

GUATEMALA

Treaty for the mutual extradition of fugitives from justice.
Signed at Washington February 27, 1903;
entered into force August 15, 1903.

33 Stat. 2147; TS 425; 8 Bevans 482.

340.3

Supplementary extradition convention.
Signed at Guatemala February 20, 1940;
entered into force March 13, 1941.

55 Stat. 1097; TS 963; 8 Bevans 528.

340.10

See also the INTER-AMERICAN extradition
convention at 410.1

EXTRADITION

Convention signed at Washington February 27, 1903
Senate advice and consent to ratification March 11, 1903
Ratified by Guatemala June 12, 1903
Ratified by the President of the United States July 8, 1903
Ratifications exchanged at Washington July 16, 1903
Proclaimed by the President of the United States July 17, 1903
Entered into force August 15, 1903
Supplemented and amended by convention of February 20, 1940¹

33 Stat. 2147; Treaty Series 425

The United States of America and the Republic of Guatemala, being desirous to confirm their friendly relations and to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of America and the Republic of Guatemala, and have appointed for that purpose the following Plenipotentiaries:

The President of the United States of America, John Hay, Secretary of State of the United States, and

The President of Guatemala, Senor Don Antonio Lazo Arriaga, Envoy Extraordinary and Minister Plenipotentiary of Guatemala to the United States:

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

The Government of the United States and the Government of Guatemala mutually agree to deliver up persons who, having been charged, as principals or accessories, 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 persons so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

¹ TS 963, p. 340.10

ARTICLE II

Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes or offenses:

1. Murder, comprehending the crimes known as parricide, assassination, poisoning, and infanticide; assault with intent to commit murder; manslaughter, when voluntary.
2. Mayhem and any other wilful mutilation causing disability or death.
3. The malicious and unlawful destruction or attempted destruction of railways, trains, bridges, vehicles, vessels, and other means of travel, or of public edifices and private dwellings, when the act committed shall endanger human life.
4. Rape.
5. Bigamy.
6. Arson.
7. Crimes committed at sea:
 - (a) Piracy, by statute or by the law of nations.
 - (b) Wrongfully sinking or destroying a vessel at sea, or attempting to do so.
 - (c) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
 - (d) Assaults on board a ship on the high seas with intent to do grievous bodily harm.
8. Burglary, defined to be the act of breaking and entering into the house of another in the nighttime, with intent to commit a felony therein.
9. The act of breaking into and entering public offices, or the offices of banks, banking houses, savings banks, trust companies, or insurance companies, with intent to commit theft therein and also the thefts resulting from such acts.
10. Robbery, defined to be the felonious and forcible taking from the person of another of goods or money, by violence or by putting the person in fear.
11. Forgery, or the utterance of forged papers.
12. The forgery, or falsification of the official acts of the Government or public authority, including courts of justice, or the utterance or fraudulent use of any of the same.
13. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank notes, or other instruments of public credit; of counterfeit seals, stamps, dies, and marks of State or public administrations, and the utterance, circulation, or fraudulent use of any of the above mentioned objects.
14. The introduction of instruments for the fabrication of counterfeit coin or bank notes or other paper current as money.
15. Embezzlement or criminal malversation of public funds committed within the jurisdiction of either party by public officers or depositaries, where the amount of money embezzled is not less than two hundred dollars.

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16. Embezzlement of funds of a bank of deposit or savings bank, or trust company chartered under Federal or State laws, where the amount of money embezzled is not less than two hundred dollars.
17. Embezzlement by any person or persons hired or salaried to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed, and where the amount of money or the value of the property embezzled is not less than two hundred dollars.
18. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons in order to exact money from them or their families, or for any unlawful end.
19. Obtaining by threats of injury, or by false devices, money, valuables or other personal property, and the receiving of the same with the knowledge that they have been so obtained, when such crimes or offenses are punishable by imprisonment or other corporal punishment by the laws of both countries, and the amount of money or the value of the property so obtained is not less than \$200.00.
20. Larceny, defined to be the theft of effects, personal property, horses, cattle, or live stock, or money, of the value of twenty-five dollars or more, or receiving stolen property, of that value, knowing it to be stolen.
21. 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.
22. Perjury; violation of an affirmation or a promise to state the truth, when required by law; subornation to commit said crimes.
23. Extradition shall also be granted for the attempt to commit any of the crimes and offenses above enumerated, when such attempt is punishable as a felony by the laws of both contracting parties.²

ARTICLE III

A person surrendered under this convention shall not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offense, not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned. He shall moreover not be tried or punished for any crime or offense provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, without the consent of the Government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in Article XI of this convention.

