
INTER-AMERICAN CONVENTION ON SERVING CRIMINAL
SENTENCES ABROAD

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Mr. HELMS, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 104-35]

The Committee on Foreign Relations, to which was referred the Inter-American Convention on Serving Criminal Sentences Abroad, done in Managua, Nicaragua, on June 9, 1993, signed on behalf of the United States at the Organization of American States Headquarters in Washington on January 10, 1995 (Treaty Doc. 104-35) having considered the same, reports favorably thereon with the conditions indicated below, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The Inter-American Convention on Serving Criminal Sentences Abroad (“the Convention”) would provide a mechanism for the reciprocal transfer of persons incarcerated in prisons in States that are Parties to the Convention to permit those individuals to serve their sentences in their home countries.

II. SUMMARY

A. GENERAL

The Convention was adopted and opened for signature at the twenty-third regular session of the Organization of American States (OAS) General Assembly meeting in Managua, Nicaragua, on June 9, 1993. It was signed by the United States at OAS Headquarters in Washington on January 10, 1995. The Convention entered into force on April 13, 1996, thirty days after the deposit of the second instrument of ratification by Venezuela. As of the date of this report, six OAS member states have deposited instruments of ratification.

The United States domestic implementation of prisoner transfer agreements is covered generally by the provisions of 18 U.S.C. §§ 4100 *et seq.* Among other things, the federal statutes provide for and govern the transfer procedure, particularly the verification of the consent of the prisoner to be transferred.

The Convention is the first multilateral treaty of its kind signed by the United States since the Reagan Administration signed the Council of Europe prisoner transfer convention in 1983. The Convention follows the format of bilateral United States prisoner transfer agreements with Mexico and Canada, and the Council of Europe convention.

B. KEY PROVISIONS

The Convention establishes basic conditions for transfer. In addition, it requires each Party to inform any sentenced person covered by the Convention about its provisions. Parties must also keep a sentenced person informed about the status of his/her transfer. For the United States, these functions generally are already performed by American consular officials abroad, where U.S. prisoners are concerned, or by federal and state penal systems in the United States where prisoners of foreign nationality are concerned.

The Convention also establishes the procedure for transfers. A request for transfer may be made by the sentencing state, the receiving state, or the sentenced person. Consequent procedures may be initiated by either the sentencing state or the receiving state. Where the sentencing or receiving state has initiated the transfer, the sentenced person must also consent. Before the transfer is made, the sentencing state shall permit the receiving state to verify, if it wishes, through an official chosen by the receiving state, that the prisoner has consented to the transfer with full knowledge of the legal consequences.

The request for transfer must be processed through the central authority designated pursuant to the Convention. In the United States, the Office of Enforcement Operations of the United States Department of Justice's Criminal Division is the action office for the conduct of international prisoner transfer operations. The Party receiving the request shall inform the other Party promptly of its decision to disapprove the transfer, and where possible and appropriate, explain the reasons for the denial.

The Convention provides that the laws and procedures of the receiving Party shall regulate the execution of the sentence with respect to any reduction of the time of imprisonment or to alternative

service of the sentence, such as conditional release or parole. No sentence may be enforced by the receiving state in a manner that would lengthen the sentence beyond the date on which it would expire in the sentencing state. A sentencing Party may request, via the central authorities, a report on the status of service of the sentence of any individual transferred to a receiving state pursuant to the Convention.

The Convention also provides that the sentencing state shall retain exclusive jurisdiction for the review of convictions and sentences of its courts. This is typical of such agreements. Although the laws of the receiving state govern the administration of a sentence, the sentencing state still retains the sole right of actual review and of reversing a conviction or pardoning the offender.

Article XII of the Convention states that the Convention shall not be construed to restrict other bilateral or multilateral treaties or other agreements. Thus, the United States would still retain discretion to invoke bilateral or other multilateral prisoner transfer agreements when to do so would be advantageous to us.

At the time the Convention was transmitted to the Senate, the Executive Branch recommended that one understanding be made with respect to Articles III, IV, V, and VI, and that one reservation be made to Article V.

The proposed understanding is that the consent requirements are “cumulative,” meaning that each transfer requires the consent of the sentencing state, the receiving state, and the prisoner, and also the consent of a state or provincial government, if the prisoner was sentenced by a state or provincial authority under the laws of that state or province.

Under the proposed reservation, the United States will require that whenever one of its nationals is to be returned to the United States, the sentencing state must provide the United States documents required to be provided (copy of the sentence, information concerning time served and potential reduction in time served due to work, good behavior, pre-trial incarceration, etc.) in English, as well as the language of the sentencing state, if different. The United States undertakes to likewise provide a translation of the required documents into the language of the receiving state, if other than English.

III. ENTRY INTO FORCE AND DENUNCIATION

A. ENTRY INTO FORCE

For ratifying states, the Convention entered into force on the thirtieth day following the date on which the second instrument of ratification was deposited. Thereafter, for a ratifying or acceding state, the proposed Convention would enter into force on the thirtieth day following the day on which such state has deposited its instrument of ratification or accession.

The Convention is now in force.

B. DENUNCIATION

Any state party may denounce the proposed Convention by registering such denunciation with the General Secretariat of the Organization of American States. At the end of one year from the

date of the denunciation, the proposed Convention would cease to be in force for the denouncing state. The Convention's provisions, however, would remain in effect for the denouncing state until the sentences of transferred persons have been served, and until pending requests for transfer have been processed and executed, absent agreement to the contrary by the parties.

IV. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed Convention on September 12, 2000, (a transcript of the hearing and questions for the record can be found in Senate hearing 106-660 entitled "Consideration of Pending Treaties"). The Committee considered the proposed Convention on September 27, 2000, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed Convention subject to the reservation, understanding, declaration and proviso noted below.

V. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Convention. On balance, the Committee believes that the proposed Convention is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification.

NEGOTIATING CRITERIA

The Committee advises the Executive Branch to bear in mind, and where appropriate, apply the negotiating criteria for bilateral prisoner transfer treaties set forth in Section 330 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (included in P.L. 104-208).

VI. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved (two thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Inter-American Convention on Serving Criminal Sentences Abroad, done at Managua, Nicaragua, on June 9, 1993, signed on behalf of the United States at the Organization of American States Headquarters in Washington on January 10, 1995 (Treaty Doc. 104-35), subject to the conditions of subsections (a) and (b).

(a) The advice and consent of the Senate is subject to the following conditions, which shall be included in the instrument of ratification of the Convention:

(1) RESERVATION.—With respect to Article V, paragraph 7, the United States of America will require that whenever one of its nationals is to be returned to the United States, the sentencing state provide the United States with the documents specified in that paragraph in the English language, as well as the language of the sentencing state. The United States undertakes to furnish a translation of those documents into the language of the requesting state in like circumstances.

(2) UNDERSTANDING.—The United States of America understands that the consent requirements in Articles III, IV, V

and VI are cumulative; that is, that each transfer of a sentenced person under this Convention shall require the concurrence of the sentencing state, the receiving state, and the prisoner, and that in the circumstances specified in Article V, paragraph 3, the approval of the state or province concerned shall also be required.

(b) The advice and consent of the Senate is subject to the following conditions, which are binding upon the President but not required to be included in the instrument of ratification of the Convention:

(1) DECLARATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(2) PROVISIO.—Nothing in this Treaty requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.