

TREATY WITH THE REPUBLIC OF PANAMA
ON THE EXECUTION OF PENAL
SENTENCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF PANAMA ON THE EXECUTION OF
PENAL SENTENCES WHICH WAS SIGNED AT PANAMA ON
JANUARY 11, 1979



JULY 30, 1979.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE,
July 30, 1979.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Republic of Panama on the Execution of Penal Sentences which was signed at Panama on January 11, 1979.

I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentences in their home country; in each case, the consent of the offender would be required.

This Treaty represents the fulfillment of a commitment undertaken by both nations in the Panama Canal Treaty of 1977. I would complement the wide range of protections and benefits afforded United States Government personnel under the Panama Canal Treaty and related agreements during the life of that Treaty, and would establish a mechanism for other nationals of both countries to serve their sentences in their home countries. Its ratification would provide our personnel stationed in the Republic of Panama further assurance that their interests will be fully protected upon the entry into force of the Panama Canal Treaty.

I recommend that the Senate give prompt and favorable consideration to this Treaty.

JIMMY CARTER.

(III)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 15, 1979.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit a Treaty between the United States of America and the Republic of Panama on the Execution of Penal Sentences which was signed at Panama on January 1, 1979. I recommend that the Treaty be submitted to the Senate for its advice and consent to ratification.

The Treaty is essentially similar to those now in force with the United Mexican States, Canada, and the Republic of Bolivia. It would permit citizens of either nation who had been convicted in the courts of the other country to serve their sentences in their home country; in each case the consent of the offender would be required.

The Treaty would fulfill the commitment of the two nations under paragraph 1 of Article IX of the Panama Canal Treaty of 1977 to "conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State * * * may elect to serve their sentences in their State of nationality." In accordance with the assurances provided the Senate that it was the Administration's intent that any such agreement with the Republic of Panama would be submitted for its advice and consent, the agreement has been concluded in the form of a treaty.

Like the similar treaties in force with the above-mentioned nations, this Treaty would relieve the special hardship which fall upon prisoners incarcerated far from home and make their rehabilitation more feasible. It would also further various efforts to establish closer international cooperation in law enforcement activities.

Prior treaties on the execution of penal sentences entered into by the United States of America, however, have been designed in part to respond to an existing situation involving the incarceration of substantial numbers of each country's nationals in the institutions of the other. Neither the United States of America nor the Republic of Panama has at present or in the past incarcerated significant numbers of nationals of the other nation, and this situation is not expected to change radically in the foreseeable future. The primary purpose of concluding this Treaty is to complement the benefits and protections afforded by the Panama Canal Treaty and related Agreements to the United States Government personnel serving in the Republic of Panama, although individuals incarcerated at present will also benefit.

The close relationship between this Treaty and the Panama Canal Treaty of 1977 is reflected in certain of the terms of the Treaty. The Treaty distinguishes between two categories of offenders. "Category 1"

offenders include persons subject to a special regime under the Panama Canal Treaty and related agreements, namely (a) members of the United States Forces, (b) members of the civilian component of the United States Forces, (c) United States citizen employees of the Panama Canal Commission, and (d) dependents of the foregoing United States Government personnel. "Category 2" offenders include other nationals of the United States of America and the Republic of Panama. Although the basic terms of the Treaty are applicable to both categories of offenders, two significant distinctions are made in recognition of the fundamental differences in the status of the aforementioned United States Government personnel and other individuals.

First, the application of the Treaty as regards Category 1 offenders is linked directly to the duration of the Panama Canal Treaty. It will therefore remain in force for Category 1 offenders until December 31, 1999. For Category 2 offenders, the Treaty will remain in force for an initial period of five years, and is automatically renewable, unless either Party formally notifies the other of its desire to terminate the Treaty, for successive five year periods. This procedure is the same as that contained in the prior treaties on the execution of penal sentences mentioned above.

Second, with respect to a Category 1 offender, the election of the individual to transfer would be determinative; neither Government would be in a position to disapprove his transfer to a penal institution in his home country. Category 2 offenders would be subject to the requirement set forth in previous treaties of this nature that the consent of the two Governments to the transfer, as well as that of the individual offender, is necessary.

An additional consideration related to the entry into force of the Panama Canal Treaty is reflected in Article X of the present Treaty. That provision would provide authority to transfer to Panamanian penal institutions, with the consent of the individual and the two Governments, individuals at present incarcerated by the United States in the Canal Zone who are not nationals of either the United States of America or the Republic of Panama. Prior treaties have not made provision for the transfer of third-country nationals. Such a provision was considered mutually desirable in this case since, in accordance with the Panama Canal Treaty, the United States will cease to maintain existing penal facilities in the Republic of Panama within 30 months from the entry into force of that Treaty. Third country nationals who are in United States custody in the Republic of Panama could, under this Treaty, be given the option of serving the remainder of their sentences in that country rather than being transferred to penal facilities in the United States of America.

In all other respects, the basic terms of the Treaty are modeled on those of the previous treaties on the execution of penal sentences to which the United States of America is party, which are being successfully implemented. The prompt ratification of the present Treaty would contribute significantly to our overall efforts in this area, and particularly to the cooperative relationship which has been established with the Republic of Panama.

Respectfully submitted.

CYRUS VANCE.

TREATY 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), provides that "The Parties shall conclude an agreement whereby nationals of either States, 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 Treaty and Article I of the Agreement in Implementation of Article IV of the Panama Canal Treaty.

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

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 administra-

tive 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 January, 1979.

FOR THE UNITED STATES OF AMERICA:

AMBLER H. MOSS, Jr.,
*Ambassador Extraordinary
and Plenipotentiary.*

FOR THE REPUBLIC OF PANAMA:

CARLOS ALFREDO LOPEZ-GUEVARA,
*Ambassador Extraordinary
and Plenipotentiary.*

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