

No. 21096

**UNITED STATES OF AMERICA
and
PANAMA**

**Treaty on the execution of penal sentences. Signed at
Panama City on 11 January 1979**

Authentic texts: English and Spanish.

Registered by the United States of America on 22 June 1982.

**ÉTATS-UNIS D'AMÉRIQUE
et
PANAMA**

**Traité relatif à l'exécution des condamnations pénales.
Signé à Panama le 11 janvier 1979**

Textes authentiques : anglais et espagnol.

Enregistré par les États-Unis d'Amérique le 22 juin 1982.

TREATY¹ BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PANAMA ON THE EXECUTION OF PENAL SENTENCES

Whereas: The United States of America and the Republic of Panama, agreeing on the necessity of mutual cooperation in combatting crime insofar as the effects of such crime extend beyond their borders and with the purpose of assuring the better administration of justice through adequate procedures that facilitate the social rehabilitation of prisoners,

Whereas: Paragraph 11 of article IX of the Panama Canal Treaty of September 7, 1977 (the Panama Canal Treaty),² provides that "The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality",

Consequently, they have agreed to enter into a Treaty on the execution of penal sentences in the following terms:

Article I. (1) Sentences imposed by a court of the Republic of Panama on nationals of the United States of America may be served in penal institutions of the United States of America or under the supervision of its authorities in accordance with the provisions of this Treaty.

(2) Sentences imposed by a court of the United States of America, or a state thereof, on nationals of the Republic of Panama may be served in penal institutions of the Republic of Panama or under the supervision of its authorities in accordance with the provisions of this Treaty.

Article II. For the purposes of this Treaty:

(1) "Transferring State" means the Party from which the offender is to be transferred.

(2) "Receiving State" means the Party to which the offender is to be transferred.

(3) "Offender" means a national of either Party who has been sentenced by the courts of the other Party.

(4) "Category I offender" means a person who has been convicted and who is (a) a United States citizen employee or his dependent, or (b) a member of the United States Forces or his dependent, or (c) a member of the civilian component or his dependent. The terms "United States citizen employee," "dependent," "United States Forces," and "member of the civilian component" as used in this subparagraph have the meaning given to them in article I of the Agreement in implementation of article III of the Panama Canal Treaty³ and article I of the Agreement in implementation of article IV of the Panama Canal Treaty.⁴

(5) "Category II offender" means all other offenders who are nationals of either the United States of America or the Republic of Panama.

¹ Came into force on 27 June 1980, by the exchange of instruments of ratification, which took place at Washington, in accordance with article XIII (1).

² See p. 3 of this volume.

³ See p. 79 of this volume.

⁴ See p. 201 of this volume.

Article III. This Treaty shall apply only under the following conditions:

- (1) That the offense for which the offender was convicted and sentenced is one which would be punishable in the Receiving State; provided, however, that this condition shall not be interpreted so as to require that the offense described in the laws of both States be identical in those matters which do not affect the nature of the crime.
- (2) That the offender be a national of the Receiving State.
- (3) That the offender has not been sentenced to the death penalty nor convicted of a purely military offense.
- (4) Except for Category I offenders, that at least six months of the offender's sentence remain to be served at the time of petition to transfer.
- (5) That the sentence be final, i.e., that any appeal procedures have been completed, and that there be no collateral or extraordinary remedies pending at the time of invoking the provisions of this Treaty.
- (6) That the offender's express consent, or the consent of a legal representative in the case of a minor, to transfer has been given voluntarily and with full knowledge of the legal consequences thereof. That before the transfer, the Transferring State shall afford an opportunity to the Receiving State to verify through an officer designated by the laws of the Receiving State that the offender's consent to the transfer has been given voluntarily. The express consent of the offender shall be required in all cases.

Article IV. The Parties will designate authorities to perform the functions provided in this Treaty.

Article V. (1) Each transfer of American offenders shall be requested in writing by the Embassy of the United States of America in the Republic of Panama to the Ministry of Foreign Affairs. As to a Category I offender, submission of such a petition shall depend solely on such offender notifying the Embassy of the United States of America of his or her preliminary decision to elect to transfer under the Treaty.

(2) Each transfer of Panamanian offenders shall be requested in writing by the Embassy of the Republic of Panama in the United States of America to the Department of State.

(3) As to Category II offenders, if the Transferring State considers the request to transfer the offender appropriate, the Transferring State will communicate its approval of such request to the Receiving State so that, once internal arrangements have been completed, the transfer of the offender may be effected.

(4) As to eligible Category I offenders, no finding of the appropriateness of such consenting offenders' transfer by the Transferring State shall be required. Once internal arrangements have been completed, their transfers shall be effected.

