION BETWEEN THE FEDERATIVE REPUBLIC OF
BRAZIL AND THE REPUBLIC OF KOREA

The Federative Republic of Brazil

and

The Republic of Korea,

Desiring to make more effective the cooperation between their respective countries in the prevention and suppression of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1. Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty and subject to the legal formalities in force in their countries, any persons who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the Requesting Party for an extraditable offence.

Article 2. Extraditable Offences

1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by deprivation of liberty for a period of at least one year or by a more severe penalty.

2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least 9 (nine) months of the sentence remains to be served.

3. For the purpose of this Article, in determining whether conduct is an offence against the law of the Requested Party:

a) it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;

b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

4. An offence of a fiscal character, including an offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter, is an extraditable offence.

Provided that the conduct for which extradition is sought is an offence in the Requested Party, 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 a tax, duty, customs, or exchange regulation of the same kind as the law of the requesting Party.

5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

a) it was an offence in the Requesting Party at the time of the conduct constituting the offence, and

b) the conduct alleged would, if it had taken place in the territory of the Requested Party at the time of the making of the request for extradition, have constituted an offence against the law in force in the territory of the Requested Party.

7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Parties, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested Party may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.

Article 3. Mandatory Refusal of Extradition

1. Extradition shall not be granted in any of the following circumstances:

a) when the Requested Party is competent, according to its law, to prosecute the person whose surrender is sought for the crime or offence for which that person's extradition is requested and the Requested Party intends to exercise its jurisdiction;

b) when, on the basis of the same fact, the person sought is being, or has already been, judged in the Requested Party;

c) when the person sought has already been granted amnesty or pardon in the Requested Party;

d) when the legal proceedings, or the enforcement of the penalty, for the offence committed have become barred by limitation, according to the law of the Requested Party;

e) when the person sought may be, or has been, tried or sentenced by an extraordinary or ad hoc tribunal, for the purposes of this subparagraph, a constitutionally established and constituted court martial is not to be regarded as an extraordinary or ad hoc tribunal;

f) when the offence for which the person's extradition is requested is of a purely military character;

g) when the offence constitutes a political crime or a fact related thereto. Reference to a political offence shall not include the following offences:

i) the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of his or her family;

ii) an offence in respect of which the Contracting Parties have the obligation to establish jurisdiction or extradite by of a multilateral international agreement to which they are both Parties, and

iii) an offence involving genocide, terrorism, murder or kidnapping, and

h) when the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to persecuting or punishing the person sought, by reason of race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons.

2. For the purposes of the present Treaty, purely military crimes shall be considered those offences consisting of acts or facts alien to the criminal law, and which result solely from a special legislation applicable to the military and intended to maintain order and discipline in the armed forces.

3. The allegation by the person sought of political purpose or motive for the request for his extradition will not preclude that person's surrender if the offence for which his extradition is requested is primarily an infraction of the ordinary criminal law. In such case, the delivery of the person being extradited will be dependant on an undertaking on the part of the Requesting Party that the political purpose or motive will not contribute toward making the penalty more severe.

Article 4. Discretionary Refusal of Extradition

Extradition may be refused under this Treaty in any of the following circumstances:

a) when the offence with which the person sought is charged or of which he is convicted, or any other offence for which he may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting Party unless that Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;

b) when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable; and

c) when, in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

Article 5. Extradition of Nationals

1. There is no obligation upon the Requested Party to grant the extradition of a person who is a national of the Requested Party, but the extradition of its nationals will be subject to the appropriate laws of that Party.

2. Where a Party refuses extradition pursuant to paragraph 1 of this Article, it shall submit the case to its competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken. That Party shall inform the Requesting Party of any action taken and the outcome of any prosecution. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 6. Rule of Speciality

1. A person who has been extradited under this Treaty shall not be detained, prosecuted or tried for any offence committed before extradition other than that for which extradition has been granted nor extradited to a third State for any offence, except in any of the following circumstances:

a) when that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;

b) when that person has not left the territory of the Requesting Party within 45 (forty-five) days after being free to do so; or

c) when the Requested Party consents, A request for consent shall be submitted, accompanied by the documents mentioned in Article 9 and a record of any statement made by the extradited person in respect of the offence concerned. Consent may be given when the offence for which it is requested is extraditable in accordance with the provisions of this Treaty.

