

N° 4658.

BELGIQUE ET MEXIQUE

Convention d'extradition. Signée à Mexico, le
22 septembre 1938.

*Textes officiels français et espagnol communiqués par le ministre des Affaires
étrangères de Belgique. L'enregistrement a eu lieu le 13 novembre 1939.*

BELGIUM AND MEXICO

Extradition Convention. Signed at Mexico,
September 22nd, 1938.

*French and Spanish official texts communicated by the Belgian Minister for
Foreign Affairs. The registration took place November 13th, 1939.*

(TEXTE ESPAGNOL. — SPANISH TEXT.)

Nº 4658. — CONVENCION DE EXTRADICION ¹ ENTRE EL REINO DE BELGICA Y LA REPUBLICA DE LOS ESTADOS UNIDOS MEXICANOS. FIRMADA EN MEXICO, EL 22 DE SEPTIEMBRE DE 1938.

SU MAJESTAD EL REY DE LOS BELGAS,

y

EL PRESIDENTE DE LOS ESTADOS UNIDOS MEXICANOS,

habiendo convenido en arreglar, por medio de una Convención, la extradición recíproca de los individuos acusados, perseguidos o condenados por las autoridades judiciales, han nombrado, con este fin, como sus Plenipotenciarios, a saber :

SU MAJESTAD EL REY DE LOS BELGAS :

Al señor Robert VAN DE KERCHOVE D'HALLEBAST, su Enviado extraordinario y Ministro plenipotenciario en los Estados Unidos Mexicanos,

EL PRESIDENTE DE LOS ESTADOS UNIDOS MEXICANOS :

Al señor General Eduardo HAY, su Secretario de Estado y de Relaciones Exteriores ;

Quienes, después de haberse comunicado sus Plenos Poderes, que fueron encontrados en buena y debida forma, convinieron en las disposiciones siguientes :

Artículo 1º.

El Gobierno de Bélgica y el Gobierno Mexicano se comprometen a entregarse recíprocamente, por petición que uno de los dos Gobiernos dirija al otro, los individuos acusados, procesados o condenados por las autoridades competentes de aquel de los dos países en donde la infracción se hubiere cometido, como autores o cómplices de los crímenes y delitos enumerados en el artículo 2º a continuación y que se encuentren en el territorio de uno u otro de los dos Estados contratantes.

Sin embargo, cuando el crimen o delito que dé lugar a la solicitud de extradición hubiere sido cometido fuera del territorio de las dos Partes contratantes, se podrá, dar curso a tal solicitud si la legislación del país requerido autoriza la persecución de las mismas infracciones cometidas fuera de su territorio.

Las Partes contratantes no estarán obligadas a entregarse a sus nacionales. En caso de la no-extradición de un nacional, las autoridades del país en donde se hubiere cometido el delito podrán denunciarlo, por la vía diplomática, ante las autoridades judiciales del país en donde se hubiere refugiado, exhibiendo las pruebas en que se funden, y dichas autoridades llevarán a la persona que se persiga ante sus propios tribunales, si así lo permitiere su legislación.

Artículo 2.

Los crímenes y delitos previstos por el artículo anterior son :

1. Asesinato, envenenamiento, parricidio, infanticidio, homicidio, violación ;
2. Incendio ;

3. Alteración o falsificación de documentos de crédito público o de billetes de banco, de títulos públicos o privados ; emitir o poner en circulación tales efectos, billetes o títulos falsificados, falsificación de manuscrito o en telegramas y uso de tales telegramas, documentos de crédito, billetes o títulos alterados, falsificados o falseados.

¹ The exchange of ratifications took place at Brussels, March 14th, 1939.
Came into force November 13th, 1939.

TRADUCTION. — TRANSLATION.

No. 4658. — EXTRADITION CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF THE UNITED STATES OF MEXICO. SIGNED AT MEXICO, SEPTEMBER 22ND, 1938.

