

States for trial, he may apply to the local authorities for means to secure and detain them while they remain in port; and in all cases where the vessel is not bound for the United States he is directed to procure at least two of the principal witnesses to be sent along with the prisoners. And he will, at the same time, promptly transmit certified copies of all the depositions, together with a carefully prepared report of all the facts and proceedings that may aid in establishing the guilt of the offenders, to the United States attorney for the district to which the prisoners are sent, and also a like report of the case to the Department of State. When practicable to do so, consuls should send the witnesses to the United States in the same ship with the accused, and in all cases should endeavor to get witnesses to the place of trial as soon as possible after the arrival of the accused.

Section 356. General principles of jurisdiction. The general principle on which such offenses are exempted from the cognizance of foreign tribunals is, as stated by Wheaton, that the public and private vessels of every nation, on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the State to which they belong. This jurisdiction, however, is exclusive only so far as respects offenses against its own municipal laws. It is accordingly otherwise with piracy and other crimes against the law of nations. It is asserted that a vessel while upon the high seas is to be regarded as a part of the country whose flag she bears, and that therefore all offenses and crimes against the laws of the country are cognizable by its tribunals alone; and that, as the municipal laws of the State provide for the punishment of offenders in its territory, whether foreigners or its own citizens or subjects, so also this cognizance embraces all persons, without regard to nationality, who have committed offenses against its laws upon its vessels when on the high seas. Whenever, therefore, jurisdiction over offenses or crimes so committed on American vessels is asserted and exercised, as has sometimes been the case, by the courts of a foreign country, it is the duty of the consular officer to protest against any and all proceedings, and to report the facts and circumstances to the Department of State and to the diplomatic representative of the United States, if there be one accredited to the country. *Dana's Wheaton*, pp. 106-107.

59. Uruguay

- (a) PENAL CODE, 4 DECEMBER 1933. L. JIMÉNEZ DE ASÚA AND F. CARSI ZACARÉS, *CÓDIGOS PENALES IBEROAMERICANOS* (1946), VOL. II, PP. 728-729. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

Article 9. Criminal Law and the territory. An offence committed within the territory of the Republic, whether by a citizen or an alien, shall be punishable according to Uruguayan law, subject to the exceptions laid down by the domestic public law or by international law.

If a person is convicted abroad of an offence committed within the national territory, the penalty already suffered, whether wholly or partly, shall be taken into account in awarding the new sentence.

Article 10. Criminal Law. Principles of defence and personality. An offence committed abroad, whether by a citizen or an alien, shall not be subject to Uruguayan law except:

- (1) Offences against the security of the State;
- (2) Forgery of the State seal or using a counterfeit State seal;
- (3) Counterfeiting currency of legal tender within the State, or Government bonds;
- (4) Offences committed by public officers in the service of the Republic involving abuse of position or breach of official duty;
- (5) An offence punishable both by foreign and by national law, committed by a Uruguayan citizen, apprehended in the territory of the Republic and not wanted by the authorities of the country in which he committed the offence; in this case the law prescribing the lesser penalty shall apply;
- (6) An offence committed by an alien to the detriment of a Uruguayan citizen or of Uruguay, subject to the provisions of the preceding paragraph where the conditions therein laid down are satisfied;
- (7) All other offences made subject to Uruguayan law by special provision thereof or by international agreement.

Article 11. Conditions under which an offence committed abroad may be punished in Uruguay. Article 10 shall not apply:

- (1) If prosecution is barred by lapse of time under another system of law;
- (2) If the offence is political;
- (3) If the accused has been acquitted abroad, or has suffered the penalty, or the penalty is barred by lapse of time.

Article 12. Procedure where the foreign penalty is the lesser but is not prescribed by Uruguayan law. Where the penalty provided by foreign law is the lesser but is not lawful in Uruguay, the penalty which appears to the judge to be the nearest to it shall be awarded.

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Note. Article 208 of the Uruguayan Penal Code considers as a special aggravating circumstance, if an offence "is directed against a vessel, aircraft", etc.

(b) CODE OF LEGISLATION RELATING TO AVIATION, ENACTED BY DECREE-LAW No. 10,288, 3 DECEMBER 1942. "REGISTRO NACIONAL DE LEYES Y DECRETOS", VOL. 65 (1942), P. 1466. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 3. The laws of Uruguay govern all acts occurring on board an aircraft, whether in flight or not, and all aircraft activities affecting third persons or property not on board, in so far as they occur in the territory, territorial waters or air space of Uruguay.

The law of Uruguay shall also apply to any act which occurs on board any Uruguayan aircraft, if the act takes place outside the territorial waters or the air space of Uruguay.

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- (c) REGULATIONS TO THE LAW ON CONSULAR ORGANIZATION, 17 JANUARY 1917. "ANUARIO DIPLOMÁTICO Y CONSULAR DE LA REPÚBLICA ORIENTAL DEL URUGUAY", 1917, p. 89. TRANSLATION FROM A. H. FELLER AND M. O. HUDSON, "A COLLECTION OF THE DIPLOMATIC AND CONSULAR LAWS AND REGULATIONS" (1933), VOL. II, PP. 1357, 1371.

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Article 144. When an offence is committed on the high seas on board a national merchant vessel, the consular agent of the first port at which the vessel stops shall ascertain if the captain has drawn up an appropriate report and, if not, the consular agent shall do so, receiving declarations of seamen and passengers, and taking all the necessary steps.

He shall detain the offenders on board and shall send them together with the report, on the same vessel or on the first vessel which leaves for the Republic, in order to be submitted to the competent judges, and he shall adopt the necessary means for their safety.

Article 145. If the vessel on which the offence was committed should have to leave for some other destination and if there should be no vessel to carry the offenders to the Republic, the consular agent shall request the local authorities to keep them in a public prison until an opportunity arises to send them home for trial, and he shall endeavor to observe the provisions of treaties existing with the Republic and the laws of the country in which he resides, and if necessary he shall pay the expenses incurred.

Article 146. Whenever the local authority attempts to judge offences committed on the high seas on board national merchant vessels, consular agents shall maintain that the jurisdiction belongs to the authorities of the Republic.

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60. Venezuela

- (a) PENAL CODE, 15 JULY 1926. L. JIMÉNEZ DE ASÚA AND F. CARSI ZACARÉS, "CÓDIGOS PENALES IBEROAMERICANOS" (1946), VOL. II, PP. 795-796. TRANSLATION BY THE SECRETARIAT OF THE UNITED NATIONS.

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Article 3. Any person committing a crime (*delito*) or petty offence (*falta*) in the territory of the Republic shall be punished in accordance with Venezuelan law.

Article 4. The following persons are subject to trial in Venezuela and shall be punished in accordance with Venezuelan penal law:

1. Venezuelans committing abroad treason against the Republic, or acts against other Venezuelans which are punishable under its laws.
2. Foreign subjects or citizens committing abroad any offence against the security of the Republic or against any of its nationals.

In the two foregoing cases the accused person must have entered the territory of the Republic and proceedings must have been instituted