2. If the charge for which the person was extradited is subsequently changed, that person may be prosecuted or sentenced provided the offence under its new description is:

a) based on substantially the same facts contained in the extradition request and its supporting documents; and

b) punishable by the same maximum penalty as, or a lesser maximum penalty than, the offence for which that person was extradited.

3. Paragraph 1 of this Article shall not apply to offences committed after the extradition.

Article 7. Request and Supporting Documents

All requests for extradition shall be in writing and supported by:

a) information concerning the identity and, if available, the nationality and probable location of the person sought;

b) a summary of the facts of the case including the time and location of the offences; and

c) the texts of the laws describing the essential elements and the designation of the offence, the punishment for the offence, and any time limit relating to the prosecution or the execution of the punishment of the offence.

2. A request for extradition which relates to a person accused of an offence shall be supported by:

a) a copy of the warrant of arrest or of its equivalent issued by the competent judicial authorities; and

b) statement that would provide reasonable grounds to suspect that the person sought has committed the offence for which extradition is requested.

3. A request for extradition which relates to a person convicted shall be supported by :

a) a copy of sentence imposed by a court; and

b) if the sentence has not been fully served, the statement of the sentence or the remainder to be served.

Article 8. Translation of the Documents

The documents presented in support of the request for extradition shall be accompanied by a duly certified translation thereof into the language of the Requested Party or another language acceptable to that Party.

Article 9. Channel of Communication and Authentication of Documents

The request for extradition and its supporting documents, or the request for provisional arrest, as well as all other pieces of official correspondence, shall be transmitted through the diplomatic channel.

2. No authentication or further certification of documents submitted through the diplomatic channel in support of the request for extradition shall be required.

Article 10. Supplementary Information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 11. Provisional Arrest

In case of urgency a Contracting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of the relevant documents mentioned in paragraphs 1 and 2 of Article 9 authorizing the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested Party, a concise statement of the conduct alleged to constitute the offence.

3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the Person claimed and the Requesting Party shall be promptly notified of the result of its request.

4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 9, within 60 (sixty) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 12. Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of a request for extradition.

Extradition having been granted, the Requested Party shall communicate promptly to the Requesting Party that the person to be extradited is held at its disposition.

2. Where extradition of a person for an offence is granted, the person shall be conveyed by the appropriate authorities of the Requested Party to a port or airport in the territory of that Party mutually acceptable to both Parties.

3. The Requesting Party may send to the Requested Party, after receiving the latter's consent, one or more duly authorized agents, either to aid in the identification of the person sought or to convey him to the territory of the Requesting Party. Such agents, during their stay in the territory of the Requested Party, shall not perform any acts of authority, and shall be subject to the applicable laws of that Party.

4. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.

Article 13. Postponed or Temporary Surrender

1. When the person whose extradition is requested is being prosecuted or is serving a sentence in the Requested Party, the surrender of that person under the provisions of the present Treaty shall be deferred until the person is entitled to be set at liberty, on account of the offence for which he is being prosecuted or is serving a sentence, for any of the following reasons: dismissal of the prosecution, acquittal, expiration of the term of the sentence or the term to which such sentence may have been committed, pardon or amnesty.

2. When, in the opinion of competent medical authority, the person whose extradition is requested cannot be transported from the Requested Party to the Requesting Party without serious danger to his life due to his grave illness, the surrender of the person under the provisions of the present Treaty shall be deferred until such time as the danger, in the opinion of the competent medical authority, has been sufficiently mitigated.

Article 14. Re surrender of the Person Extradited

A person who, after surrender by either of the Contracting Parties to the other under the terms of the present Treaty, succeeds in escaping from the Requesting Party and takes refuge in the territory of the Party which has surrendered him, or passes through it in transit, will be detained, upon simple diplomatic request, and surrendered anew without other formalities, to the Party to which his extradition was granted.

Article 15. Consequences of a Refusal of Extradition

In case the extradition of a person is refused, no other request for extradition of the same person can be presented on the basis of the same fact which determined the original request.