HIS MAJESTY THE KING OF THE BELGIANS
and

THE PRESIDENT OF THE UNITED STATES OF MEXICO,

Having agreed to regulate, by means of a Convention, the reciprocal extradition of persons accused, proceeded against or sentenced by the judicial authorities, have appointed for that purpose as their Plenipotentiaries :

HIS MAJESTY THE KING OF THE BELGIANS :

M. Robert VAN DE KERCHOVE D'HALLEBAST, his Envoy Extraordinary and Minister Plenipotentiary to the United States of Mexico ;

THE PRESIDENT OF THE UNITED STATES OF MEXICO :

General Eduardo HAY, his Secretary of State and Secretary for Foreign Affairs ;

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

Article 1.

The Belgian Government and the Mexican Government undertake to surrender to each other upon a requisition made by one of the two Governments to the other, persons accused, proceeded against or sentenced by the competent authorities of that of the two countries in which the offence was committed, as principals or accessories in respect of the crimes or offences enumerated in Article 2 below, who are in the territory of the State to which the requisition is made.

Nevertheless, when the crime or offence in respect of which extradition is sought has been committed outside the territory of the two Contracting Parties, such extradition may be granted provided that the laws of the country applied to permit prosecution for the offence concerned when committed outside its territory.

The Contracting Parties shall not be bound to surrender their own nationals. In the event of the non-extradition of a national, the authorities of the country where the offence has been committed shall be entitled, on producing evidence in support, to bring the matter, through the diplomatic channel, to the notice of the judicial authorities of the country of refuge, who shall bring the person proceeded against to trial before their own courts if their laws so allow.

Article 2.

The crimes and offences falling within the terms of the preceding Article shall be :

(1) Murder with premeditation, poisoning, parricide, infanticide, murder without premeditation or voluntary manslaughter, rape ;

(2) Arson ;

(3) Counterfeiting or falsifying public bonds or bank notes, or public or private securities ; uttering or putting into circulation such counterfeit or forged bonds, notes or securities ; forgery of documents or telegrams ; and the use of such counterfeit, fabricated or falsified telegrams, bonds, notes or securities ;

Receiving or procuring counterfeit or falsified banknotes for the purpose of putting them into circulation ;

(4) Counterfeit coinage, including counterfeiting and impairing coins, uttering or putting into circulation counterfeit or impaired coins, and fraud in the choice of specimens for the assaying of coins ;

Receiving or procuring counterfeit or impaired coins for the purpose of putting them into circulation ;

Giving to coins the appearance of coins of a higher value or introducing into the country, receiving or procuring coins to which has been given the appearance of coins of a higher value for the purpose of putting them into circulation ;

(5) Perjury and false statements by experts or interpreters ;

(6) Theft, obtaining money or goods by false pretences, extortion, misappropriation of funds by public officials ;

(7) Fraudulent bankruptcy and frauds committed in connection with bankruptcies ;

(8) Association to commit crimes against persons or property.

(9) Threats of violence against persons or property, if punishable by death, penal servitude or rigorous imprisonment ;

Offers and proposals to commit a crime or participate therein, and acceptance of such offers or proposals ;

(10) Abortion ;

(11) Bigamy ;

(12) Violation by private individuals of personal liberty and domicile ;

(13) Carrying or receiving and harbouring a child, suppressing the fact of the birth of a child, substituting one child for another or attributing to a woman a child of which she has not been delivered ;

(14) Exposing or abandoning a child ;

(15) Abduction of a minor ;

(16) Indecent assault with violence ;

(17) Indecent assault without violence or threats on, or with the assistance of, the person of a minor of either sex under 16 years of age ;

Indecent assault without violence or threats, by a relative in the ascending line, on, or with the assistance of, the person of a minor of either sex, even if over 16 years of age but not emancipated by marriage ;

(18) Offence against public morals by encouraging, facilitating or favouring, in order to gratify the passions of another, the defilement, corruption or prostitution of a minor of either sex ; hiring, enticing or leading away, for immoral purposes, a woman or girl of full age, when effected by fraud or with the aid of violence, threats, abuse of authority or any other means of compulsion, in order to gratify the passions of another ; hiring, enticing or leading away a woman or girl of full age, even with her consent, for immoral purposes in another country, in order to gratify the passions of another ; detention of a person in a brothel against the will of such person or compulsion of a person of full age for immoral purposes ;

