

TREATY WITH MEXICO ON THE EXECUTION  
OF PENAL SENTENCES

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

A TREATY BETWEEN THE UNITED STATES OF AMERICA  
AND THE UNITED MEXICAN STATES ON THE EXECUTION  
OF PENAL SENTENCES WHICH WAS SIGNED IN MEXICO  
CITY ON NOVEMBER 25, 1976



FEBRUARY 21, 1977.—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

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THE WHITE HOUSE, *February 15, 1977.*

*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 United Mexican States on the Execution of Penal Sentences which was signed in Mexico City on November 25, 1976.

I transmit also, for the information of the Senate, the report by 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 as well as the approval of the authorities of the two governments would be required.

This Treaty is significant because it represents an attempt to resolve a situation which has inflicted substantial hardships on a number of citizens of each country and has caused considerable concern to both governments. It received the approval of the Senate of the United Mexican States on December 30, 1976. I recommend that the Senate give favorable consideration to this Treaty at an early date.

JIMMY CARTER.

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## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
*Washington, January 17, 1977.*

THE PRESIDENT,  
*The White House.*

**THE PRESIDENT:** I have the honor to submit a Treaty between the United States of America and the United Mexican States on the Execution of Penal Sentences which was signed in Mexico City on November 25, 1976. I recommend that the Treaty be submitted to the Senate for its advice and consent to ratification.

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 as well as the approval of the authorities of the two governments would be required.

The Treaty was first suggested by the Foreign Minister of Mexico at a meeting in June of this year and was then negotiated in a series of three meetings from September to November. It was approved by the Senate of the United Mexican States on December 30, 1976. It is contemplated that a similar Treaty will be negotiated with Canada in the near future.

The Treaty is intended both to relieve the special hardships which fall upon prisoners incarcerated far from home and to make their rehabilitation more feasible, and also to relieve diplomatic and law enforcement relations between the two countries of the strains that arise from the imprisonment of large numbers of each country's nationals in the institutions of the other. It constitutes part of an ongoing effort to improve relations between the two countries. It is also part of various efforts to establish closer international cooperation in law enforcement activities. The Treaty is without a direct analogy in United States practice, except for the Status of Forces Agreement with South Korea (17 UST 1677; TIAS 6127), but there are multi-lateral arrangements of this kind among the Nordic countries and in the Council of Europe.

The basic terms of the Treaty are as follows. Each transfer would be contingent upon the consent both of the state which sentenced the prisoner (the Transferring State) and of the state which was to receive and confine him (the Receiving State). The decision to transfer would be made on the basis of the whole record of the prisoner and the authorities' estimate as to the likelihood that the transfer would be beneficial (Article IV). In each case, the express consent of the prisoner concerned would have to be obtained; there can be no involuntary transfer under this Treaty. Certain categories of prisoners are

excluded from the terms of the Treaty: (1) political and military offenders, (2) offenders who are domiciliaries of the Transferring State, (3) those having less than six months to serve when processing of their transfer begins, and (4) offenders against the immigration laws (Article II). The program is basically one between the two federal governments. Prisoners who are transferred become the responsibility of the federal government in the Receiving State. However, a state in either country which wishes to allow some of the prisoners which it holds to be transferred may exercise that option if it chooses.

When a prisoner has been transferred, the following procedures govern his treatment thereafter. The original sentence would carry over to his new confinement, preserving deductions for good behaviour in prison, labor done by him and pre-trial confinement. The Transferring State retains the power to grant pardon or amnesty. With these exceptions, the execution of the sentence is to be carried out according to the rules and practices prevailing in the state to which he is transferred (Article V(2)). In particular, the rules of the Receiving State as to parole will determine the date at which the prisoner is released from confinement. Each nation is to report to the other on the manner in which it is administering the confinement of transferred prisoners.

The Treaty provides in Article II(5) that no prisoner will be transferred until the time for leave to appeal has expired and that no proceedings by way of appeal or collateral attack be pending. It further provides that any collateral attack on the sentence must proceed through the courts of the country which imposed the sentence (Article VI).

