

CANADA

TREATY SERIES, 1945

No. 12

TREATY AND PROTOCOL

FOR THE

EXTRADITION OF CRIMINALS

CONCLUDED BETWEEN

CANADA

AND THE

UNITED STATES OF AMERICA

Treaty signed at Washington, April 29, 1942

Protocol signed at Ottawa, October 3, 1945

(These instructions have not yet been ratified)



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TREATY AND PROTOCOL FOR THE EXTRADITION OF CRIMINALS BETWEEN CANADA AND THE UNITED STATES OF AMERICA*

Treaty signed at Washington, April 29, 1942

Protocol signed at Ottawa, October 3, 1945

TREATY

His Majesty the King of Great Britain, Ireland and the British dominions beyond the Seas, Emperor of India, in respect of Canada; and

The President of the United States of America,

Desiring to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the two countries and have named for that purpose as their respective plenipotentiaries:

His Majesty the King of Great Britain, Ireland, and the British dominions beyond the Seas, Emperor of India, for Canada:

Mr. Leighton McCarthy, K.C., Envoy Extraordinary and Minister Plenipotentiary of Canada at Washington; and

The President of the United States of America:

Mr. Cordell Hull, Secretary of State of the United States of America;

Who, having communicated to each other their full powers, found in good and due form, have agreed as follows:

ARTICLE I

The high contracting parties engage to deliver up to each other, under the circumstances and conditions stated in the present treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in article III, committed within the territory of the one party, shall be found within the territory of the other party.

ARTICLE II

For the purposes of the present treaty:

- (a) the territory of Canada shall be deemed to be all territory wherever situated under its exclusive administration and control;
- (b) the territory of the United States of America shall be deemed to be all territory wherever situated belonging to the United States of America including its dependencies and all other territories under its exclusive administration or control;

*For the extradition arrangements previously in effect, see the Conventions concluded between His Britannic Majesty and the United States on the 9th August, 1842 (*Treaties and Agreements Affecting Canada in force between His Majesty and the United States of America*, 1814-1925, Ottawa, 1927, page 18), the 12th July, 1889 (*ibid.*, p. 73), the 13th December, 1900 (*ibid.*, p. 140), the 12th April, 1905 (*ibid.*, p. 163), the 15th May, 1922 (*ibid.*, p. 504), and the 8th January, 1925 (*ibid.*, p. 514).

- (c) the word "territory" shall be deemed to include territorial waters, merchant vessels on and aircraft over the high seas, and men of war wherever situated;
- (d) "requesting country" shall be deemed to mean that country on behalf of which a competent authority requests the surrender of an accused or convicted person;
- (e) "requested country" shall be deemed to mean that country from which the surrender of an accused or convicted person is requested by a competent authority of the other country.

ARTICLE III

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including crimes designated by the terms assassination, paricide, poisoning, and infanticide); manslaughter.
2. Malicious wounding; inflicting grievous bodily harm.
3. Rape, abortion, carnal knowledge of children under the age of 16 years; indecent assault or incest provided such crime or offence is punishable by the laws of both countries.
4. Procuration; abduction, or detention of women or girls for immoral purposes.
5. Bigamy.
6. Arson.
7. Wilful and unlawful destruction or obstruction of railroads, highways, docks, channels, beacons and buoys, airdromes, and other transportation facilities.
8. Crimes committed on the high seas, in the territorial seas or inland waters as follows:
 - (a) Piracy, as commonly known and defined by the law of nations, or by statutes;
 - (b) Wrongfully sinking or destroying a vessel or attempting to do so;
 - (c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel;
 - (d) Assault on board ship with intent to do bodily harm.
9. Burglary, shop-breaking, and house-breaking.
10. The act of breaking into and entering the offices of government and public authorities, or any buildings not dwellings with intent to commit a crime or offence therein.
11. Robbery.
12. Forgery or uttering what is forged.
13. The forgery or falsification of the official documents or acts of the government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.

14. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by national, state, provincial, territorial, local or municipal governments, bank notes or other instruments of public credit, counterfeit seals, stamps, dies and marks of state or public administrations, and the utterance, circulation or fraudulent use of the above-mentioned objects; knowingly and without lawful authority making or having in possession any instrument, tool or engine adapted and intended for the counterfeiting of any of the above-mentioned objects.