²For supplement to art. II and an amendment to art II, para. 23, see convention of Feb. 20, 1940 (TS 963), p. 340.10.

U.S. EXTRADITION TREATIES

The consent of that Government shall likewise be required for the extradition of the accused to a third country; nevertheless, such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV

The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such a crime or offense. A person who has been surrendered on account of one of the common crimes or offenses mentioned in Article II shall consequently in no case be prosecuted and punished in the State to which his extradition has been granted on account of a political crime or offense committed by him previously to his extradition, or on account of an act connected with such a political crime or offense, unless he has been at liberty to leave the country for one month after having been tried and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government or against that of any member of his family, when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offense or an act connected with such an offense.

ARTICLE V

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this convention, but the executive authority of each shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.

ARTICLE VI

If the person whose surrender may be claimed, pursuant to the stipulations of the present convention, shall have been accused or arrested for the commission of any offense in the country where he or she has sought asylum, or shall have been convicted thereof, his or her extradition may be deferred until he or she is entitled to be liberated on account of the offense charged, for any of the following reasons: acquittal; expiration of term of imprisonment; expiration of the period to which the sentence may have been commuted, or pardon.

ARTICLE VII

If a fugitive criminal claimed by one of the parties hereto shall be also claimed by one or more powers, pursuant to treaty provisions on account of crimes or offenses committed within their jurisdiction, such criminal shall be delivered up in preference in accordance with that demand which is the earliest in date, unless the State from which extradition is sought is bound to give preference otherwise.

ARTICLE VIII

Extradition shall not be granted, in pursuance of the provisions of this convention, 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 IX

On being informed by telegraph or otherwise, through the diplomatic channel, that a warrant has been issued by competent authority for the arrest of a fugitive criminal charged with any of the crimes enumerated in the foregoing articles of this treaty, and on being assured from the same source that a requisition for the surrender of such criminal is about to be made, accompanied by such warrant and duly authenticated depositions or copies thereof in support of the charge, each government shall endeavor to procure the provisional arrest of such criminal and to keep him in safe custody for such time as may be practicable, not exceeding forty days, to await the production of the documents upon which the claim for extradition is founded.

ARTICLE X

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

If the person whose extradition may be asked for shall have been convicted of a crime or offense, a copy of the sentence of the court in which he has been convicted, authenticated under its seal, with attestation of the official character of the judge, by the proper executive authority, and of the latter by the minister or consul of the United States or of Guatemala, respectively, shall accompany the requisition. When, however, the fugitive shall have been 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 upon which such warrant has been issued, must accompany the requisition as aforesaid.

ARTICLE XI

The expenses of the arrest, detention, examination and delivery of fugitives under this convention 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 expenses for the services of such officers of the government from which extradition is sought as received a fixed salary; and provided that the charge for the services of such public officials as receive only fees shall not exceed the fees to which such officials are entitled under the laws of the country for services rendered in ordinary criminal proceedings.

ARTICLE XII

All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, and that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

ARTICLE XIII

Each of the contracting parties shall exercise due diligence in procuring the extradition and prosecution of its citizens who may be charged with the commission of any of the crimes or offenses mentioned in Article II, exclusively committed in its territory against the government or any of the citizens of the other contracting party, when the person accused may have taken refuge or be found within the territory of the latter, provided the said crime or offense is one that is punishable, as such, in the territory of the demanding country.

ARTICLE XIV

The present convention shall take effect thirty days after the exchange of ratifications, when the convention of October 11, 1870, and the additional article of October 22, 1887,³ shall cease to be in force and shall be superseded by the present convention which shall continue to have binding force for six months after a desire for its termination shall have been expressed in due form by one of the two governments to the other.

It shall be ratified and its ratifications shall be exchanged at Washington as soon as possible.

In witness whereof, the respective plenipotentiaries have signed the above articles both in the English and Spanish languages, and have hereunto affixed their seals.

Done, in duplicate, at the City of Washington, this 27th day of February one thousand nine hundred and three.

