

N° 1491.

SUISSE ET URUGUAY

Traité d'extradition, signé à Montevideo, le 27 février 1923, et protocole additionnel, signé à Montevideo, le 26 novembre 1926.

**SWITZERLAND
AND URUGUAY**

Extradition Treaty, signed at Montevideo, February 27, 1923, and Additional Protocol, signed at Montevideo, November 26, 1926.

N^o 1491. — TRAITÉ ¹ D'EXTRADITION ENTRE LE CONSEIL FÉDÉRAL SUISSE ET LA RÉPUBLIQUE DE L'URUGUAY. SIGNÉ A MONTEVIDEO, LE 27 FÉVRIER 1923.

Textes officiels français et espagnol communiqués par le Conseil fédéral suisse. L'enregistrement de ce traité a eu lieu le 15 juin 1927.

French and Spanish official texts communicated by the Swiss Federal Council. The registration of this Treaty took place June 15, 1927.

LE CONSEIL FÉDÉRAL SUISSE et SON EXCELLENCE MONSIEUR LE PRÉSIDENT DE LA RÉPUBLIQUE DE L'URUGUAY, ayant jugé opportun, afin de contribuer à une administration uniforme, prompt et efficace, de la justice et de la répression du crime, de conclure un traité pour régler l'extradition réciproque des malfaiteurs, ainsi que certaines questions connexes, ont nommé pour leurs plénipotentiaires respectifs, savoir :

LE CONSEIL FÉDÉRAL SUISSE :

M. Charles EGGER, docteur en droit, son envoyé extraordinaire et ministre plénipotentiaire auprès de Son Excellence M. le Président de la République de l'Uruguay ;

SON EXCELLENCE M. LE PRÉSIDENT DE LA RÉPUBLIQUE DE L'URUGUAY :

M. Juan Antonio BUERO, docteur en droit, son ministre, secrétaire d'Etat des Relations extérieures ;

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants :

Article premier.

Les Hautes Parties contractantes s'engagent à se livrer réciproquement, selon les règles établies par les articles suivants, les personnes prévenues ou condamnées par les autorités compétentes d'un des deux Etats comme auteurs ou complices de l'un des faits énumérés à l'article 2, et qui se trouvent sur le territoire de l'autre pays, si ces faits constituent une infraction de droit commun punissable tant selon la loi du lieu de refuge que selon celle de l'Etat requérant.

Article 2.

Les faits délictueux qui donnent lieu à l'extradition sont les suivants :

1. Homicide, comprenant le meurtre, l'assassinat, le parricide, l'infanticide, l'empoisonnement ;
2. Avortement volontaire ² ;

¹ L'échange des ratifications a eu lieu à Berne, le 3^e juin 1927.

¹ The exchange of ratifications took place at Berne, June 3, 1927.

² Voir ci-après : Protocole additionnel, article premier.

¹ TRADUCTION. — TRANSLATION.

No. 1491. — EXTRADITION TREATY BETWEEN THE SWISS FEDERAL COUNCIL AND THE REPUBLIC OF URUGUAY. SIGNED AT MONTEVIDEO, FEBRUARY 27, 1923.

THE SWISS FEDERAL COUNCIL and HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF URUGUAY, have decided, in the interests of the uniform, speedy and efficacious administration of justice and the repression of crime, to conclude a treaty regulating between the two States the extradition of offenders and certain questions connected therewith, and have appointed as their Plenipotentiaries :

THE SWISS FEDERAL COUNCIL :

M. Charles EGGER, Doctor of Laws, Their Envoy Extraordinary and Minister Plenipotentiary accredited to His Excellency the President of the Republic of Uruguay ;

HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF URUGUAY :

M. Juan Antonio BUERO, Doctor of Laws, His Minister and Secretary of State for Foreign Affairs ;

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

Article 1.

The High Contracting Parties agree to surrender to one another, in accordance with the rules laid down in the following Articles, persons charged or convicted by the competent authorities of one of the two States as authors of, or accomplices in, any of the acts enumerated in Article 2, if such persons are in the territory of the other country, and if the acts in question constitute a violation of the ordinary law punishable both under the law of the place of asylum and under that of the applicant State.

Article 2.

Extradition shall be granted in respect of the following offences :

- (1) Homicide, including murder, assassination, parricide, infanticide, and poisoning ;
- (2) Wilful abortion ² ;
- (3) Malicious striking or wounding, resulting in death or permanent injury to health, permanent disability for work, or grievous injury to limb or organ ;
- (4) Rape, indecent assault with violence, procuring ;
- (5) Indecent assault, with or without violence, on a child of either sex under 14 years of age ;

¹ Traduit par le Secrétariat de la Société des Nations.

¹ Translated by the Secretariat of the League of Nations.

