

N° 4038.

COLOMBIE ET CUBA

Traité d'extradition. Signé à La
Havane, le 2 juillet 1932.

COLOMBIA AND CUBA

Treaty of Extradition. Signed at
Havana, July 2nd, 1932.

TEXTE ESPAGNOL. — SPANISH TEXT.

Nº 4038. — TRATADO ¹ DE EXTRADICION ENTRE LA REPUBLICA DE COLOMBIA Y LA REPUBLICA DE CUBA. FIRMADO EN LA HABANA, EL 2 DE JULIO DE 1932.

Texte officiel espagnol communiqué par le délégué permanent de la République de Cuba près la Société des Nations. L'enregistrement de ce traité a eu lieu le 14 janvier 1937.

Spanish official text communicated by the Permanent Delegate of the Republic of Cuba to the League of Nations. The registration of this Treaty took place January 14th, 1937.

SU EXCELENCIA EL PRESIDENTE DE LA REPÚBLICA DE CUBA y SU EXCELENCIA EL PRESIDENTE DE LA REPÚBLICA DE COLOMBIA, deseando regular mediante un Tratado la extradición recíproca de los delincuentes, han designado para ese objeto como sus plenipotenciarios respectivos, a saber :

SU EXCELENCIA EL PRESIDENTE DE LA REPÚBLICA DE CUBA :

A Su Excelencia el Dr. Orestes FERRARA y MARINO, Secretario de Estado, y

SU EXCELENCIA EL PRESIDENTE DE LA REPÚBLICA DE COLOMBIA :

A Su Excelencia el Dr. Pedro Juan NAVARRO, Su Enviado extraordinario y Ministro plenipotenciario en la República de Cuba,

quienes después de haberse comunicado sus respectivos Plenos Poderes, que hallaron en buena y debida forma, han convenido en los siguientes artículos :

Artículo I.

Los Gobiernos de la República de Cuba y de la República de Colombia, se obligan recíprocamente a entregarse, con arreglo a las estipulaciones de este Tratado, y en virtud de la petición que el uno dirija al otro, las personas que, estando acusadas o sentenciadas como autores, cómplices o encubridores de delito común, cometido dentro de la jurisdicción de una de las Altas Partes contratantes y siendo prófugos de la Justicia, busquen refugio o se encuentren en el territorio de la otra. También se concederá la extradición cuando el delito se haya cometido fuera del territorio del Estado reclamante, siempre que éste, conforme a sus leyes de orden interno, tenga jurisdicción para juzgar y castigar el hecho que motiva la demanda, y que las leyes del país requerido autoricen, en condiciones análogas, la persecución del mismo delito en el extranjero.

¹ L'échange des ratifications a eu lieu à La Havane, le 15 octobre 1936.

¹ The exchange of ratifications took place at Havana, October 15th, 1936.

¹ TRANSLATION.

No. 4038. — EXTRADITION TREATY BETWEEN THE REPUBLIC OF COLOMBIA AND THE REPUBLIC OF CUBA. SIGNED AT HAVANA, JULY 2ND, 1932.

HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF CUBA and HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF COLOMBIA, being desirous of regulating, by means of a Treaty, the reciprocal extradition of offenders, have appointed for this purpose as their respective Plenipotentiaries :

HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF CUBA :

His Excellency Dr. Orestes FERRARA y MARINO, Secretary of State ; and

HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF COLOMBIA :

His Excellency Dr. Pedro Juan NAVARRO, His Envoy Extraordinary and Minister Plenipotentiary in the Republic of Cuba ;

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

Article I.

The Governments of the Republic of Cuba and the Republic of Colombia undertake to surrender to each other, in accordance with the provisions of the present Treaty and upon requisition being duly made by one Government to the other, all persons who, being accused or under sentence as principals or accomplices in or accessories to any offence at ordinary law committed within the jurisdiction of one of the High Contracting Parties and being fugitives from justice, shall take refuge or be found within the territory of the other Party. Extradition shall likewise be granted when the offence has been committed outside the territory of the applicant State, provided that the latter, under its municipal law, is competent to try and punish the act which gave rise to the requisition and that the laws of the country applied to authorise, under similar conditions, legal proceedings in respect of the same offence in another country.

Article II.

The act in respect of which extradition is applied for must be punishable under the laws of the applicant State and the State applied to at the time it was committed.

Article III.

The present Treaty shall apply not only to offences or crimes committed, but also to those which are prevented or attempted.

¹ Translated by the Secretariat of the League of Nations, for information.

