

TREATY WITH CANADA ON THE EXECUTION
OF PENAL SENTENCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA
AND CANADA ON THE EXECUTION OF PENAL SENTENCES
WHICH WAS SIGNED AT WASHINGTON ON MARCH 2, 1977



APRIL 18, 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

U.S. GOVERNMENT PRINTING OFFICE

89-118

WASHINGTON : 1977

★(Star Print)

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 18, 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 Canada on the Execution of Penal Sentences which was signed at Washington on March 2, 1977.

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 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 concern to both Governments. I recommend that the Senate give favorable consideration to this Treaty together with the similar treaty with the United Mexican States which I have already transmitted.

JIMMY CARTER.

(III)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., April 8, 1977.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit a Treaty between the United States of America and Canada on the Execution of Penal Sentences which was signed at Washington on March 2, 1977. I recommend that the Treaty be submitted to the Senate for its advice and consent to ratification.

The Treaty is essentially similar to that with the United Mexican States which was signed on November 25, 1976 and has already been submitted by you to the Senate. 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 as well as the approval of the authorities of the two **Governments would be required.**

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 substantial number 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 the Republic of Korea (17 UST 1677; TIAS 6127), but there are multilateral 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 III). 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) military offenders; (2) those having less than six months to serve when processing of their transfer begins; and (3) 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 or province 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 pretrial 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 IV(1)). 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(3) 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 V).

The Treaty will require implementing legislation to give it effect within the United States. Such legislation will be submitted to Congress in the near future.

Respectfully submitted.

CYRUS VANCE.

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

The Government of the United States of America and the Government of Canada,

Desiring to enable Offenders, with their consent, to serve sentences of imprisonment or parole or supervision in the country of which they are citizens, thereby facilitating their successful reintegration into society;

Have agreed as follows:

ARTICLE I

For the purposes of this Treaty:

(a) "Sending State" means the Party from which the Offender is to be transferred;

(b) "Receiving State" means the Party to which the Offender is to be transferred;

(c) "Offender" means a person who, in the territory of either Party, has been convicted of a crime and sentenced either to imprisonment or to a term of probation, parole, conditional release or other form of supervision without confinement. The term shall include persons subject to confinement, custody, or supervision under the laws of the Sending State respecting juvenile offenders; and

(d) "Citizen" includes an Offender who may be a dual national of the Parties and in the case of the United States also includes nationals.

ARTICLE II

The application of this Treaty shall be subject to the following conditions:

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

(b) That the Offender is a citizen of the Receiving State.

(c) That the offense is not an offense under the immigration laws or solely against the military laws of a Party.

(d) That there is at least six months of the Offender's sentence remaining to be served at the time of his application.

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

(1)

ARTICLE III

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

2. Each Party shall inform an Offender, who is within the scope of the present Treaty, of the substance of the Treaty.

3. Every transfer under this Treaty shall be commenced by a written application submitted by the Offender to the authority of the Sending State. If the authority of the Sending State approves, it will transmit the application, together with its approval, through diplomatic channels to the authority of the Receiving State.

4. If the authority of the Receiving State concurs, it will so inform the Sending State and initiate procedures to effectuate the transfer of the Offender at its own expense. If it does not concur, it will promptly advise the authority of the Sending State.

5. If the Offender was sentenced by the courts pursuant to the laws of a state or province of one of the Parties, the approval of the authorities of that state or province, as well as that of the federal authority, shall be required. The federal authority of the Receiving State shall be responsible for the custody of the transferred Offender.

6. In deciding upon the transfer of an Offender, the authority of each Party shall bear in mind all factors bearing upon the probability that transfer will be in the best interests of the Offender.

7. No Offender shall be transferred unless:

(a) he is under a sentence of imprisonment for life; or

(b) the sentence which he is serving states a definite termination date, or the authorities authorized to fix such a date have so acted; or

(c) he is subject to confinement, custody or supervision under the laws of the Sending State respecting juvenile offenders; or

(d) he is subject to indefinite confinement as a dangerous or habitual offender.

8. The Sending State shall furnish to the Receiving State a statement showing the offense of which the Offender was convicted, the termination date of the sentence, the length of time already served by the prisoner and any credits to which the Offender is entitled on account of work done, good behavior or pretrial confinement. Where requested by the Receiving State a translation shall be provided.

9. Each Party shall establish by legislation or regulation the procedures necessary and appropriate to give legal effect within its territory to sentences pronounced by courts of the other Party and each Party agrees to cooperate in the procedures established by the other Party.

10. Delivery of the Offender by the authorities of the Sending State to those of the Receiving State shall occur at a place agreed upon by both Parties. The Sending 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.

ARTICLE IV

1. 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 Sending State shall, in addition, retain a power to pardon the Offender and the Receiving State shall, upon being advised of such pardon, release the Offender.

2. The Receiving State may treat under its laws relating to youthful offenders any Offender so categorized under its laws regardless of his status under the laws of the Sending State.

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 Sending State.

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

5. The authorities of each Party shall at the request of the other Party provide reports indicating the status 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 transfer of an Offender under the provisions of this Treaty shall not create any additional disability under the laws of the Receiving State or any State or province thereof beyond those which the fact of his conviction may in and of itself already have created.

ARTICLE V

Each Party shall regulate by legislation the extent, if any, to which it will entertain collateral attacks upon the convictions or sentences handed down by it in the cases of Offenders who have been transferred by it. Upon being informed by the Sending State that the conviction or sentence has been set aside or otherwise modified, the Receiving State shall take appropriate action in accordance with such information. The Receiving State shall have no jurisdiction over any proceedings, regardless of their form, intended to challenge, set aside or otherwise modify convictions or sentences handed down in the Sending State.

ARTICLE VI

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 a court, Federal, State, or provincial, of the Receiving State.

ARTICLE VII

If either Party enters into an agreement for the transfer of sanctions 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 VIII

1. This Treaty shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged. The exchange of instruments of ratification shall take place at Ottawa as soon as possible.

2. The present Treaty shall remain in force for three years from the date upon which it enters into force. Thereafter, the Treaty shall continue in force until thirty days from the date upon which either Party gives written notice to the other Party of its intention to terminate the Treaty.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Treaty.

DONE in duplicate, in the English and French languages, each language version being equally authentic, at Washington this second day of March, 1977.

For the Government of the United States of America :

GRIFFIN B. BELL.

For the Government of Canada :

FRANCIS FOX.

○