² See below : Additional Protocol, Article 1.

- (6) Bigamy ;
- (7) Abduction or unlawful detention of persons, concealment of birth or substitution of children ;
- (8) Exposure or abandonment of children or helpless persons ; kidnapping of minors ;
- (9) Counterfeiting or altering of coin or paper-money, banknotes or other credit notes in circulation as legal tender, or bonds or other valuable scrip issued by the State or by corporations, companies or private individuals ; counterfeiting or altering postage stamps, dies, marks or seals of the State or public administrations ; fraudulent use of such counterfeit or altered objects, or their importation, manufacture or utterance with intent to defraud ; fraudulent or improper use of seals, stamps, or recognised marks ;
- (10) Forgery of public or private documents, falsification of official documents or commercial papers of any kind ; fraudulent use of such forged or falsified documents ; abstraction of documents ;
- (11) Perjury, subornation of perjury, or false swearing, in civil or criminal cases ;
- (12) Corruption of public officials ;
- (13) Embezzlement or malversation of public funds, peculation by officials or trustees ;
- (14) Arson ; improper use of explosives ;
- (15) Malicious acts resulting in the destruction of, or damage to, railways, steamships, mail-vans, or electrical apparatus or conduits (telegraphs, telephones), or endangering their working ;
- (16) Robbery ; extortion ; larceny ; receiving stolen goods ;
- (17) Piracy ; malicious acts designed to sink, wreck, destroy, render unseaworthy or damage a vessel, when this may result in danger to another party ;
- (18) Obtaining money or goods by false pretences ;
- (19) Abuse of confidence and misappropriation ;
- (20) Fraudulent bankruptcy.

The above-mentioned classes of offence shall include attempts to commit, or complicity in such acts, when punishable under the laws of both countries.

The enumeration of the above-mentioned offences shall not prevent the Contracting Parties from demanding or granting, on terms of reciprocity, the extradition of persons charged with or convicted of other offences, provided that the laws of the State applied to contain no provision to the contrary.

Extradition shall not be granted :

- (a) In the case of convicted persons, when the total penalties inflicted amount to less than one year's imprisonment ;
- (b) In the case of persons awaiting judgment, when the maximum penalty for the alleged offence is less than two years' imprisonment under the laws both of the applicant State and of the State applied to.

Article 3.

Extradition shall not be granted :

- (a) For political offences or acts connected therewith ;
- (b) If the offence was committed in the territory of the State applied to ;
- (c) If the request for extradition is in respect of an offence for which the person in question has already been tried, sentenced or acquitted in the country applied to ;
- (d) If, under the laws of the country applied to or under those of the applicant country, immunity from prosecution or punishment has been acquired by prescription

in respect of the last act which formed the subject of prosecution or conviction, before the request for arrest or extradition reaches the Government of the State applied to.

Article 4.

The Contracting Parties agree not to surrender their own nationals, irrespective of whether nationality has been acquired by birth or by naturalisation, and even if naturalisation was granted after the offence was committed.

In such case, the authorities of the country in which the offence has been committed may, on producing proofs, notify the judicial authorities of the country of asylum, which shall then bring the accused before their own courts.

Proceedings shall not be opened in the country in which the offence was committed, if, in the country of origin, the person charged has been finally acquitted or convicted, and in the latter case, if he has served his sentence or has acquired immunity through prescription.

Article 5.

When the punishable act in respect of which extradition is requested was committed outside the territory of the applicant State, the request shall be complied with, subject to the provisions of Article 3, paragraph (b), if the laws of the Contracting Parties permit of judicial proceedings in respect of such acts committed abroad.

Article 6.

A person whose extradition has been granted may not be proceeded against or punished for offences committed prior to extradition, or for acts connected with such offences, unless the country surrendering him agrees to such a procedure and the offences are among those enumerated in Article 2.

The Government of that country may demand the documents mentioned in Article 9.

The person in question shall not be surrendered without the consent of the said Government to any third State that may demand his surrender for offences unconnected with those for which extradition is granted.

These restrictions shall not apply : (1) if the extradited person being acquainted with the provisions of the present Convention, expressly agrees to be proceeded against or punished for a previous offence not mentioned in the request for extradition ; (2) if he agrees to be surrendered to a third State ; (3) if he remains in the country where he was tried for three months after the date on which he purged his sentence or was pardoned and set at liberty, or if he subsequently returns to the territory of the applicant State.

In the cases mentioned under numbers 1 and 2 in the preceding paragraph, the original or a legalised copy of the declaration of consent made by the person surrendered shall be presented to the Government of the country which granted and effected extradition.

Article 7.

Extradition shall be granted only on condition that the person surrendered shall not be tried by any but an ordinary court of law.

Article 8.