Article IV.

Extradition shall not be granted in the following cases :

(a) When, under the laws of both States, the maximum penalty applicable to the offence charged against the person whose extradition is applied for does not exceed one year's imprisonment.

(b) When, under the laws of either country, exemption from prosecution or punishment for the offence in question has been acquired by lapse of time.

(c) When the person whose extradition has been applied for has been tried and released, or has served his sentence or has been amnestied or pardoned.

(d) When he has been tried for the same offence in the country applied to.

(e) When the person claimed is a national of the State applied to or has been naturalised therein, unless his nationalisation or naturalisation took place after the offence. If, however, extradition is refused on this ground, the State applied to shall be bound to try him in accordance with its own laws in the same way as if the offence which gave rise to the request had been committed in its own territory, using the evidence submitted by the applicant State together with any other evidence which the authorities of the State applied to may think fit to adduce. The Government of the latter State shall be required to communicate to the former the sentence or final decision reached.

(f) When the offence in respect of which extradition is applied for is of a political character or is connected with an offence of a political character, or when the person claimed proves that the request for extradition has really been made for the purpose of trying or punishing him for an offence of a political character.

Article V.

Legislation promulgated in the State applied to after the offence has been committed may not bar extradition.

Article VI.

The assassination or attempted assassination of the Head of either Contracting State, irrespective of the means employed and the circumstances in which the act was committed, shall be regarded for the purposes of the present Treaty as an offence at ordinary law.

Acts committed or attempted by anarchists, or in which explosives or other means likely to cause serious damage are employed, shall not be regarded as political offences.

No person surrendered by either High Contracting Party to the other shall be accused, proceeded against or punished in respect of any political crime or offence or any act connected therewith committed before the requisition for his extradition. Should any doubt arise as to whether the provisions of this paragraph are applicable to a given case, the decision of the authorities of the Government which has granted extradition shall be final.

Article VII.

No civil obligation contracted within the jurisdiction of the country applied to by the person claimed may serve as a ground for the refusal of extradition.

Article VIII.

Extradition shall be applied for through the respective diplomatic representatives and, failing them, through the highest consular officials, should the former be absent from the country or seat of Government.

If, owing to the lack or absence of diplomatic or consular representatives, the requisition cannot be transmitted through them, it may be sent direct by the Secretary of State for Foreign Affairs of the country applying for extradition to the Foreign Secretary of the State applied to.

Article IX.

To enable extradition to be granted, the originals or certified copies of the following documents must be produced :

- (a) The sentence convicting the accused person or the warrant for his arrest or imprisonment ;
- (b) An exact description of the acts constituting the offence with which he is charged, when these are not set forth in the documents mentioned in the previous paragraph ;
- (c) Civil status and description of the person claimed ;
- (d) Text of the penal law applicable to the case.

Article X.

The competent chancelleries shall order the necessary measures to be taken with a view to the provisional arrest of the fugitive, and the requisitions for extradition shall be dealt with in accordance with the legislation in force in the State applied to.

Article XI.

If the documents accompanying the requisition for extradition are incomplete, they shall be returned to the applicant country for the omissions to be supplied. If the person claimed has been provisionally arrested, he shall remain in detention until the expiration of a period not exceeding ninety days.

Article XII.

If the extradition of a person is refused, no further requisition for his extradition may be made in respect of the same offence.

Article XIII.

In no case and on no grounds may the person extradited be sentenced to corporal punishment or to the death penalty.

Article XIV.

Should the person claimed have been proceeded against or sentenced in the State applied to in respect of an offence committed therein, extradition shall be postponed until he is acquitted or pardoned, or has served his sentence, or until the proceedings against him have been terminated in some other way. None of these circumstances, however, shall prevent the application of the extradition procedure.

Article XV.

No person surrendered by one of the Contracting Parties to the other may be accused, proceeded against or sentenced without his consent, given freely and publicly, in respect of any offence or crime committed prior to his extradition other than that which gave rise to his surrender, unless such person was free to leave the country during one month after he had been arrested and tried therein and, should he have been convicted, one month after he had served his sentence or had been pardoned.

The Government to which the extradited person has been surrendered must first obtain the consent of the Government which granted extradition before taking proceedings against or convicting the person surrendered.

Article XVI.