15. Embezzlement.

16. Kidnapping or false imprisonment of minors or adults.

17. Larceny or theft.

18. Obtaining any property, including money or valuable securities, by false pretences, or receiving any property, including money or valuable securities, knowing the same to have been unlawfully obtained.

19. Perjury or subornation of perjury.

20. Fraud, or breach of trust by a bailee, banker, agent, factor, trustee, executor, administrator, guardian, or by a director or officer of any company or corporation, or by any one in any fiduciary position; fraudulent conversion.

21. Crimes and offences against the laws for the suppression of slavery and slave trading.

22. Wilful desertion or wilful non-support of minor or dependent children.

23. Bribery, defined to be the offering, giving or receiving of bribes.

24. Crimes or offences against the bankruptcy laws.

25. Crimes or offences against the laws for the suppression of traffic in narcotics.

26. Using the mails to defraud.

27. Extortion, or threats with intent to extort money or other things of value.

28. Malicious injury to property.

29. Use of explosives so as to endanger human life or property.

30. Smuggling, defined to be the act of wilfully and knowingly violating the customs laws.

31. Crimes or offences against the laws for the prevention of fraud in the sale or purchase of securities.

32. Crimes or offences, if indictable, against the laws regulating

(a) public securities, markets, or activities affecting such markets;

(b) registration or licensing of securities or of persons or companies doing business in securities, or giving advice with respect thereto;

(c) investment or public utility companies.

33. Extradition shall also take place for participation or conspiracy in any of the crimes or offences before mentioned or in any attempt to commit any of such crimes or offences.

ARTICLE IV

An accused person shall not be surrendered if the crime or offence for which his surrender is requested is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try to punish him for a crime or offence of a political character, provided that in no case shall murder, assassination or poisoning, either consummated or attempted, be deemed a crime or offence of a political character.

ARTICLE V

An accused person shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause according to the laws of the requesting country, he is exempt from prosecution or punishment for the crime or offence for which the surrender is asked.

ARTICLE VI

Extradition shall not take place if the person claimed has already been tried and discharged or punished, or is being punished, or is still under trial in the territories of the requested country, for the crime or offence for which his extradition is requested.

If the accused person be actually under prosecution, out on bail or in custody, for a crime or offence committed in the requested country, or shall have been convicted thereof, his extradition may be deferred until such proceedings be ended, and until he shall have been set at liberty in due course of law.

ARTICLE VII

No person shall be tried for any crime or offence committed prior to his extradition, other than that for which he was surrendered, unless for one month after trial, or in case of conviction, for one month after having suffered his punishment, or having been pardoned, he has been at liberty to leave the country.

ARTICLE VIII

The arrest and extradition of persons under the provisions of this treaty shall be carried out in Canada and in the United States of America, respectively, in conformity with the laws regulating extradition for the time being in force in the requested country.

Pertinent statutes of the requesting country shall be regarded as sufficiently proved for the purposes of extradition if they are certified by a principal law officer of such country or a sub-division thereof.

Requisition for the surrender of accused persons shall be made by the diplomatic agent of the requesting country. In the event of the absence of such agent from the country, requisition may be made by a consular officer.

ARTICLE IX

Extradition shall take place if the evidence be found sufficient to justify committal for trial for a crime or offence against the laws of the requesting country. In determining the sufficiency of such evidence, the courts of the requested country may apply the laws of the requested country with regard to the sufficiency of evidence to justify committal for trial in criminal causes. It shall not be essential to produce evidence sufficient to convict the accused person

of the crime or offence charged were he placed on trial therefor, and it shall not be essential to establish that the crime or offence would be a crime or offence under the laws of the requested country.

If the person claimed shall have been convicted of the crime or offence for which his surrender is asked, it shall be sufficient to prove that he is the identical person so convicted in the courts of the requesting country and to produce a duly authenticated copy of the sentence of the court before which such conviction took place.

ARTICLE X

If the person claimed by one of the high contracting parties pursuant to the stipulations of this treaty shall also be claimed by one or more other countries on account of crimes or offences committed within their jurisdiction, such person shall be delivered to that country whose claim is first received unless such claim is waived.

ARTICLE XI

Either Government may ask for the provisional apprehension and detention of a person, if it indicates at the same time its intention to request his extradition. During the period of provisional arrest of a person, whether pursuant to a formal request or otherwise, for the purpose of extradition hereunder, the legal officers of the requested country shall oppose the release on bail of such accused or convicted person, except in cases in which the denial of bail would, in their opinion, cause injustice.