Article 16. Communication of the Final Sentence

The Party to which an extradition has been granted shall notify the Requested Party of the final sentence pronounced on the case, if such sentence acquits the extradited person.

Article 17. Expenses

1. The Requested Party shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting Party.
2. The Requested Party shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to a person nominated by the Requesting Party.
3. The Requesting Party shall bear the expense incurred in conveying the person from the territory of the Requested Party.

Article 18. Surrender of Property

To the extent permitted under the law of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.

2. Subject to paragraph I of this Article, the above mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death or escape of the person sought.
3. Where the law of the Requested Party or the rights of third parties so require, any articles so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 19. Transit

1. To the extent permitted by its law, transit through the territory of one of the Contracting Parties of a person surrendered by a third State shall be granted on request made through the diplomatic channel by the other Contracting Party. The request shall include the information referred to in Article 13 and indicate the agents who will escort the person being extradited.
2. The request for transit may be refused if reasons of public order are opposed to the transit.
3. No authorization for transit shall be required when air transport is to be used and no landing is scheduled in the territory of the transit State.

Article 20. Concurrent Requests

Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all the relevant circumstances and, in particular to:
 - a) if the requests relate to different offences, the relative seriousness of those offences;
 - b) the time and place of commission of each offence;
 - c) the respective dates of the requests;
 - d) the nationality of the person sought; and
 - e) the ordinary place of residence of the person.

Article 21. Entry Into Force and Termination

1. The present Treaty shall enter into force 30 (thirty) days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. The present Treaty shall also apply to any offence specified in Article 2 committed before this Treaty enters into force.
3. Either Contracting Party may terminate this Treaty at any time by giving 6 (six) months' written notice to the other Contracting Party.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

Done in duplicate, in the Portuguese, Korean and English languages, all texts being equally authentic, in Brasilia, on the 1st day of September 1995. In case of divergence of interpretation, the English text shall prevail.

The Federative Republic of Brazil:

CELSO LAFER

The Republic of Korea:

MYONGBAI KIM

[ENGLISH TEXT — TEXTE ANGLAIS]

I

DAI/DJ/DAOC-II/01/PAIN BRAS CORS

Brasilia, December 18, 2001

Excellency,

I have the honour to refer to the Treaty on Extradiction, signed between the Governments of the Federative Republic of Brazil and of the Republic of Korea on September 1, 1995, approved in Brazil by means of the Legislative Decree nr. 263, of December 28, 2000, in order to propose to Your Excellency a correction in its Portuguese version.

Said correction would consist in replacing the words "contra a" with "previsto na " in letter b), paragraph 6 of Article 2, as follows:

"b) a conduta em questão, caso ocorresse no território da Parte Requerida na ocasião do pedido de extradição, constituísse crime previsto na legislação em vigor no território da Parte Requerida."

If the above proposal is acceptable to the Government of the Republic of Korea, I have the honour to propose that this Note, in the Portuguese and English Languages, which is equally authentic, together with Your Excellency's reply shall constitute an agreement to correct the Portuguese version of the Treaty on Extradiction between the Federative Republic of Brazil and the Republic of Korea signed on September 1, 1995, which shall enter into force on the date of Your Excellency's reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

CELSO LAFER
Minister of State of Foreign Relations

His Excellency
Myongbai Kim
Ambassador Extraordinary and Plenipotentiary of the
Republic of Korea

[TRANSLATION — TRADUCTION]

II
EMBASSY OF THE REPUBLIC OF KOREA

Brasilia, December 18, 2001

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note No. DAI/DJ/DAOC-II/01/PAIN BRAS CORS, dated December 18, 2001, which reads as follows:

[See note I]

I have further the honour to confirm that the foregoing proposal is acceptable to the Government of the Republic of Korea and that Your Excellency's Note and this reply, in the Korean and English languages, which is equally authentic, shall constitute an agreement to correct the Portuguese version of the Treaty on Extradition between the Republic of Korea and the Federative Republic of Brazil signed on September 1, 1995, which shall enter into force on the date of this reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

MYONGBAI KIM
Ambassador Extraordinary
and Plenipotentiary of the Republic of Korea
to the Federative Republic of Brazil

His Excellency
Celso Lafer
Minister of State of
Foreign Relations of the
Federative Republic of Brazil