The Treaty will require implementing legislation to give it effect within the United States. Such legislation will be prepared in time for transmission to Congress for its consideration in conjunction with the Treaty.

Respectfully submitted.

HENRY A. KISSINGER.

**TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON THE EXECUTION OF PENAL SENTENCES**

The United States of America and the United Mexican States, desiring to render mutual assistance in combating crime insofar as the effects of such crime extend beyond their borders and to provide better administration of justice by adopting methods furthering the offender's social rehabilitation, have resolved to conclude a Treaty on the execution of penal sentences and, to that end, have named their plenipotentiaries Joseph John Jova, Ambassador Extraordinary and Plenipotentiary by the President of the United States of America and Alfonso Garcia Robles, Secretary of Foreign Relations by the President of the United Mexican States,

Who, having exchanged their full powers and having found them in proper and due form, have agreed on the following Articles:

**ARTICLE I**

(1) Sentences imposed in the United Mexican States on nationals of the United States of America may be served in penal institutions or subject to the supervision of the authorities of the United States of America in accordance with the provisions of this Treaty.

(2) Sentences imposed in the United States of America on nationals of the United Mexican States may be served in penal institutions or subject to the supervision of the authorities of the United Mexican States in accordance with the provisions of this Treaty.

**ARTICLE II**

This Treaty shall apply only subject to the following conditions:

(1) That the offense for which the offender was convicted and sentenced is one which would also be generally punishable as a crime in the Receiving State, provided, however, that this condition shall not be interpreted so as to require that the crimes described in the laws of the two States be identical in such matters not affecting the character of the crimes such as the quantity of property or money taken or possessed or the presence of interstate commerce.

(2) That the offender must be a national of the Receiving State.

(3) That the offender not be a domiciliary of the Transferring State.

(4) That the offense not be a political offense within the meaning of the Treaty of Extradition of 1899 between the parties, nor an offense under the immigration or the purely military laws of a party.

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(5) That at least six months of the offender's sentence remains to be served at the time of petition; and

(6) That no proceeding by way of appeal or of collateral attack upon the offender's conviction or sentence be pending in the Transferring State and that the prescribed time for appeal of the offender's conviction or sentence has expired.

#### ARTICLE III

Each State shall designate an authority to perform the functions provided in this Treaty.

#### ARTICLE IV

(1) Every transfer under the Treaty shall be commenced by the Authority of the Transferring State. Nothing in this Treaty shall prevent an offender from submitting a request to the Transferring State for consideration of his transfer.

(2) If the Authority of the Transferring State finds the transfer of an offender appropriate, and if the offender gives his express consent for his transfer, said Authority shall transmit a request for transfer, through diplomatic channels, to the Authority of the Receiving State.

(3) If the Authority of the Receiving State approves the request, it shall promptly so inform the Transferring State and shall initiate the necessary procedures to effect the transfer of the offender. If it does not approve the request, it shall so notify promptly the Authority of the Transferring State.

(4) In deciding upon the transfer of an offender the Authority of each Party shall bear in mind all factors bearing upon the probability that the transfer will contribute to the social rehabilitation of the offender, including the nature and severity of his offense and his previous criminal record, if any, his medical condition, the strength of his connections by residence, presence in the territory, family relations and otherwise to the social life of the Transferring State and the Receiving State.

(5) If the offender was sentenced by the courts of a state of one of the Parties, the approval of the authorities of that state, as well as that of the Federal Authority, shall be required. The Federal Authority of the Receiving State shall, however, be responsible for the custody of the transferred offender.

(6) No offender shall be transferred unless either the sentence which he is serving has a specified duration, or such a duration has subsequently been fixed by the appropriate administrative authorities.