The Contracting Parties agree that if the penalty applicable to the person whose extradition is demanded is that of death, extradition shall be granted only on condition that such penalty shall be commuted to one of imprisonment.

Article 9.

The request for extradition shall be made through the diplomatic channel, or, failing diplomatic agents, through the senior consul of the applicant country, or, failing consuls, directly by one Government to the other.

The request for extradition shall be accompanied by the original or a legalised copy of the judgment in the case of a convicted person, or by a warrant of arrest issued by the competent authority with a detailed statement of the offence in question and the date on which it was committed, in the case of a person awaiting trial.

The originals or copies of these documents shall be forwarded, accompanied by a French translation if they are drawn up in Spanish, German or Italian; the authenticity of copies being attested by a statement by the applicant authority. When the request for extradition is made through the diplomatic channel, consular legalisation shall not be necessary.

The request for extradition shall be accompanied by the information and documents necessary to establish the identity of the person claimed, and by a copy of the legal provisions applicable to the offence in question in the applicant country.

In the case of requests for the extradition of escaped prisoners, a document shall be submitted, issued by the competent administrative authority and reproducing the sentence, the judicial notification of the sentence as forwarded to that authority, the penal provisions in virtue of which the sentence was pronounced, the length of the term still to be served, the date and circumstances of the escape, and such information as may be necessary to establish the identity of the person claimed.

Article 10.

In urgent cases the Contracting Parties may demand by post or telegraph that administrative steps be taken for the provisional arrest of the accused and for the confiscation of the objects connected with the offence; the demand shall be complied with in the case of any of the offences mentioned in Article 2, whenever the existence of a judgment or warrant of arrest can be adduced.

The provisional arrest shall be effected in accordance with the formalities and rules established by the legislation of the country applied to; if the documents mentioned in Article 9 have not been received by that country within ninety days of the date on which the arrest was effected, the person arrested shall be released, unless he is kept under arrest for some other reason.

Article 11.

The examination of the request for extradition and the authorisation of extradition shall be in conformity with the legal provisions of the State applied to.

If that State deems the request inadequate as regards the formal or material conditions required under the present Treaty, it may demand of the applicant State such information and additional material as may be thought necessary to throw further light on the matter, after which it shall decide what action is to be taken on the request. If the additional information does not reach the Government applied to within ninety days of the date upon which it was demanded, the person claimed may be released and may not be re-arrested on the grounds on which extradition was requested.

Article 12.

If the person claimed is being proceeded against or is serving a sentence in the country of asylum for an offence other than that for which extradition is requested, he shall not be surrendered until final judgment has been given and, if he is convicted, until he has served his sentence or been pardoned.

Civil obligations which the person claimed may have contracted in the country of asylum shall not constitute an obstacle to his extradition.

Article 13.

If a person whose extradition is demanded under the terms of the present Treaty is claimed by one or more other Governments for offences committed in their respective territories, extradition shall be granted to the State in whose territory the most serious offence was committed, or, if the offences are of equal gravity, to the State whose request for extradition was first submitted.

Article 14.

If the applicant State takes no decision within three months of the date upon which the person claimed was placed at its disposal, that person shall be set at liberty and may not be re-arrested on the same grounds.

Article 15.

The objects which constitute the *corpus delicti* or have been employed to commit the offence, and likewise any papers or other material proofs that may be found or seized, as the result of judicial action on the person claimed or on third parties, shall be delivered to the applicant authority.

They shall be so delivered even if extradition cannot take place owing to the death or escape of the accused.

The rights of third parties over the objects in question shall be reserved, and such objects shall be restored to them free of cost after the trial.

Article 16.

The conveyance in transit through the territory of one of the Contracting Parties of a person surrendered by a third State to the other Party shall be permitted on the presentation of the original or a legalised copy of one of the documents mentioned in Article 9, provided that the person in question is not a national of the country of transit and that the act for which extradition is granted, is covered by the present Treaty and is not included among the exceptions enumerated in Article 3.

Such conveyance in transit shall be effected by the quickest routes under the escort of agents of the State applied to, and at the expense of the applicant State.

Article 17.

The expenses occasioned by the detention, maintenance and conveyance in transit of the person whose extradition has been granted, and by the safe keeping and transport of the objects which, under the terms of Article 15, are to be delivered or restored, shall be borne by the two States within the limits of their respective territories.

The transport and other expenses in the territory of intermediate States shall be borne by the applicant State.

Article 18.

Should one of the two Governments consider it necessary, in a criminal case concerning one of the offences mentioned in Article 2, to hear witnesses domiciled in the other State or to proceed with other measures of investigation, letters rogatory shall be sent for this purpose, through the channels mentioned in Article 9, and the necessary action shall be taken without delay in accordance with the laws of the country.