Should either High Contracting Party notify the other by any means whatsoever that the competent authority has issued a warrant for the arrest of a fugitive who is guilty of an offence at ordinary law and should it inform that Party by the same means that his extradition will be duly requested, the Government applied to shall, provided the request is in accordance with the provisions of the present Treaty, take steps with a view to the provisional arrest of the offender and shall keep him securely in custody for a period not exceeding ninety days, pending the formulation of the requisition for extradition in accordance with the provisions of the present Treaty.

If no requisition for extradition is submitted within the period mentioned above, the prisoner shall be released. Nevertheless, if the requisition is submitted after the expiry of that period, it shall be examined and a decision taken; should extradition be granted, the offender may be re-arrested, but simply for the purpose of being surrendered to the applicant Government.

Article XVII.

Should the same person be claimed by two or more States, extradition shall be granted to the State which has concluded an extradition treaty with the State applied to. Conditions being equal, extradition shall be granted to the State in whose territory, in the opinion of the country of refuge, the most serious offence has been committed.

Should the offences be equally serious, extradition shall be granted to the country which was the first to apply for it and, should the requisitions be made on the same date, the offender shall be surrendered to the State of which he is a national or, failing that, to the State in which he is domiciled, if that State is one of those applying for his extradition.

The order of preference established in this Article shall not be observed if the country of refuge is obliged by virtue of a previous treaty to follow a different order.

Article XVIII.

If during a non-political trial it is deemed to be necessary to hear the statements of or to obtain information from persons in either country or to carry out any other act or legal formality, letters rogatory shall be sent through the diplomatic or consular channel and effect shall be given to them by the competent officials in accordance with the laws of the country applied to.

The two Governments agree to waive repayment of the cost of giving effect to letters rogatory, except in so far as the reports of experts are concerned.

Article XIX.

The fugitive shall be taken by agents of the State of refuge as far as the port most suitable for his embarkation and shall there be surrendered to the agents of the applicant State.

If at the end of ninety days the applicant State shall not have taken delivery of the prisoner, he shall be released and may not be re-arrested on the same grounds.

Article XX.

Each State shall defray the costs incurred within its own territory in respect of the arrest, custody, maintenance and transport of the extradited person and the despatch and transport of the objects to be surrendered in accordance with the present Treaty.

Article XXI.

The consuls-general, consuls, vice-consuls and consular agents of either State may request that officers, sailors and any other members of the crew of a fighting or mercantile vessel or aircraft

of their respective countries who are charged with the offence of desertion be arrested and placed on board a vessel or aircraft of their country.

For this purpose, they shall apply in writing to the competent local authorities of the State to which the request is made and shall prove by the production of the ship's or aircraft's register or the muster-roll of the crew or other official documents that the persons claimed are members of the said crew. The request having thus been substantiated, the surrender of the persons claimed may not be refused, unless it is duly proved that they are nationals of the State applied to or have been naturalised in that State, except when nationalisation or naturalisation has taken place after desertion.

Officials of the applicant State shall be afforded full protection in the search for and capture of the deserters, who shall be interned in the prisons of the State applied to, at the request and expense of the consuls of the applicant State, until the latter are able to send them back to their country. Should such an opportunity not occur during the period of one month as from the date of their arrest, the deserters shall be released and may not be re-arrested on the same grounds.

Should the deserter have committed some offence and be claimed by the competent court for the purpose of trial, his surrender shall be postponed until the sentence has been rendered or served.

Article XXII.

Should either High Contracting Party obtain the surrender of an offender from a third State, extradition in transit shall be granted through the territory of the other State on production of the original or a certified copy of the document granting extradition, provided the act which gave rise to extradition is not covered by the provisions of paragraph (*f*) of Article IV of the Treaty.

The cost of extradition in transit shall be defrayed by the applicant Party.

Article XXIII.

No requisition for extradition based on the provisions of the present Treaty may be made in respect of an offence committed prior to the exchange of ratifications thereof.

As regards requisitions now under consideration or future requisitions in respect of such previous offences, the principle of reciprocity which has so far been observed by the two High Contracting Parties shall continue to be applied.

Article XXIV.

The present Treaty shall come into force on the date of the exchange of ratifications, which shall be effected in accordance with the laws of the contracting countries, and shall remain in force until six months after one of the two Governments has duly notified the other of its desire to abrogate or terminate it.

Article XXV.

The exchange of ratifications shall be effected as soon as possible in the City of Havana.

In faith whereof the Plenipotentiaries have signed the present Treaty and have thereto affixed their seals.

Done in duplicate at Havana, the second day of July, one thousand nine hundred and thirty-two.

(Signed) Orestes FERRARA.

(Signed) Pedro Juan NAVARRO.