(7) The Transferring State shall furnish the Receiving State a statement showing the offense of which the offender was convicted, the duration of the sentence, the length of time already served by the prisoner and any credits to which the offender is entitled, such as, but not limited to, work done, good behavior or pretrial confinement. Such statement shall be translated into the language of the Receiving State and duly authenticated. The Transferring State shall also furnish the Receiving State a certified copy of the sentence handed down by the competent judicial authority and any modifications thereof. It shall



also furnish additional information that might be useful to the Authority of the Receiving State in determining the treatment of the convict with a view to his social rehabilitation.

(8) If the Receiving State considers that the documents supplied by the Transferring State do not enable it to implement this Treaty, it may request additional information.

(9) Each Party shall take the necessary legislative measures and, where required, shall establish adequate procedures, to give for the purposes of this Treaty, legal effect, within its territory to sentences pronounced by courts of the other Party.

#### ARTICLE V

(1) Delivery of the 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 Transferring State shall afford an opportunity to the Receiving State, if it so desires, to verify, prior to the transfer, that the offender's consent to the transfer is given voluntarily and with full knowledge of the consequences thereof, through the officer designated by the laws of the Receiving 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, conditional release or otherwise. The Transferring State shall, however, retain the power to pardon or grant amnesty to the offender and the Receiving State shall, upon being advised of such pardon or amnesty release the offender.

(3) No sentence of confinement shall be enforced by the Receiving State in such a way as to extend its duration beyond the date at which it would have terminated according to the sentence of the court of the Transferring State.

(4) The Receiving State shall not be entitled to any reimbursement for the expenses incurred by it in the completion of the offender's sentence.

(5) The Authorities of each party shall, every six months, exchange reports indicating the status of confinement of all offenders transferred under this Treaty, including in particular the parole or release of any offender. Either Party may, at any time, request a special report on the status of the execution of an individual sentence.

(6) The fact that an offender has been transferred under the provisions of this Treaty shall not prejudice his civil rights in the Receiving State in any way beyond those ways in which the fact of his conviction in the Transferring State by itself effects such prejudice under the laws of the Receiving State or any State thereof.

#### ARTICLE VI

The Transferring State shall have exclusive jurisdiction over any proceedings, regardless of their form, intended to challenge, modify or set aside sentences handed down by its courts. The Receiving State shall, upon being advised by the Transferring State of action affect-

ing the sentence, take the appropriate action in accordance with such advice.

#### ARTICLE VII

An offender delivered for execution of a sentence under this Treaty may not be detained, tried or sentenced in the Receiving State for the same offense upon which the sentence to be executed is based. For purposes of this Article, the Receiving State will not prosecute for any offense the prosecution of which would have been barred under the law of that State, if the sentence had been imposed by one of its courts, federal or state.

#### ARTICLE VIII

(1) This Treaty may 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 to the type of treatment to be accorded such individuals upon transfer. Consent for the transfer shall be obtained from the legally authorized person.

(2) By special agreement between the Parties, persons accused of an offense but determined to be of unsound mental condition may be transferred for care in institutions in the country of nationality.

(3) 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

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; and

(3) "Offender" means a person who, in the territory of one of the parties, has been convicted of a crime and sentenced either to imprisonment or to a term of probation, parole, suspended sentence, or any other form of supervision or conditional sentence without confinement.

(4) A "domiciliary" means a person who has been present in the territory of one of the parties for at least five years with an intent to remain permanently therein.

#### ARTICLE X

(1) This Treaty is subject to ratification. The exchange of ratifications shall take place in Washington.

(2) This Treaty shall enter into force thirty days after the exchange of ratifications and shall remain in force for three years.

(3) Should neither contracting party have notified the other ninety days before the three-year period mentioned in the preceding paragraph has expired of its intention to let the Treaty terminate, the Treaty shall remain in force for another three years, and so on every three years.

DONE at Mexico City in duplicate, this twenty-fifth day of November, one thousand nine hundred seventy six, in the English and Spanish languages, each text of which shall be equally authentic.

FOR THE UNITED STATES OF AMERICA:      FOR THE UNITED MEXICAN STATES:

Sevilla Shu Sia

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