(19) Maliciously striking or wounding, with premeditation, or resulting in seemingly incurable infirmity, permanent incapacity for work, complete loss of the use of an organ, serious mutilation or unintended death ;

(20) Fraudulent conversion and misrepresentation ;

(21) Suborning of perjury on the part of witnesses, experts or interpreters ;

(22) False swearing ;

(23) Counterfeiting or falsifying seals, stamps, dies and marks, the use of counterfeit or falsified seals, stamps, dies and marks, and prejudicial use of genuine seals, stamps, dyes and marks ; placing, out of personal spite or with intent to defraud, upon a work

of art or literary work or musical composition, the name of an author or any distinctive sign adopted by him to indicate his work ;

Knowingly selling, offering for sale or introducing into the national territory with a view to sale the objects or works above-mentioned ;

Counterfeiting or falsifying implements for use in the making of coins or banknotes ;

Receiving or procuring, with fraudulent intent, the counterfeit or falsified implements referred to in the preceding paragraph, or genuine implements for use in the making of coins or banknotes ;

(24) Bribery of public officials ;

(25) Destruction of buildings, steam-engines or telegraphic apparatus ; destruction or disfigurement of burial places, monuments, works of art, documents or other papers ; destruction of, or damage to, produce, merchandise or other movable property, and obstructing the execution of public works ;

(26) Destruction of or damage to crops, plants, trees or grafts ;

(27) Destruction of agricultural implements ; destruction or poisoning of cattle or other animals ;

(28) Abandonment of a ship or a merchant or fishing vessel by the master, in cases other than those authorised by law ;

(29) Stranding, loss or destruction by the master or the officers and members of the crew, improper use by the master of a ship or of a merchant or fishing vessel ; unnecessary jettisoning or destruction of all or part of the cargo, stores or gear ; taking an unauthorised course ; borrowing without cause on the ship, stores or gear, or pledging or sale of merchandise or victuals, or the entry in the accounts of fictitious damage or expenses, sale of the ship without special authority except in the case of unseaworthiness, unloading of merchandise without previous report, except in the case of imminent danger, theft on board ship, adulteration on board ship of stores or merchandise by the admixture of harmful substances ; attacks upon or resistance to the master with violence and assault by more than one-third of the crew, refusal, with striking and wounding, to obey orders given by the master or officer in charge to ensure the safety of the vessel or cargo ; conspiracy against the safety, liberty or authority of the master, or seizure of the ship by the sailors or passengers by means of fraud or violence directed against the master ;

(30) Receiving articles obtained by means of one of the crimes or delicts specified in the present Convention ;

(31) Traffic in slaves ;

(32) Resistance by masters and crews of vessels to the orders of officers acting under Articles 42 *et seq.* of the General Act of the Conference of Brussels of July 2nd, 1890 ;

(33) Infringement of the prohibitions concerning firearms and munitions laid down in Articles 8 and 9 of the General Act of the Conference of Brussels of July 2nd, 1890.

The foregoing list of offences shall be deemed to include attempts punishable under the laws of the two contracting countries. In all cases, the offences for which extradition is sought must render the offenders liable to penalties of which the maximum term is not less than one year, and extradition may not take place unless the acts concerned are punishable under the laws of the country to which the requisition is addressed.

Article 3.

The requisition for extradition shall always be made through the diplomatic channel.

Article 4.

Extradition shall be granted on the production of either the original or a certified copy of the judgment or sentence, or of the warrant of arrest, or of some other document having at least

the same force, provided always that it contains an exact description of the act in respect of which it has been issued and is accompanied by documents establishing the existence of the elements constituting the offence or offences concerned. The aforementioned documents shall also be accompanied by a certified copy of the text of the law applicable to the offence charged and of the legal provisions governing limitation, proving that neither the criminal proceedings nor the enforcement of the sentence have been barred by lapse of time. The description of the person claimed shall be provided whenever possible.

Article 5.

In urgent cases, provisional arrest shall be effected on notification, by post or telegraph, of the existence of one of the documents warranting detention mentioned in Article 4, provided always that such notification is duly made through the diplomatic channel to the Minister for Foreign Affairs of the country applied to. Provisional arrest shall be effected in the manner and in accordance with the rules prescribed by the laws of the Government applied to; such an arrest shall not, however, be further maintained if, within a period of twelve weeks, the requisition for extradition, accompanied by the documents mentioned in Article 4, shall not have been transmitted to the Government applied to.