John Hay [SEAL]
Ant. Lazo Arriaga [SEAL]

³Unperfected; for explanation of circumstances and procedural history of the convention and additional article, see List of Treaties Submitted to the Senate, 1789-1934 (U.S. Government Printing Office, 1935, Washington, D.C.), pp. 75-76

EXTRADITION

*Convention signed at Guatemala February 20, 1940, supplementing
convention of February 27, 1903*

Ratified by Guatemala June 20, 1940

Senate advice and consent to ratification November 26, 1940

Ratified by the President of the United States December 20, 1940

Ratifications exchanged at Guatemala February 6, 1941

Proclaimed by the President of the United States March 3, 1941

Entered into force March 13, 1941

55 Stat. 1097; Treaty Series 963

**SUPPLEMENTARY CONVENTION TO THE EXTRADITION TREATY CONCLUDED
BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF GUATEMALA ON
FEBRUARY 27, 1903.**

The United States of America and the Republic of Guatemala, desiring to enlarge the list of crimes and offenses for which extradition may be granted in the terms of the Treaty concluded between the two countries on February 27, 1903;¹ and in the desire also to clear up certain doubts which may arise in the application of the said Treaty, and thus favor the administration of justice and prevent crime in their respective territories and jurisdictions, have resolved to conclude a supplementary Convention for that purpose and have appointed their Plenipotentiaries, to wit:

The President of the United States of America, Fay Allen DesPortes, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Guatemalan Government; and

The President of Guatemala, Senor Licenciado Carlos Salazar, Secretary of State for Foreign Affairs,

who, after having exhibited their respective Full Powers, which were found to be in good and due form, have agreed upon the following Articles:

¹ TS 425, p. 340.3

ARTICLE I

The High Contracting Parties agree to the addition of the following crimes and offenses, under number 23, to the list of the crimes and offenses specified in Article 2 of the Extradition Treaty concluded between the United States of America and the Republic of Guatemala on February 27, 1903, namely:

23. Violation of the laws prohibiting or regulating the traffic in narcotics, when the penalty to which violators are liable is one year's imprisonment or more.

The High Contracting Parties also agree to amend number 23 of Article 2 of the said Treaty of 1903, to make it read as follows, renumbering it number 24:

24. Extradition shall also be granted for an attempt to commit any of the crimes or offenses listed above, or for participation in such crimes or offenses as an accessory before or after the fact, provided that all such violations are punishable with imprisonment of one year or more by the laws of both Contracting Parties.

ARTICLE II

This Convention shall be considered as an integral part of the said Extradition Treaty of February 27, 1903; and it is agreed that the participation as an accessory before or after the fact referred to in the foregoing Article shall be applied, in a proper case, to all the crimes or offenses listed in the said Treaty, and to the crimes or offenses included under number 23 of the Second Article of the above-mentioned Treaty, in the manner previously agreed upon.

ARTICLE III

In order to avoid, as far as may be possible, the doubts which might result from difference in the scope of the Spanish word "delito" and the English words "crime" and "offense", as well as the exact translation into Spanish of the expressions "attempt" and "accessories before or after the fact", and the exact translation into English of the words used in the Guatemalan penal legislation "tentativa", "complice" and "encubridor", the High Contracting Parties declare that for the application both of the Treaty of Extradition which they concluded on February 27, 1903, and for the application of the present Additional Convention, the Spanish word "delito" is equivalent to the English words "crime" and "offense"; that the Spanish words "delito frustrado" and "tentativa" are equivalent to the English word "attempt"; and that the Spanish names "complice" and "encubridor" are translated into English as "accessories before or after the fact".

ARTICLE IV

This convention shall be ratified and the ratifications exchanged in Guatemala City as soon as possible.

It shall come into force ten days after its publication in accordance with the laws of the High Contracting Parties, the said period to run from the date of its publication in the country last publishing, and it shall continue and shall terminate in the same manner as the above-mentioned Treaty of February 27, 1903.

In faith whereof the respective Plenipotentiaries have subscribed and affixed their seals to this Convention, in duplicate in the English and Spanish languages in the City of Guatemala on the twentieth day of February, nineteen hundred and forty.

FAY ALLEN DESPORTES [SEAL]
CARLOS SALAZAR [SEAL]