Any fugitive provisionally arrested shall be released unless within two months from the date of arrest, or within such further time as a proper authority of the requested country shall direct, the formal requisition for surrender is made by the appropriate representative of the requesting country and within that time the documentary proofs in support of the requisition are produced before the appropriate judge or magistrate.

If, at any time prior to committal for trial, the accused or convicted person shall signify his willingness to return to the requesting country he shall, subject to the consent of the competent authorities of the requested country, be delivered to the proper officials of the requesting country for return thereto.

ARTICLE XII

All articles which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence, shall be given up when the extradition takes place, in so far as this may be permitted by the law of the requested country.

ARTICLE XIII

All expenses connected with the extradition shall be borne by the requesting country. However, the appropriate legal officers of the requested country where the proceedings of extradition are had, shall, consistently with the discharge of their duties and without charge, co-operate with the officers of the requesting country before the respective judges and magistrates.

ARTICLE XIV

The present treaty shall be ratified by the high contracting parties in accordance with their respective constitutional methods and shall take effect ten days after the exchange of ratifications which shall take place at Washington as soon as possible.

The present treaty shall remain in force for a period of five years and in case neither of the high contracting parties shall have given notice one year before the expiration of that period of his intention to terminate the treaty, it shall continue in force until the expiration of one year from the date on which such notice of termination shall be given by either of the high contracting parties.

On the coming into force of the present treaty it shall supersede all other existing provisions of treaties and conventions relating to extradition between Canada and the United States of America.

IN WITNESS WHEREOF the above-named plenipotentiaries have signed the present treaty and have hereunto affixed their seals.

DONE in duplicate at Washington this twenty-ninth day of April, 1942.

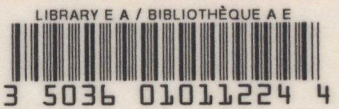
(Seal) LEIGHTON McCARTHY.

(Seal) CORDELL HULL.

Article VII

Article XIII

Article XV



PROTOCOL ANNEXED TO THE TREATY FOR THE EXTRADITION OF
CRIMINALS BETWEEN CANADA AND THE UNITED STATES
OF AMERICA WHICH WAS SIGNED AT WASHINGTON
APRIL 29, 1942

The undersigned, having been duly authorized to conclude a Protocol to be annexed to, and to form a part of, the Treaty for the Extradition of Criminals between Canada and the United States of America which was signed at Washington on April 29, 1942:

Considering that it is desired that the provisions of Items 26, 31 and 32 of Article 3 of the Treaty should not extend to the extradition of persons engaged in lawful business transactions in the requested country, unless the activities of such persons involve fraud, as defined by the laws of both countries, or wilful and knowing violation of the laws of the requesting country; and

Considering that it is desired that said provisions should not extend to the extradition of a publisher or vendor of a lawful publication in the requested country which is primarily intended for sale and circulation in that country, the circulation of which in the requesting country is only incidental to the ordinary course of publication and sale in the requested country; and

Considering that it is desired that all doubt should be removed as to the retroactive effect of any provisions of Article 3 of the Treaty which make extradition possible for an offence which was not previously an extraditable offence:

have accordingly agreed as follows:

1. No person dealing in securities in the requested country in the ordinary course of business and in compliance with the laws of the requested country shall be subject to extradition in respect of any matter involving an offence under Items 26, 31 or 32 of Article 3 of the Treaty, unless the offence involves—

- (a) fraud, as defined by the laws of both countries, or
- (b) wilful and knowing violation of the laws of the requesting country.

2. No person shall be subject to extradition for the sale and circulation in the requesting country of a lawful publication in the requested country which is primarily intended for sale and circulation in that country, the circulation of which in the requesting country is only incidental to the ordinary course of publication and sale in the requested country.

3. No person shall be subject to extradition by reason of any offence committed at a date prior to that on which the present Treaty comes into effect which was not an extraditable offence at the time when it was committed.

4. The terms of this declaration shall be deemed to have equal force and effect as the Treaty itself and to form an integral part thereof.

IN FAITH WHEREOF, the undersigned have signed the present Protocol and have affixed thereto their respective seals.

DONE in Ottawa this third day of October, one thousand nine hundred and forty-five.

RAY ATHERTON,
*Ambassador Extraordinary and Plenipotentiary of
the United States of America.*

LOUIS S. ST. LAURENT,
Acting Secretary of State for External Affairs.