The letters rogatory and the documents annexed thereto shall be accompanied by a French translation for the purposes of execution in Switzerland and by a Spanish translation for the purposes of execution in Uruguay.

When the application for the forwarding of such documents is made through the diplomatic channel, consular legalisation shall not be necessary.

The respective Governments renounce all claims to the refund of costs arising out of the execution of letters rogatory, except where expert opinion is taken in criminal, commercial or medico-legal matters.

No claim shall be allowed for the costs of judicial acts performed by the magistrates of one country, on their own initiative, for the purposes of instituting proceedings or establishing proof in the case of offences committed within their territories by a foreigner who is subsequently proceeded against in his own country.

Article 19.

Should it be considered necessary or desirable, in a criminal case concerning one of the offences mentioned in Article 2, to secure the attendance in Court of a witness, the Government of the country in which such witness resides shall call upon him to comply with the subpoena served on him, and if he agrees to do so, the applicant Government shall allow him, from the moment he leaves his domicile, travelling expenses and a subsistence allowance assessed according to the rates in force in the country in which he is to attend, unless the said applicant Government considers itself called upon to grant him a higher allowance.

No witness, whatever his nationality, who, when summoned by one of the two States, voluntarily attends in the Courts of the other State, may be prosecuted or detained for offences or on the ground of judgments in civil, criminal or police-court cases prior to his departure from the State applied to, or on the ground of complicity in the offences forming the subject of the case in which he is witness.

Article 20.

In criminal cases that are not of a political, military or fiscal character, when the Government of one of the two countries considers it necessary to give notice of an act of procedure or a judgment to a person residing in the territory of the other State, the document shall be served on that person by an authorised official; the original, accompanied by the letter of notification, shall be sent back to the applicant State, which shall not be required to refund any expenses.

All acts to be served shall be drawn up in the language of the applicant authority. The contents shall, however, be notified to the Government of the country applied to, either in the official language of that country or in French, when the document is forwarded.

Article 21.

Each of the Contracting Parties undertakes to communicate to the other all convictions for offences of any nature pronounced by its courts against nationals of the other. Such communication shall be in the form of an extract from the final judgment, to be forwarded through the diplomatic channel.

Article 22.

The present Treaty shall be ratified in accordance with the constitution and laws of each of the Contracting States, and shall come into force six weeks after the exchange of ratifications, which shall take place at Berne at the earliest possible date.

The Treaty shall be for an unlimited period; each of the Contracting Parties shall have the right to denounce it at any moment, the denunciation becoming operative only six months after notification.

In faith whereof, the Plenipotentiaries have drawn up the present Act and have duly signed and sealed the same.

Done at Montevideo, February the twenty-seventh, One thousand nine hundred and twenty-three.

(L. S.) (Signed) EGGER.

(L. S.) (Signed) J. A. BUERO.

ADDITIONAL PROTOCOL

TO THE EXTRADITION TREATY BETWEEN SWITZERLAND AND THE REPUBLIC OF URUGUAY,
DATED FEBRUARY 27, 1923.

THE SWISS FEDERAL COUNCIL and HIS EXCELLENCY THE PRESIDENT OF THE ORIENTAL REPUBLIC OF URUGUAY, Signatories to the Treaty for the Extradition of Criminals, signed at Montevideo on February 27, 1923, being desirous of eliminating one of the grounds for extradition specified in the said Treaty, have decided with this object to attach thereto an Additional Protocol and have appointed as their Plenipotentiaries :

THE SWISS FEDERAL COUNCIL :

M. Charles EGGER, their Envoy Extraordinary and Minister Plenipotentiary accredited to His Excellency the President of the Oriental Republic of Uruguay ; and

HIS EXCELLENCY THE PRESIDENT OF THE ORIENTAL REPUBLIC OF URUGUAY :

M. Alvaro SARALEGUI, His Minister and Secretary of State for Foreign Affairs ;

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

Article 1.

The Offence mentioned in paragraph 2 of Article 2 of the above-mentioned Extradition Treaty shall be excluded from the latter. Accordingly, the extradition of persons accused of voluntary abortion shall not be granted.

Article 2.

The provisions of the preceding Article shall form an integral part of the Extradition Treaty of February 27, 1923.

Article 3.

The present Additional Protocol shall be ratified in accordance with the Constitution and laws of each of the Contracting States, and the ratifications shall be exchanged at Berne at the same time as those of the Treaty.

In faith whereof the above-mentioned Plenipotentiaries have signed this Additional Protocol and have thereto affixed their seals.

Done at Montevideo, in two identical copies, both equally authentic, each in French and Spanish, November the twenty-sixth, One thousand nine hundred and twenty-six.

(L. S.) (Signed) EGGER.

(L. S.) (Signed) ALVARO SARALEGUI.