Article 6.

Extradition shall not take place when it is requested for an offence in respect of which the person claimed has already been sentenced, acquitted or discharged in the country of the Government to which the requisition is made.

If the person concerned is being proceeded against or has been sentenced in the country where he is found, his extradition may be postponed until the proceedings are abandoned, until he has been acquitted or discharged or until he has served his sentence.

In cases in which he is being proceeded against or is in custody in the same country by reason of obligations contracted by him towards private persons, his extradition shall nevertheless take place, subject to the right of the injured party to pursue his remedy before the competent authority.

In the case of a crime mentioned in Article 2 rendering the offender liable to the death penalty, the Government applied to shall be entitled to make extradition conditional on a previous assurance given through the diplomatic channel by the Government making the requisition that sentence of death, if passed, will not be carried out.

Article 7.

Should the same person be claimed simultaneously by several States, the State applied to shall decide in its discretion to which country such person is to be surrendered.

Article 8.

The provisions of the present Convention shall not apply to persons guilty of any political crime or offence, or of an offence connected therewith. A person whose extradition has been granted for one of the ordinary criminal offences mentioned in Article 2 shall, therefore, in no case be proceeded against or punished, in the State to which extradition has been granted, for a political crime or delict committed by him prior to extradition, nor for any act connected with such a political crime or delict, unless the said person has been free to leave the country again during a period of three months after having been tried and, if sentenced, after having served his sentence or been pardoned.

An attempt upon the life of the head of a foreign State or of the members of his family shall not be deemed to be a political offence, or an act connected with such an offence, when constituting murder without premeditation, murder with premeditation or poisoning.

Article 9.

The person extradited shall not be proceeded against or punished in the country to which extradition has been granted, nor extradited to a third country, for any crime or offence not falling within the terms of the present Convention committed prior to his extradition, unless, in both

such cases, he has been free to leave the said country again during a period of three months after having been tried and, if sentenced, after having served his sentence or been pardoned.

Further, he shall not be proceeded against or punished for a crime or offence, falling within the terms of the Convention, committed prior to his extradition but other than that for which his extradition was granted, without the consent of the Government by which he was surrendered and which, if it thinks fit, shall be entitled to require the production of one of the documents mentioned in Article 4 of the present Convention. The consent of the said Government shall likewise be required for the extradition of the accused person to a third country. Such consent shall, however, not be necessary if the accused person, of his own accord, asks to be brought to trial or to serve his sentence, or if he has not left the territory of the country to which he was surrendered within the period stipulated above.

Article 10.

Extradition shall be refused if, at the time when surrender would take place, exemption from prosecution or punishment in respect of the offence which gave rise to the requisition for extradition has been acquired by lapse of time, under the laws of either of the Contracting Parties.

Article 11.

In extradition cases, all impounded articles which may serve to prove the crime or offence, together with all stolen articles, shall, at the discretion of the competent authority, be handed over to the applicant Power, either if extradition is possible or if it has been rendered impossible by the escape or death of the accused. This shall likewise apply to any articles which the accused may have hidden or deposited in the country and which are subsequently discovered.

Nevertheless, the rights which third parties not implicated in the proceedings may have acquired in the articles mentioned in the present Article shall be reserved.

Article 12.

When extradition has been granted, the accused person shall be handed over to the applicant State at such place on the frontier or at such port as it shall decide. All costs occasioned by the extradition in the territory of the State applied to, together with the costs occasioned in such territory by the consignment and transport of the articles which, under the foregoing Article, are to be restored or handed over, shall be borne by the State applied to. Costs occasioned in either connection outside the said territory shall be borne by the State making the requisition.

Article 13.

It is expressly provided that extradition by conveyance in transit through the respective territories of the contracting States of a person not belonging to the country of transit shall be granted, on the production either of the original or of a certified copy of one of the documents mentioned in Article 4 above, provided always that the act occasioning extradition is included in the present Convention and does not come within the provisions of Articles 8 and 10.

The cost of transit shall be borne by the Party making the requisition.