(5) Delivery of an offender by the authorities of the Transferring State to those of the Receiving State shall occur at a place agreed upon by both Parties. The Receiving State will be responsible for the custody and transport of the offender from the Transferring State.

(6) In making decisions concerning the requests for or approval of the transfer of a Category II offender under paragraphs 1-3 of this article and with the

objective that the transfer should contribute positively to his social rehabilitation, the authorities of each Party will consider, among other factors, the seriousness of the crime, previous criminal record, if any, health status and the ties that the offender may have with the society of the Transferring State and the Receiving State.

(7) In cases where a Panamanian national has been sentenced by a state of the United States of America, the approval of such an offender's transfer pursuant to paragraph 3 of this article shall be required from both the appropriate state authority and the federal authority.

(8) The Transferring State shall furnish to the Receiving State a certified copy of the sentence or judgment relating to the offender. When the Receiving State considers such information insufficient, it may request, at its expense, copies of principal portions of the trial record or such additional information as it deems necessary. The Transferring State shall grant such requests to the extent permissible under its laws.

(9) When the Transferring State does not approve, for whatever reason, the transfer of a Category II offender, it shall communicate this decision to the Receiving State without delay.

(10) The Receiving State shall not be entitled to any reimbursement for the expenses incurred by it in the transfer of an offender or the completion of his sentence.

Article VI. (1) An offender delivered for execution of sentence under this Treaty may not again be detained, tried or sentenced in the Receiving State for the same offense for which the sentence was imposed by the Transferring State.

(2) Except as otherwise provided in this Treaty, the completion of a transferred offender's sentence shall be carried out according to the laws and procedures of the Receiving State, including the application of any provisions for reduction of the term of confinement by parole or conditional release.

(3) Each Party may request reports indicating the status of confinement of all offenders transferred under this Treaty, including in particular the parole or release of an offender. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

Article VII. The Transferring State shall retain exclusive jurisdiction regarding the sentences imposed and any procedures that provide for revision or modification of the sentences pronounced by its courts. The Transferring State also shall retain the power to pardon or grant amnesty or clemency to an offender. The Receiving State, upon being informed of any decision in this regard, will put such measures into effect.

Article VIII. (1) This Treaty shall also be applicable to persons subject to supervision or other measures under the laws of one of the Parties relating to youthful offenders. The Parties shall, in accordance with their laws, agree on the kind of treatment to be accorded such persons upon transfer. Consent for the transfer of such persons shall be obtained from a legally authorized representative.

(2) Nothing in this Treaty shall be interpreted to limit the ability which the Parties may have, independent of the present Treaty, to grant or accept the transfer of youthful or other offenders.

Article IX. By arrangement between the Parties for specific cases, persons accused of a crime who have been duly determined by competent authorities of the Transferring State to be suffering from a mental aberration or mental illness, and for such reason are declared incompetent to stand trial, may be transferred to the country of which they are nationals so that they may be cared for in special institutions.

Article X. Notwithstanding any other provision of this Treaty, or any law of either Party, prior to the termination of the Transition Period established by article XI of the Panama Canal Treaty, all offenders incarcerated in the areas and installations made available for the use of the United States of America by the Republic of Panama, who are not nationals of either country, shall be permitted, subject to the approval of both Parties, to elect to serve the remainder of their sentences in penal institutions of the Republic of Panama.

Article XI. If either Party enters into an agreement for the execution of penal sentences with any other State, the other Party shall cooperate in facilitating the transit through its territory of offenders being transferred pursuant to such agreement. The Party intending to make such a transfer will give advance notice to the other Party of such transfer.

Article XII. In order to carry out the purposes of this Treaty, each Party shall take the necessary measures and shall establish adequate administrative procedures so that a sentence imposed by a Transferring State will have legal effect in the Receiving State.

Article XIII. (1) This Treaty shall be subject to ratification and shall enter into force on the date on which the instruments of ratification are exchanged. The exchange of instruments of ratification shall take place at Washington.

(2) This Treaty shall remain in force as follows:

- (a) With respect to "Category I offenders," until noon, Panama time, December 31, 1999; and
- (b) With respect to "Category II offenders," for a period of five years from the date of exchange of instruments of ratification of this Treaty, and shall be automatically renewed for additional periods of five years, unless one of the Parties notifies the other Party in writing of its intent to terminate it at least six months before the expiration of the initial five-year period or of any extension thereof.

DONE in duplicate, in the English and Spanish languages, both texts being equally authentic, at Panama, this 11th day of January 1979.

For the United States of America:

[Signed]

AMBLER H. MOSS, Jr.
Ambassador Extraordinary
and Plenipotentiary

For the Republic of Panama:

[Signed]

CARLOS ALFREDO LÓPEZ GUEVARA
Ambassador Extraordinary
and Plenipotentiary