

## EXTRADITION

*Treaty signed at Washington October 28, 1896*

*Senate advice and consent to ratification, with amendments, January 28, 1897<sup>1</sup>*

*Ratified by the Orange Free State May 26, 1898*

*Ratified by the President of the United States, with amendments, February 21, 1899<sup>1</sup>*

*Ratifications exchanged at Washington April 20, 1899*

*Proclaimed by the President of the United States April 21, 1899*

*Entered into force May 21, 1899*

*Became obsolete May 28, 1900<sup>2</sup>*

Treaty Series 266

### ARTICLE I

The Government of the United States and the Government of the Orange Free State mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other:

Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime or offense had been there committed.

---

<sup>1</sup> The U.S. amendments read as follows:

"Article 2, sub-article 6; after 'larceny', in line 27, insert *and*.

"Article 2, sub-article 6; after 'property' in line 31, insert, *stolen or*.

"Article 2, sub-article 6, line 36; strike out [*stolen or*], and after 'embezzled', in the same line, insert *stolen or received*.

"Article 2, sub-article 11, paragraph (a), after 'Piracy', in line 51, strike out [*by Statute or*].

"Strike out all of Article 5, and insert in lieu thereof, the following:

*"In no case shall the nationality of the person accused be an impediment to his extradition, under the conditions stipulated by the present Treaty, but neither Government shall be bound to deliver its own citizens for extradition under this Convention; but either shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so."*

"Article 6, line 4; after 'or if', strike out [*he proves*], and insert, *it shall be made to appear*."

The text printed here is the amended text as proclaimed by the President.

<sup>2</sup> Date on which the Orange Free State was annexed to South Africa as the Orange River Colony.

## ARTICLE II

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide and poisoning; attempt to commit murder; the killing of a human being, when such act is punishable in the United States as voluntary manslaughter, and in the Orange Free State as manslaughter.

2. Arson.

3. Robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods, by violence or putting him in fear; burglary; also house-breaking or shop-breaking.

4. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of government, or public authorities, or of courts of justice, or the utterance of the thing forged or falsified.

5. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or of bank-notes, or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals of state.

6. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers; larceny; and receiving money, valuable securities or other property, knowing the same to have been stolen, when such act is made criminal by the laws of both countries and the amount of money or the value of the property stolen or received is not less than two hundred dollars (\$200) or forty pounds sterling (£40.); receiving in the Orange Free State a diamond or diamonds, cut or uncut, and of whatever value, knowing the same to have been embezzled, stolen or received.

7. Fraud or breach of trust by a bailee, banker, agent, factor, trustee or other person acting in a fiduciary capacity or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars (\$200) or forty pounds sterling (£40).

8. Perjury; subornation of perjury.

9. Rape; abduction; kidnapping.

10. Willful and unlawful destruction or obstruction of railroads which endangers human life.

11. Crimes committed at sea:

(a.) Piracy, by the law of nations;

(b.) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas, against the authority of the Master;

(c.) Wrongfully sinking or destroying a vessel at sea, or attempting to do so;

(d.) Assaults on board a ship on the high seas with intent to do grievous bodily harm.

12. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this treaty, provided such participation may be punished in the United States as a felony, and in the Orange Free State by imprisonment at hard labor.

### ARTICLE III

Requisitions for surrender of fugitives from justice shall be made by the diplomatic agents of the contracting parties, or in the absence of these from the country or its seat of government may be made by the superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the court in which he was convicted, or if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced.

The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in the Orange Free State, respectively, in conformity with the laws regulating extradition for the time being in force in the state on which the demand for surrender is made.

### ARTICLE IV

Where the arrest and detention of a fugitive are desired on telegraphic or other information in advance of the presentation of formal proofs, the proper course in the United States shall be to apply to the judge or other magistrates authorized to issue warrants of arrest in extradition cases, and present a complaint on oath, as provided by the Statutes of the United States.

In the Orange Free State the proper course shall be to apply to the Foreign Office, which will immediately cause the necessary steps to be taken in order to secure the provisional arrest and detention of the fugitive.

The provisional detention of a fugitive shall cease and the prisoner be released, if a formal requisition for his surrender, accompanied by the necessary evidence of his criminality, has not been produced, under the stipulations of this Treaty, within two months from the date of his provisional arrest or detention.

### ARTICLE V

In no case shall the nationality of the person accused be an impediment to his extradition, under the conditions stipulated by the present Treaty, but neither Government shall be bound to deliver its own citizens for extradition

under this Convention; but either shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.

#### ARTICLE VI

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if it shall be made to appear that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

No person surrendered by either of the high contracting parties to the other shall be triable or tried or be punished for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made, or which may have granted the extradition shall be final.

#### ARTICLE VII

Extradition shall not be granted, in pursuance of the provisions of this Treaty, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed has become barred by limitation, according to the laws of the country to which the requisition is addressed.

#### ARTICLE VIII

No person surrendered by either of the high contracting parties to the other shall, without his consent, freely granted and publicly declared by him, be triable or tried or be punished for any crime or offense prior to his extradition, other than that for which he was delivered up, until he shall have an opportunity of returning to the country from which he was surrendered.

#### ARTICLE IX

All articles seized which are in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable and in conformity with the laws of the respective countries, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to such articles shall be duly respected.

#### ARTICLE X

If the individual claimed by one of the high contracting parties, in pursuance of the present Treaty, shall also be claimed by one or several other Powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to the State whose demand is

first received: Provided, that the Government from which extradition is sought is not bound by Treaty to give preference otherwise.

#### ARTICLE XI

The expenses incurred in the arrest, detention, examination and delivery of fugitives under this Treaty shall be borne by the State in whose name the extradition is sought: Provided, that the demanding Government shall not be compelled to bear any expense for the services of such public officers of the government from which extradition is sought as receive a fixed salary; and, Provided, that the charge for the services of such public officers as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

#### ARTICLE XII

The present Treaty shall take effect on the 30th day after the date of the exchange of ratifications, and shall not operate retroactively. On the day on which it becomes operative however, the extradition articles in the Treaty of December 22, 1871, between the two High Contracting Parties which has been denounced to take effect in January, 1895, shall terminate.

The ratifications of the present Treaty shall be exchanged at Washington as soon as possible and it shall remain in force for a period of six months after either of the contracting Governments shall have given notice of a purpose to terminate it.

In witness whereof the respective plenipotentiaries have signed the above articles and have hereunto affixed their seals.

Done in duplicate at the city of Washington, this 28th day of October one thousand eight hundred and ninety-six.

RICHARD OLNEY [SEAL]

CHARLES D. PIERCE [SEAL]