Article 14.

If, in a criminal case of a non-political character, either Government should deem it necessary to obtain the evidence of witnesses who are in the other State, or to have conducted any other proceeding required by the preliminary examination, letters of request shall be sent for the purpose through the diplomatic channel and effect shall be given thereto by the competent officers, in conformity with the laws of the country where the witnesses are to be heard. The respective Governments hereby waive all claim to the repayment of costs resulting from compliance with letters of request, except as regards the taking of evidence from criminal, commercial or medico-legal experts, requiring several sittings.

Article 15.

If, in criminal matters of a non-political character, the notification of proceedings or of a judgment of the authorities of either of the contracting countries to a person in the territory of the other country should be considered necessary, the document, transmitted through the diplomatic channel, shall be served on such person direct, at the instance of the office of public prosecutions at the place of residence, through the competent officer, and the original recording such service shall be returned through the same channel free of charge to the Government making the requisition.

Article 16.

If, in a criminal case of a non-political character, the personal appearance of a witness is required, the Government of the country in which he is to be found shall invite him to comply with the summons addressed to him ; if the witness agrees to make the journey, he shall at once be issued the necessary passport, and travelling and subsistence allowances shall be granted to him in accordance with the rates and regulations in force in the country in which the hearing is to take place. No witness of whatever nationality who, when summoned in one of the two countries, shall voluntarily appear before the judicial authorities of the other, may be proceeded against or held in custody for previous offences or sentences within the jurisdiction of, or awarded by, the criminal or correctional courts, or as an accessory in the offence which is the subject of the proceedings in which he appears as a witness.

When, in a criminal case of a non-political character, which is under preliminary examination in either of the two countries, it is deemed necessary or expedient to obtain the production of articles serving as proof of the offence or of judicial documents, the request therefor shall be made through the diplomatic channel, and shall be granted, unless there are special reasons to the contrary, subject to the obligation to return the articles concerned.

The contracting Governments waive all claim to the repayment of costs incurred within their respective territories from the despatch or return of articles serving as proof and documents.

Article 17.

The two Governments undertake to communicate to each other sentences for crimes or offences passed by the Belgian courts or Mexican federal courts or by the ordinary Mexican courts in the Federal District and Territories on citizens or subjects of the other. Such communications shall be effected by the transmission, through the diplomatic channel, of a bulletin or extract recording the judgment passed and having acquired final force, to the Government of the country to which the person sentenced belongs. Each of the two Governments shall give to the competent authorities the necessary instructions to that effect.

Article 18.

The provisions of the present Convention shall apply to the possessions, colonies and mandated territories of the High Contracting Parties.

For that purpose, the natives of the said territories, possessions and colonies shall be assimilated to nationals.

For the purposes of the application of the present Convention to the Belgian Congo and the territories of Ruanda-Urundi, over which Belgium exercises a mandate on behalf of the League of Nations :

(1) In the urgent cases mentioned in Article 5, the provisional arrest shall take place on notification, given by the Governor-General of the Belgian Congo to the Secretariat for External Relations of Mexico and *vice versa*, of the existence of one of the documents warranting detention mentioned in Article 4 ;

(2) Offences against the penal laws of the Belgian Congo and Ruanda-Urundi which are punishable by more than five years' penal servitude shall be deemed to be crimes, and those punishable by more than two months' penal servitude shall be deemed to be

delicts. The penal servitude provided for by the laws of the Belgian Congo and Ruanda-Urundi shall be assimilated to imprisonment ;

(3) The period of twelve weeks provided for in Article 5 of the Convention shall be reduced to sixty days.

Article 19.

The present Convention shall take the place of that of May 12th, 1881.

It shall come into force ninety days after its publication in the forms prescribed by the laws of the two countries.

Each of the Contracting Parties shall, at all times, be entitled to denounce it, on notifying the other Party of his intention one year in advance.

It shall be ratified and the ratifications exchanged as soon as possible at Brussels.

Done at Mexico, in duplicate, each copy being in both the French and Spanish languages, this 22nd day of September, 1938.

(L. S.) (Signed) VAN DE KERCHOVE.

(L. S.) (Signed) Eduardo HAY.